

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FT. LAUDERDALE DIVISION**

Case No. 0:21-cv-60643-RKA

ZELDA BRODOWICZ, DEREK ELLIS,
and HAROLD NYANJOM, individually and
on behalf of all others similarly situated

Plaintiffs,

v.

VIRGIN SCENT, INC., d/b/a ARTNATURALS,
INC., and WALMART, INC.,

Defendants.

REVISED SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by and between Zelda Brodowicz, Derek Ellis, Harold Nyanjom, Lauren Slaughter, Kaila Saiki, Raymond Saiki, Stephanie Pinghera, Jody McIntyre, Mayra Duarte, Lucas Pichardo, Amy Robinson, Donald Boorman, Kenneth Scantlin, Shelley Howe, Mark Sophocles, and Virgin Scent, Inc. (collectively, the “Parties”). This Agreement is submitted to the Court pursuant to Rule 23, Federal Rules of Civil Procedure, and is subject to preliminary and final approval by the Court.

DEFINITIONS

As used in this Agreement, the following terms have the meanings specified below:

1. “Action” means *Zelda Brodowicz, et al., v. Virgin Scent, Inc. and Walmart, Inc.*, No. 21-cv- 60643-RKA (S.D. Fla.), pending before the Court.
2. “Agreement” means this Settlement Agreement.

3. “*Artnaturals*” means Virgin Scent, Inc. Artnaturals and Virgin Scent are used interchangeably in this Agreement.

4. “*Attorneys’ Fee, Costs, and Expenses Award*” means an award of attorneys' fees, costs, and expenses, to be paid to Class Counsel as set forth in Paragraphs 7-9 of the Terms of the Settlement below.

5. “*Claim Period*” means a period of sixty (60) days after the sending of the Notice pursuant to Paragraph 20 of the Terms of the Settlement below.

6. “*Class Actions*” mean this Action, the *Slaughter* Action, the *Saiki* Action, and the *Deans* Action, collectively.

7. “*Class Administrator*” means Angeion Group, the class action claim administrator retained by Plaintiffs and Virgin Scent to perform Class Notice and Administration.

8. “*Class Counsel*” means Ruben Honik and David J. Stanoch of Honik LLC, and Conlee S. Whiteley of Kanner & Whiteley, L.L.C.

9. “*Class Notice and Administration*” means the processes set forth in this Agreement, including, but not limited to, those set forth in Paragraphs 15-19 and 30-36 of the Terms of the Settlement below, for the Class Administrator to provide notice to Settlement Class Members and administer the Settlement Fund.

10. “*Class Notice and Administration Costs*” means all costs incurred by the Class Administrator in connection with Class Notice and Administration.

11. “*Class Period*” means January 1, 2015 through the date of preliminary approval of the Settlement memorialized by this Agreement.

12. “*Complaint*” means the Second Amended Complaint filed by Brodowicz in the Action on June 23, 2022.

13. Unless otherwise indicated, “*Court*” means the United States District Court, Southern District of Florida.

14. “*Deans Action*” means *Pamela Deans v. Virgin Scent, Inc.*, Case No. 37-2021-00048846-CU-BC-CTL (Cal. Super. Ct.).

15. “*Effective Date*” has the meaning set forth in Paragraph 37 of the Terms of the Settlement below.

16. “*Final Fairness Hearing*” means the hearing in the Action for the Court to consider final approval of the Settlement and entry of the Judgment.

17. “*Final Payment*” means the amount actually paid to a Settlement Class Member pursuant to the formula set forth in Paragraphs 30-35 of the Terms of the Settlement below.

18. “*Hand Sanitizer Product*” means all hand sanitizer products made or distributed by Virgin Scent.

19. “*Insurers*” mean IAT Insurance Group, Markel, National Union Fire Insurance Company of Pittsburg, P.A., and RSUI Group, Inc. The Insurers have reserved their rights but are agreeing to fund the Aggregate Settlement Fund to resolve the litigation.

20. “*IRS*” means the Internal Revenue Service.

21. “*Judgment*” means the Final Judgment and Order of Dismissal with Prejudice to be entered in the Action in connection with the Settlement of all the Class Actions at or after the Final Fairness Hearing.

22. “*Net Aggregate Settlement Fund*” means the Aggregate Settlement Fund net of the Court Award for Attorneys’ Fee, Costs, and Expenses, Class Administration Expenses, and CAFA Notice Expenses in *Brodowicz*.

23. “*Notice*” or “*Long Form Notice*” means the Notice of Pendency of Proposed Settlement of Class Action, Settlement Hearing, and Fee Application to be posted on a website to be created by the Settlement Administrator. A template of the Notice is attached hereto as Exhibit A.

24. “*Objection and Opt-Out Period*” has the meaning set forth in Paragraph 20 of the Terms of the Settlement below.

25. “*Plaintiffs*” means Zelda Brodowicz, Derek Ellis, Harold Nyanjom (plaintiffs in the Action), and Lauren Slaughter, Kaila Saiki, Raymond Saiki, Stephanie Pinghera, Jody McIntyre, Mayra Duarte, Lucas Pichardo, Amy Robinson, Donald Boorman, Kenneth Scantlin, Shelley Howe, and Mark Sophocles (plaintiffs in the *Slaughter* Action).

26. “*Plan of Payment*” means the Plan of Payment and Distribution of the Settlement Fund described in Paragraphs 30-36 of the Terms of the Settlement below.

27. “*Preliminary Approval Order*” means the Order Preliminarily Approving the Settlement and Providing for Notice to the Settlement Class as set forth in Paragraph 14 of the Terms of the Settlement below.

28. “*Preliminary Payment*” means the amount the Class Administrator determines is to be payable, as a preliminary matter, to a Settlement Class Member, pursuant to the formula set forth in Paragraphs 31-34 of the Terms of the Settlement below.

29. “*Proof of Purchase*” means an itemized retail sales receipt or other document or retail store club or loyalty card record showing, at a minimum, the purchase of a Hand Sanitizer Product, the purchase prices, and the date and place of purchase.

30. “*Publication Notice*” means the publication short form notice to be published as set forth in Paragraph 17 of the Class Notice and Administration below.

31. “*Released Claims*” means any and all rights, claims, liabilities, actions, causes of action, costs, attorneys' fees, demands, damages, and remedies, known or unknown, liquidated or unliquidated, legal, statutory, declaratory, or equitable, that the Releasing Parties ever had, now have, or may have in the future, that are based upon the same nucleus of fact as the claims in the Class Actions. In addition, the Plaintiffs shall release any and all claims they have brought, could have brought, or in the future could bring against the Released Parties as of the date of this Agreement, whether known or unknown.

32. “*Released Parties*” means (a) Virgin Scent, together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; affiliates; divisions; current or former corporate owners, including but not limited to Akiva Nourollah, Yosef Nourollah, Yaakov Nourollah, Yehuda Nourollah, and Osher Netkin; (b) the Insurers, and (c) any manufacturer, bottler, distributor, or retail seller of the Hand Sanitizer Products, including Walmart Inc., irrespective of whether such manufacturer, bottler, distributor, or retail seller is named as a defendant in any lawsuit.

33. “*Releasing Parties*” means the Plaintiffs and all Settlement Class Members who have not opted out of the Settlement.

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

35. “*Settlement Class*” has the meaning set forth in Paragraph 2 of the Terms of the Settlement below.

36. “*Settlement Class Member(s)*” means any and all persons who are members of a Settlement Class.

37. “*Settlement Fund*” or “*Aggregate Settlement Fund*” means the Settlement Fund described in Paragraph 4 of the Terms of the Settlement below.

38. “*Settling Parties*” means the Plaintiffs, individually and on behalf of the Settlement Class Members, and Virgin Scent.

39. “*Slaughter Action*” means *Lauren Slaughter, et al. v. Virgin Scent, Inc.*, Consolidated Case No. 2:21-CV-02875-VAP-E (C.D. Cal.).

40. “*Valid Claims*” means a Claim Form submitted by a Settlement Class Member that is: (a) submitted in accordance with the directions accompanying the Claim Form and the provisions of this Agreement; (b) accurately, fully, and truthfully completed and executed, with all the information requested in the Claim Form; (c) signed physically or by e-signature by a Settlement Class Member personally, subject to the penalty of perjury; (d) returned via mail and postmarked by the Claim Form Deadline, or if submitted online by 11:59 p.m. Eastern Time on the Claim Filing Deadline; and (e) determined to be valid by the Class Administrator.

41. “*Virgin Scent*” means Virgin Scent, Inc., d/b/a Artnaturals. Artnaturals and Virgin Scent are used interchangeably in this Agreement.

42. “*Virgin Scent’s Counsel*” means David Walz, D. Matthew Allen, Robert Pass, and Caycee Hampton, Carlton Fields, P.A., P.O. Box 3239, Tampa, FL 33601-3239.

RECITALS

A. *The Action*

a. WHEREAS the Action was filed on March 24, 2021 by Plaintiff Zelda Brodowicz, individually and on behalf of a putative class. Defendant Virgin Scent moved to dismiss the Action on June 21, 2021. The First Amended Complaint was filed September 18, 2021. Virgin Scent again moved to dismiss this complaint on February 25, 2022. The Second Amended Complaint was filed June 23, 2022. Virgin Scent moved to dismiss this complaint on July 18, 2022. This motion remains pending.

b. WHEREAS the Second Amended Complaint alleges that Virgin Scent manufactured, marketed, distributed, and sold adulterated and misbranded Hand Sanitizer Products that contained dangerously high levels of benzene without disclosing the benzene to consumers.

c. WHEREAS each plaintiff in the *Brodowicz* Action alleges they have purchased and used Hand Sanitizer Products.

B. *The Slaughter Action*

a. WHEREAS the Slaughter Action was filed in the Central District of California on April 2, 2021. A few days later, the plaintiffs in a companion case filed a complaint in Case No. 21-CV-02948. On July 13, 2021, the court consolidated the two Central District of California cases together under Case No. 2:21-cv-02854. Virgin Scent moved to dismiss the second amended complaint in the consolidated action on February 25, 2022. Virgin Scent also moved to stay the *Slaughter* Action. The motion to stay was granted on May 31, 2022.

b. WHEREAS the Second Amended Complaint in *Slaughter* alleges that Virgin Scent manufactured, marketed, distributed, and sold adulterated and misbranded hand sanitizer that contained dangerously high levels of benzene without disclosing the benzene to consumers.

C. *The Deans Action*

a. WHEREAS the *Deans* Action was filed in San Diego, California Superior Court on November 17, 2021, by Pamela Deans, individually and on behalf of a putative class of California citizens who purchased Virgin Scent hand sanitizer. Virgin Scent removed the *Deans* Action to federal court on April 4, 2022. The federal court remanded

the *Deans* Action to California Superior Court on July 25, 2022. Virgin Scent filed a motion to dismiss on March 9, 2022. That Motion to Dismiss remains pending.

b. WHEREAS the complaint in *Deans* alleges that Virgin Scent manufactured, marketed, distributed, and sold adulterated and misbranded hand sanitizer that contained dangerously high levels of benzene without disclosing the benzene to California consumers. Thus, the putative class alleged in the *Deans* Action is wholly encompassed within the Settlement Class sought to be certified in this Action.

D. WHEREAS Virgin Scent commissioned independent tests of its Hand Sanitizer Products, which results confirmed substantial variability as to the existence and extent of any presence of benzene. Several other studies of hand sanitizer, including a March 2022 study commissioned by Valisure, a 2021 Canadian study, and a September 2022 New York University study, confirmed that benzene's presence in hand sanitizer generally is sporadic.

E. WHEREAS in October, 2021, the Food and Drug Administration ("FDA") announced that it had tested certain Virgin Scent scent-free hand sanitizer and found "unacceptable" levels of benzene. Virgin Scent also tested a batch from the same lot, which detected no benzene above the FDA 2 percent threshold. Nonetheless, in an abundance of caution, on October 27, 2021, Virgin Scent voluntarily recalled manufacturing lot G20128A, as well as the ten adjacent manufacturing lots of 8 oz scent free hand sanitizer. On April 22, 2022, the recall was expanded to include at least 38 additional batches.

F. WHEREAS in February and March, 2022, the FDA inspected Virgin Scent's California facility and observed what the agency claimed were several violations of its standards. Virgin Scent responded that it lacked batch production records or records of distribution for hand sanitizer products. It also informed the FDA that distribution of over the counter drug products

was no longer a part of Virgin Scent's brand strategy. On October 20, 2022, Virgin Scent confirmed to the FDA that it had ceased manufacturing all OTC products.

G. WHEREAS on September 30, 2021, a fire broke out at Virgin Scent's Los Angeles warehouse, destroying an unknown amount of product.

H. WHEREAS after a declaration of default on bank loans, Virgin Scent's assets were subsequently seized by its bank, and Virgin Scent has no remaining material assets.

I. WHEREAS Virgin Scent denies all of the allegations raised in the Class Actions and asserts that the Class Actions are without merit. Nevertheless, in order to avoid the burden, expense, risk, and uncertainty of continuing to litigate the Class Actions, and to put to rest the controversies at issue in the Class Actions, and without any admission of any liability or wrongdoing whatsoever, Virgin Scent wishes to settle the Class Actions and the Released Class Claims on the terms and conditions set forth in this Agreement.

J. WHEREAS Plaintiffs and Class Counsel assert that the Action has merit. Nevertheless, in order to avoid the burden, expense, risk, and uncertainty of continuing to litigate the Class Actions, and to put to rest the controversies at issue in the Class Actions, Plaintiffs and Class Counsel wish to settle the Class Actions and all Released Class Claims on the terms and conditions set forth in this Agreement.

K. WHEREAS Class Counsel has analyzed and evaluated the risks of continued litigation and the possibility that Plaintiffs will be unable to prove liability, damages, or entitlement to relief on a classwide or individual basis. In addition to taking into account the uncertain outcome and risk of the litigation, Class Counsel considered the difficulties and delays inherent in such litigation. Class Counsel also considered the financial condition of Virgin Scent and the unlikely

possibility of obtaining any additional recoveries from Virgin Scent beyond the proceeds of insurance policies.

L. WHEREAS the Settling Parties have engaged in formal and informal discovery in a cooperative manner. Plaintiffs and Class Counsel have reviewed facts, documents, and data relating to liability and damages. Moreover, the Settling Parties have conducted arms-length settlement negotiations, including three mediation sessions, the last before the Hon. Wayne Andersen, U.S.D.C., Northern District of Illinois, Ret., after which the Parties reached an agreement in principle to settle on the terms embodied in this Agreement.

M. WHEREAS Virgin Scent asserts, and Plaintiffs have confirmed, that Virgin Scent currently has no assets and that the only source of funding of this Settlement consists of Virgin Scent's insurance policies with the Insurers.

N. WHEREAS the Settling Parties agree that the Settlement is fair, reasonable, and adequate, and that the Settlement confers substantial benefits upon the Settlement Class Members. Plaintiffs and Class Counsel further agree that the Settlement is in the best interests of the Settlement Class Members.

O. WHEREAS the Settling Parties executed a settlement agreement on April 28, 2023 and submitted same to the Court that same day.

P. WHEREAS, on May 5, 2023, the Court denied without prejudice Plaintiffs' unopposed motion for preliminary approval to address certain procedural aspects of settlement approval.

Q. WHEREAS, the Settling Parties have prepared this revised settlement agreement to address the concerns raised by the Court in its May 5, 2023 order.

TERMS OF THE SETTLEMENT

1. The Settling Parties, intending for this Agreement to constitute a full and final settlement of the Class Actions and release of the Released Claims, agree as follows:

Certification of Settlement Class

2. **Definition of Settlement Class.** For settlement purposes only, the Settling Parties agree to request that the Court certify a Settlement Class, under Rule 23(b)(3), Fed. R. Civ. P., as defined below:

All persons in the United States who, since January 1, 2015 to the present, paid any amount of money for a Hand Sanitizer Product that was sold or otherwise distributed by Artnaturals, Inc.

Any judges to whom the Class Actions are assigned, and any member of such judges' immediate families, are excluded from the Settlement Class.

3. **Non-Certification or Modification of Settlement Class.** If the Court declines to certify the Settlement Class, or changes or alters the composition of the Settlement Class defined in Paragraph 2 above, it shall constitute grounds for termination under Paragraph 44 below.

Settlement Consideration

4. **Settlement Fund.** The Class Administrator shall establish an account for the Aggregate Settlement Fund, into which Virgin Scent and/or its Insurers shall contribute \$3,088,000.00. The Aggregate Settlement Fund shall be used to fund (a) payments to Settlement Class Members (to the extent and in the manner provided for herein within the Claim Period), (b) Attorney's Fees, Costs, and Expenses, (c) Class Administration Expenses, (d) CAFA Notice, and (e) tax levies, if any. Settlement Class Members must look solely to the Aggregate Settlement Fund, pursuant to the procedures set forth herein, for satisfaction of their claims against Virgin Scent, and Virgin Scent and its Insurers shall have no other or further monetary obligation, or obligation of any kind, to Settlement Class Members.

5. **Cap on Aggregate Settlement Fund.** Virgin Scent's total commitment and obligation under this Settlement Agreement shall not exceed \$3,088,000.00.

6. **Categories of Compensation.** Settlement Class Members shall be eligible for monetary payments from the Net Aggregate Settlement Fund as follows.

a. **Economic Compensation.** Class Members will receive an automatic payment ("Automatic Payment") based on the number of purchases each Class Member made for Hand Sanitizer Products; provided, however, that Class Members who lack Proof of Purchase will be limited to ten Automatic Payments.

b. **Medical Monitoring Compensation.** Class Members may receive medical monitoring compensation ("Medical Monitoring Payment") based on the terms set forth in Paragraph 34 below; provided, however, that no claimant will receive more than \$1,000 in Medical Monitoring Payments, and the aggregate total of Medical Monitoring Payments shall not exceed \$300,000 from the Net Aggregate Settlement Fund.

c. To the extent settlement funds within the Medical Monitoring Compensation category are not redeemed, those funds shall be reallocated to the Economic Compensation category. The total amount allocated for the combined Categories 1 through 2 shall not exceed the total of the Net Aggregate Settlement Fund.

Attorneys' Fees, Costs and Expenses Award

7. **Award For Attorneys' Fees, Costs, and Expenses.** Any Attorneys' Fee, Costs, and Expenses Award shall be paid from the Aggregate Settlement Fund. Virgin Scent agrees not to oppose a request for reasonable Attorney's Fee, Costs, and Expenses, in an amount up to (but not to exceed) 33 percent of the Aggregate Settlement Fund. Plaintiffs agree that they have or will reach agreement among themselves and their respective counsel as to how any attorneys' fee and

costs award shall be allocated; failing such agreement, Plaintiffs agree to petition the court in *Brodowicz* for an order of allocation.

8. **Timing of Payment.** Any Attorneys' Fee, Costs, and Expenses Award entered by the Court in accordance with Paragraph 7 shall be paid no later than fourteen (14) days after Virgin Scent and/or its Insurers fund the Attorney's Fees, Costs, and Expenses Awards per ¶ 10.b below.

9. **No Additional Obligation.** Virgin Scent shall have no further liability for attorneys' fees, or any costs of Plaintiffs, Class Counsel, or any Settlement Class Member.

Establishment of the Aggregate Settlement Fund

10. Virgin Scent and/or its Insurers shall make payments into the Aggregate Settlement Fund as follows:

- a. **Funding of Expenses.** Amounts equal to the cost of publishing the Notice and other Class Administration Costs are to be paid within thirty (30) days of when such amounts are invoiced to Virgin Scent, along with wire instructions and other required documentation and become due and owing. Virgin Scent and/or its Insurers are not required to advance costs for claims validation or other claims processing related costs until such time such costs are actually incurred. These amounts shall be subtracted from the Aggregate Settlement Fund to calculate the Net Aggregate Settlement Fund.
- b. **Funding of Attorney's Fees, Costs, Expenses Award.** Virgin Scent and/or its Insurers shall fund the Attorney's Fees, Costs, and Expenses Award within 21 days of an order granting such award. These amounts shall be subtracted from the Aggregate Settlement Fund to calculate the Net Aggregate Settlement Fund.

- c. **Funding of Net Aggregate Settlement Fund.** Within ten (10) business days of the Effective Date, Virgin Scent or its Insurers shall deposit the amount of the Net Aggregate Settlement Fund into an escrow account to be managed by the Class Administrator or bank to be approved by the Parties, from which individual settlement payments shall be allocated and paid to Settlement Class Members in the manner approved by the Court.

11. **Jurisdiction of the Court.** The Aggregate Settlement Fund shall be considered to be in *custodia legis* of the Court, and shall remain subject to the Court's jurisdiction until all claims against the Aggregate Settlement Fund are paid in accordance with this Agreement.

12. **Qualified Settlement Fund.** The Settling Parties agree to treat the Aggregate Settlement Fund at all times as a “qualified settlement fund” (“QSF”) within the meaning of Section 468B of the Internal Revenue Code of 1986, as amended, and United States Treasury Regulations thereunder, including § 1.468B-1. On or before February 15 of the year following any calendar year in which Virgin Scent transfers assets to the QSF, Virgin Scent must prepare and provide to the administrator of the QSF a “Section 1.468B-3 Statement” that contains: (1) a title identifying it as a Section 1.468B-3 Statement; (2) Virgin Scent’s name, address, and employer identification number; (3) the QSF’s name, address, and employer identification number; (4) the amount of any funds transferred; and (5) the date of such transfer. All taxes (including any estimated taxes, interest, or penalties) arising with respect to the income earned by the Aggregate Settlement Fund (including any taxes or tax detriments that may be imposed upon Virgin Scent or Virgin Scent’s Counsel with respect to income earned by the Aggregate Settlement Fund for any period during which the Aggregate Settlement Fund does not qualify as a “qualified settlement fund” for the purpose of federal or state income taxes (“Taxes”)) shall be paid out of the Aggregate

Settlement Fund to the relevant taxing authority, or if Virgin Scent has already paid such taxing authority, to Virgin Scent, without the necessity of any order of the Court. The Class Administrator shall retain adequate reserves for this purpose. Neither Virgin Scent nor Virgin Scent's Counsel shall have any obligation, liability, or responsibility for Taxes or Tax Expenses. Rather, the Aggregate Settlement Fund shall pay all Taxes and Tax Expenses and indemnify and hold Virgin Scent and Virgin Scent's counsel harmless for Taxes and Tax Expenses (including, without limitation, Taxes or Tax Expenses payable by reason of any such indemnification). The Settling Parties agree to cooperate with one another, and their respective attorneys and accountants, as is reasonably necessary to carry out this Paragraph 12.

13. **Acknowledgement.** The Parties acknowledge and agree that the Aggregate Settlement Fund is established solely to compromise the damages claims asserted by Settlement Class Members in the Class Actions and for no other purpose.

Preliminary and Final Approval

14. Within 5 days of the execution of this Agreement, Plaintiffs shall file in the Court a motion for preliminary approval of the Settlement, and supporting memoranda, and will share with Virgin Scent's counsel a draft of the motion and memoranda before filing. The Settling Parties shall request that, within the timeframe set forth herein, and in accordance with Rule 23 of the Federal Rules of Civil Procedure, the Court enter an Order Preliminarily Approving the Settlement and Providing for Notice, the form of which is attached to this Agreement as Exhibit A, that accomplishes the following: (a) certifies the Settlement Class; (b) appoints Class Counsel; (c) appoints the Class Administrator; (d) establishes the time periods and deadlines for Class Notice, Opt-outs, Objections, and a Final Fairness Hearing; and (e) establishing the date for the Final Fairness Hearing. Following entry of the Order Preliminarily Approving the Settlement and Providing for Notice, Plaintiffs then shall file a motion for final approval of the Settlement, and

supporting memoranda, and will share with Virgin Scent's counsel a draft of the motion and memoranda before filing. The Settling Parties shall request that the Court; (a) approve the Settlement, including the Plan of Payment; and (b) enter the Judgment and the Attorneys' Fee, Costs, and Expenses Award.

Class Notice and Administration

15. **Class Administration.** The Settling Parties have selected by agreement Angeion Group as Class Administrator.

16. **Costs of Administration.** All reasonable Class Notice and Administration Costs will be paid from the Aggregate Settlement Fund, as set forth in Paragraph 10 above. Any money in this account not used for payment of Class Notice and Administration Costs shall be returned to the Aggregate Settlement Fund.

17. **Notice to Settlement Class Members.** On the date to be set by the Court in the Preliminary Approval Order, which date the Settling Parties will request be twenty-one (21) days after the Preliminary Approval Order is entered, the Class Administrator shall:

- a. Provide Publication Notice in the form set forth in Exhibit B to Settlement Class Members by publishing said notice at least twice in USA Today or via web banner advertising or similar online methods, and selected Google and Facebook Groups to be agreed to by the Parties.
- b. Make available the Long Form Notice set forth in Exhibit C at a dedicated website, and shall make this Agreement, the Complaints in this Action and the *Slaughter* Action, and Virgin Scent's Answers in this Action and the *Slaughter* Action, available at such website, along with answers to "frequently asked questions," the questions and answers to which shall be

agreed to by the Settling Parties. The dedicated website shall permit each Settlement Class Member to download the Class Notice.

18. **Approval of Notice.** The Notice is subject to prior approval by the Court as satisfying the adequacy and due process requirements of Rule 23 of the Federal Rules of Civil Procedure.

19. **Provision of Agreement and Pleadings Upon Request.** The Class Administrator also shall provide a copy of this Agreement and any pleadings filed in the Class Actions to Settlement Class Members upon request.

Claim Period, Objection and Opt-Out Period

20. The deadline for Settlement Class Members to make claims (the “Claim Filing Deadline”) shall be sixty (60) days after the Class Administrator publishes the Notice. The deadline for Settlement Class Members to object to the Settlement or to opt out of the Settlement Class (the “Objection and Opt-Out Period”) shall be sixty (60) days after the publication of the Notice. This shall be the same deadline for objecting to the requested Attorneys’ Fee, Costs, and Expenses by Class Counsel.

Final Fairness Hearing and Final Approval of Settlement

21. **Timing of Hearing.** The Final Fairness Hearing will be scheduled at the Court’s convenience but on a date as near as possible to, but not earlier than, thirty (30) days after the Objection and Opt-Out Period expires.

22. **Content and Filing of Objections.** Any objection or petition to intervene in the Action by a Settlement Class Member must be in writing, filed with the Court, and served on Class Counsel and Virgin Scent’s Counsel, no later than sixty (60) days after the date the Notice is distributed. It must include: (1) the Settlement Class Member’s name, address, telephone number,

and a statement of whether the Settlement Class Member or his or her attorney will appear at the Final Fairness Hearing; (2) proof that the objector or proposed intervener is a Settlement Class Member; (3) a statement of each objection being made; (4) a description of the facts underlying each such objection; (5) a description of the legal authorities underlying each such objection, if any; (6) a list of witnesses who may be called to testify at the Final Fairness Hearing, either live, by deposition, or by affidavit, if any; and (7) a list of exhibits, along with copies of such exhibits, that the objector may offer during the Final Fairness Hearing, if any.

23. **Appearance at Final Fairness Hearing.** Any Settlement Class Member who files and serves a timely, written objection pursuant to Paragraph 22 indicating its intent to appear at the Final Fairness Hearing may do so, either *pro se* or by counsel (at its own expense, and show cause as to why (a) all terms of this Agreement should not be approved as fair, reasonable, and adequate; or (b) the Judgment should not be entered. If a Settlement Class Member or its attorney has not stated in its written notice of objection pursuant to Paragraph 22 above that it intends to appear at the Final Fairness Hearing, but later decides that it intends to do so, the Settlement Class Member must file with the Court, and serve on Class Counsel and Virgin Scent's Counsel, a written notice stating its intent to do so, no later than seventy-five (75) days after the Notice is distributed.

24. **Appearance by Attorney.** Any Settlement Class Member who retains an attorney to prepare a written objection or notice to appear at the Final Fairness Hearing must, in addition to the requirements stated in Paragraph 22-23 above, state the following in the written objection or notice of intent to appear at the Final Fairness Hearing: (1) set forth the attorney's experience with class actions; (2) if the attorney has represented objectors in a class action, then the attorney must detail the disposition or effect that any such objection had on each class action case and how much the attorney was paid for the representation of each objector in each class action case; and (3) even

if the Settlement Class Member employs an attorney to prepare a written objection, the Settlement Class Member must sign the written objection personally as an attestation that the Settlement Class Member reviewed and discussed the written objection with his or her attorney.

25. **Failure of Compliance.** Any Settlement Class Member who fails to comply with the provisions of Paragraphs 20 and 22-23 shall waive and forfeit any and all rights he or she otherwise may have to object to the Settlement or to appear at the Final Fairness Hearing, and shall be bound by this Agreement and by all proceedings, orders, and judgments in the Action.

26. **Objectors Entitled to Settlement Benefits.** Any Settlement Class Member who objects to the Settlement nevertheless shall be entitled to all benefits of the approved Settlement.

27. **Motion for Final Approval and Opposition to Objections.** Plaintiffs shall file a motion, along with memoranda, supporting final approval of the Settlement no later than fourteen (14) days before the Final Fairness Hearing.

28. **Motion for Attorneys' Fees, Costs, and Expenses.** Class Counsel may file a motion for Attorneys' Fees, Costs, and Expenses contemporaneously with the motion for preliminary approval of the Settlement.

29. **Judgment.** The Settling Parties shall request that the terms of this Agreement be incorporated into the Judgment.

Plan of Payment and Distribution of the Settlement Fund

30. **Administration by Class Administrator.** Once the Aggregate Settlement Fund is tendered to the Class Administrator pursuant to Paragraph 10 above, the Class Administrator shall administer the Settlement Fund. Only the Class Administrator may disburse money from the Aggregate Settlement Fund. The Class Administrator shall not disburse any money from the Aggregate Settlement Fund except as provided by this Agreement, by order of the Court, or by joint written instructions of Class Counsel and Virgin Scent's Counsel. Virgin Scent and Virgin

Scent's Counsel are not responsible for, and shall not have any liability for, the administration of the Aggregate Settlement Fund. The Settling Parties shall cooperate to promote reliable and accurate claim administration.

31. **Claim Submission/Proof of Claim.** A Settlement Class Member who wishes to make a claim for an Automatic Payment or Medical Monitoring Payment as set forth in paragraph 6 shall submit a Proof of Claim either by first class mail or online at the Settlement Website no later than the Claim Filing Deadline set forth in Paragraph 20. Claim Forms postmarked or submitted online after the Claim Filing Deadline will not be considered Valid Claims. In either case, to receive an Automatic Payment or Medical Monitoring Payment, the Settlement Class Member must submit a claim form within the Claim Period that satisfies the eligibility rules set forth below.

- a. The Claim Form shall include the Settlement Class Member's name and current address.
- b. All claimants must provide Proof of Purchase or submit a declaration under penalty of perjury attesting to purchase and the number of bottles purchased. All claimants also must attest that the claimed purchases were not made for purposes of resale.
- c. For Claim Forms submitted online, the Class Member shall have the opportunity to upload Proof of Purchase image files prior to submitting the claim, and to print a page immediately after the Claim Form has been submitted showing the information entered, the names of image files uploaded, and the date and time the Claim File was submitted.

d. All claimants making claims for medical monitoring compensation shall attest to use of the Hand Sanitizer Product and the need to medically monitor manifest dermal symptoms in a declaration the form of which will be agreed to by the parties prior to the issuance of class notice.

e. The Class Administrator shall not consider any Proof of Claim received after the expiration of the Claim Period, provided that there is an opportunity to cure rejected claims that were submitted within the Claim Period (as described below).

f. The Class Administrator shall reject any Proof of Claim that does not satisfy all of subsections (a), (b), and (d) of this Paragraph 31. All disputes regarding whether a Proof of Claim satisfies the requirements of this Paragraph 31, including the sufficiency of any documentation required by subsections (a), (b), and (d), shall be resolved by agreement of Class Counsel and Virgin Scent's Counsel, or failing such agreement, by the Court.

32. **Determination of Claims.** Within fourteen (14) days of the conclusion of the Claim Period, the Class Administrator shall determine: (i) whether each Settlement Class Member's Proof of Claim (for those Settlement Class Members who submit claims) complies with Paragraph 31 above, and (ii) the Automatic Payment and Medical Monitoring Payment for each Settlement Class Member, as applicable, in accordance with Paragraphs 6 and 34. The Class Administrator promptly shall give notice to Class Counsel and Virgin Scent's Counsel of its determinations.

33. **Notice and Opportunity to Cure for Rejected Claims.** When the Class Administrator determines a Claimant is not eligible, it shall send an email to the email address

listed on the claim form that states what aspect of the claim was rejected and the reason why. The email shall give the Claimant fourteen (14) days after the date of the email to supplement the claim form. If the claim form is not corrected with qualifying information within this window, the claim determination is finalized. If the claim form is timely corrected with qualifying information, the eligibility determination shall be revised.

34. **Final Determination of Claims.** The Class Administrator shall determine the Final Payment for each Settlement Class Member. For purposes of determining the Final Automatic Payment:

- a. Settlement Class Members who submit one or more Proofs of Purchase shall receive the full purchase price for each Hand Sanitizer Product listed on the Proof of Purchase, inclusive of all taxes.
- b. Settlement Class Members who submit Proof of Claims but lack Proofs of Purchase shall receive up to ten Automatic Payments equaling \$5 each.
- c. Settlement Class Members who make a claim for a Medical Monitoring Payment shall receive a pro rata share of the sum of Medical Monitoring Payments to be distributed, up to a maximum amount of \$1,000 per claimant.
- d. Notwithstanding 34.b above, each Settlement Class Member submitting a claim for Economic Compensation shall have their payment increased or decreased on a *pro rata* basis such that the total amount paid to all Settlement Class Members equals the Net Aggregate Settlement Fund.

35. **Distribution of Settlement Fund.** After all valid claims are determined and the Settlement is approved after the Final Fairness Hearing, but in no event later than thirty-five (35)

days after the Effective Date, the Class Administrator shall distribute money from the Aggregate Settlement Fund, in accordance with its Final Payment determination referenced in Paragraph 34 above, to the Settlement Class Members who have not opted out. All available funds will be distributed to the Settlement Class Members.

36. **Unclaimed settlement funds; subsequent distribution(s); cy pres.** Settlement checks must be deposited within 60 days. In the event there are more than \$100,000 in unclaimed funds, the Class Administrator will distribute funds pro rata (i.e., in proportion to initial payments) to all Settlement Class Members other than those who did not deposit their settlement checks initially. After two additional distributions or when \$100,000 or less in unclaimed funds remains (whichever comes first), the Class Administrator shall deliver the unclaimed funds to the National Institute of Environmental Health as grant for benzene exposure research or the National Cancer Institute as cy pres.

Effective Date

37. The “Effective Date” shall be the first business day after the deadline for filing an appeal of the Court’s Final Order and Judgment, if no appeal has been filed therefrom. If an appeal has been filed, the Effective Date shall be ten (10) days after the appeal has been dismissed in its entirety, or the Judgment has been affirmed in its entirety by the court of last resort to which such appeal may be taken, and such dismissal or affirmation is no longer subject to further appeal or review. Notwithstanding the foregoing, no appeal of an order relating only to Class Counsel’s attorney’s fees, cost, or expenses shall delay the Effective Date of this Agreement.

No Admission of Liability

38. Virgin Scent denies any and all liability in the Class Actions. By entering into and complying with this Agreement, Virgin Scent is not admitting any liability to Plaintiffs, any Settlement Class Member, or any other person or entity, or the truth of any allegations or

circumstances. Virgin Scent further is not waiving any claim, counterclaim against Plaintiffs, defense, or affirmative defense, except as expressly provided in this Agreement.

Release

39. **Scope of Release.** As of the Effective Date, the Releasing Parties, and each of them, shall be deemed to have fully released and forever discharged the Released Parties from the Released Claims.

40. **Release Binding Regardless of Circumstances.** The Releasing Parties may hereafter discover facts other than or different from those that they know or believe to be true with respect to the subject matter of the Released Claims, or the law applicable to the Released Claims may change. Nonetheless, each of the Releasing Parties acknowledges that he or she has waived and fully, finally, and forever settled and released all of the Released Claims, (a) whether or not such Released Claims were concealed or hidden, and without regard to subsequent discovery of different or additional facts or subsequent changes in the law; and (b) even if he or she never receives actual notice of the Settlement, never submits a Proof of Claim, or never receives a distribution from the Aggregate Settlement Fund.

41. **Waiver of Section 1542.** As to the Released Claims only, upon entry of the Final Approval Order and Judgment, the Plaintiffs and each Settlement Class Member expressly waives and relinquishes the provisions, rights, and benefits of Section 1542 of the California Civil Code, 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.

and any and all provision, rights, and benefits of any similar, comparable, or equivalent state, federal, or other law, rule, or regulation or the common law or equity. The Plaintiffs and each

Settlement Class Member may hereafter discover facts other than, different from, or in addition to those that he, she or it knows or believes to be true and, except as otherwise set forth herein, the Plaintiffs and each Settlement Class Member hereby expressly waives and fully, finally, and forever settles, releases, and discharges all known or unknown, suspected or unsuspected, contingent or non-contingent Released Claim as of the date of entry of the Preliminary Approval Order, whether or not concealed or hidden, and without regard to the subsequent discovery or existence of such other, different, or additional facts. The Plaintiffs acknowledge, and the Settlement Class Members shall be deemed by operation of the Final Approval Order and Judgment to have acknowledged that the waivers in this Paragraph 41 were separately bargained for and are a material element of this Agreement. The waivers in this Paragraph 41 apply only to the Released Claims and not to any other claims.

42. **Retention of Jurisdiction.** The Court shall retain jurisdiction to enforce the Judgment, Releases, and agreements contemplated by this Settlement and by the Judgment.

Dismissal

43. Within five days of the Effective Date, Plaintiffs shall dismiss with prejudice the *Slaughter* Action.

Termination of Agreement

44. **Non-Approval of Settlement.** This Agreement may be terminated by either Settling Party by giving notice to counsel for the other Settling Party and the Court within ten (10) days after any of the following occurs:

- a. The Court declines to certify the Settlement Class; or
- b. The Court declines to approve the Settlement, or an appellate court reverses the Court's approval of the Settlement; or

c. The Court modifies, amends, incorporates into, or deletes or strikes from, the Preliminary Approval Order, the Judgment, or this Agreement, any provision which a Settling Party in good faith regards as material.

45. **Effect of Termination.** If this Agreement is terminated, then: (a) this Agreement shall be void; (b) this Agreement and all negotiations and proceedings relating thereto shall be of no force or effect, without prejudice to the rights of the Settling Parties; (c) any order modifying the definition of the Settlement Class shall be void; (d) any class certification order shall be void; (e) the Settling Parties shall be deemed to have reverted to their respective status in the Class Actions as of January 27, 2023, and as if this Agreement and any related orders had never been executed, entered into, or filed; (f) the Settling Parties shall not seek to recover from one another any costs incurred in connection with this Agreement; (g) Virgin Scent and/or the Insurers shall be relieved of any further obligation to fund the Aggregate Settlement Fund, and (h) any money in the Aggregate Settlement Fund (including interest) shall revert to Virgin Scent and/or the Insurers, and the Class Administrator promptly shall pay any such money to Virgin Scent or the Insurers, as directed by Virgin Scent's Counsel. Virgin Scent, however, shall have no right to seek reimbursement from Plaintiffs or any Settlement Class Member for any funds already distributed for any Class Notice and Administration Costs.

46. **Use of Agreement in Future Proceedings.** Nothing in this Agreement is intended, or will be construed, to limit a Settling Party's right to use or offer this Agreement in evidence in any action or proceeding in any court or other tribunal to enforce or implement its terms, to support or defend the Settlement, including on any appeal from the Judgment, or to enforce or assert a claim or defense of *res judicata*, collateral estoppel, claim or issue preclusion, settlement, release, merger and bar, or any similar claim or defense.

General Provisions

47. **Stay of Cases and Related Cases.** Immediately following the execution of this Agreement, the Parties shall notify the courts in *Slaughter* and *Deans* of a mediated settlement and seek a stay (or continued stay) pending preliminary and final approval of the settlement class in *Brodowicz*.

48. **CAFA Notification.** The Class Administrator shall be responsible for providing the required CAFA notification of the Settlement to appropriate state and federal agencies within ten (10) days of submission of the Settlement to the Court for preliminary approval. The cost of CAFA Notice shall be paid from the Aggregate Settlement Fund.

49. **Notice.** Virgin Scent shall give notice to Plaintiffs by hand delivery, next day delivery, U.S. Mail delivery, or electronic mail delivery of written notice to Class Counsel. Plaintiff shall give notice to Virgin Scent by hand delivery, next day delivery, U.S. Mail delivery, or electronic mail delivery of written notice to Virgin Scent's Counsel.

50. **Arms-Length Negotiations.** The Parties reached this Settlement after arms-length negotiations with several days of assistance from an experienced, Court-appointed mediator. The Parties shall use their best efforts to obtain a statement from the mediator, to be filed with the Court in conjunction with a motion for final approval of the Settlement, that in his opinion, the settlement is fair, reasonable, and adequate in light of the strengths and weaknesses of the claims and defenses and the risks of establishing liability and damages.

51. **Supplemental Agreement:** Pursuant to Fed. R. Civ. P. 23(e)(3), the Parties disclose their separate agreement that (a) *Slaughter* shall be settled by a separate settlement agreement on an individual, non-class basis for \$1000 per named plaintiff, for a total not to exceed \$12,000.00, in exchange for general releases and dismissal of said claims, funds for which individual settlements shall be provided by Artnaturals or its insurers separate and apart from the

Aggregate Settlement Fund; and (b) payments to the named plaintiffs in *Slaughter* are conditioned upon final approval of the Settlement Class. The Parties have no other side agreements in connection with this Settlement.

52. **Confidentiality; No Public Statements.** The Parties and their counsel further agree that they will not issue press releases or otherwise make public statements beyond what is stated in the publicly filed Court report concerning the outcome of this litigation. Neither party shall claim victory or publicize the outcome of this matter beyond the information filed with the Court as necessary to effect this settlement. The Parties are permitted, however, to disclose the outcome of the Litigation to insurers and indemnitees.

53. **Return or Destruction of Discovery Documents and Deposition Transcripts.** Within 60 days of the Effective Date, Plaintiffs and their counsel shall return to Virgin Scent and Walmart all documents received in discovery (formal or informal), and all transcripts of depositions in these cases, or certify that all such documents and transcripts, and copies thereof, have been destroyed.

54. **Deadlines.** Any deadline herein that falls on a Saturday or Sunday, or legal holiday as defined in the Federal Rules of Civil Procedure, will carry over to the next business day.

55. **Entire Agreement; Construction.** This Agreement, together with the Supplemental Agreement referenced in Paragraph 51, constitutes the entire agreement between and among the Settling Parties with respect to the Settlement. This Agreement shall not be construed more strictly against one party than another merely because it may have been prepared by counsel for one of the Settling Parties, it being recognized that, because of the arm's length negotiations resulting in this Agreement, both Settling Parties have contributed materially to the preparation of this Agreement. This Agreement supersedes all prior negotiations and agreements,

and may not be modified or amended except by a writing signed by the Settling Parties or their respective counsel. All captions used in this Agreement are for reference and convenience only, and shall not be used for interpretation.

56. **No Inducements.** Each Settling Party warrants that he or it is acting on his or its independent judgment and upon the advice of his or its own counsel, and not in reliance upon any warranty or representation, express or implied, of any nature or kind, by any other person or entity, except as expressly set forth in this Agreement.

57. **No Encouragement to Opt Out Of, Object To, Violate, or Terminate Agreement.** The Settling Parties, Class Counsel, and Virgin Scent's Counsel shall not engage in any conduct or make any statements: (a) to encourage, promote, or solicit Settlement Class Members or their counsel to opt out of the Settlement Class or to object to the Settlement, or (b) to facilitate, induce, or cause the non-fulfillment of a condition or the occurrence of an event giving rise to a Settling Party's right to terminate this Agreement. This provision does not preclude Class Counsel from referring class members to independent counsel as necessary.

58. **Binding Agreement; No Third Party Beneficiaries.** This Agreement shall be binding upon, and shall inure to the benefit of, the Settling Parties, the Settlement Class Members, the Releasing Parties, and the Released Parties. Except as provided in the foregoing sentence, nothing in this Agreement is intended to create any legally enforceable rights in any other person or to make any other person a beneficiary of this Agreement.

59. **Cooperation; Further Assurances.** The Settling Parties, Class Counsel, and Virgin Scent's Counsel: (a) acknowledge that it is their intent to consummate this Agreement; (b) shall cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement, and shall exercise their best efforts to accomplish the terms and

conditions of this Agreement; and (c) shall execute all documents and perform all additional acts necessary and proper to effectuate the terms of this Agreement.

60. **Florida Law Applicable.** This Agreement shall be construed, enforced, and administered in accordance with the laws of the State of Florida, without reference to its conflict of laws principles.

61. **Jurisdiction of Court.** All Settling Parties and Settlement Class Members submit to the continuing jurisdiction of the Court for any suit, action, proceeding, or dispute arising out of, or relating to, this Agreement. Any disputes arising out of, or related to, the interpretation, implementation, administration, and enforcement of this Agreement will be made by motion to the Court.

62. **Attorneys' Fees.** The prevailing Settling Party in any action for breach of this Agreement shall be entitled to an award of reasonable attorney's fees and costs.

63. **No Assignment of Claims.** No Settlement Class Member will assign, or attempt to assign, to any persons any rights or claims related to the subject matter of the Class Actions, including any settlement proceeds. Any such assignment, or attempt to assign, to any person any rights or claims related to the subject matter of the Class Actions, including any settlement proceeds, will be void, invalid, and of no force and effect, and the Class Administrator will not recognize any such action.

64. **Execution in Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, the Settling Parties have caused this Agreement to be executed by their duly authorized representatives.

Executed By:

Counsel for Zelda Brodowicz

Counsel for Derek Ellis

Date

Date

Counsel for Harold Nyanjom

Counsel for Lauren Slaughter

Date

Date

Counsel for Kaila Saiki

Counsel for Raymond Saiki

Date

Date

Counsel for Stephanie Pinghera

Counsel for Jody McIntyre

Date

Date

Counsel for Mayra Duarte

Counsel for Lucas Pichardo

Date

Date

Counsel for Amy Robinson

Counsel for Donald Boorman

Date

Date

Counsel for Kenneth Scantlin

Counsel for Shelley Howe

Date

Date

Counsel for Mark Sophocles

/s/ David J. Walz

Counsel for Virgin Scent, Inc.

Date

May 12, 2023

Date

IN WITNESS WHEREOF, the Settling Parties have caused this Agreement to be executed by their duly authorized representatives.

Executed By:

/s/ Ruben Honik
Counsel for Zelda Brodowicz

5/12/2023
Date

s/ Ruben Honik
Counsel for Derek Ellis

5/12/2023
Date

s/ Ruben Honik
Counsel for Harold Nyanjom

5/12/2023
Date

/s/ Alan M. Mansfield
Counsel for Lauren Slaughter

5/12/2023

/s/ Jeremy O. Krivoshey
Counsel for Kaila Saiki

5/12/2023
Date

/s/ Jeremy O. Krivoshey
Counsel for Raymond Saiki

5/12/2023
Date

/s/ Jeremy O. Krivoshey
Counsel for Stephanie Pinghera

5/12/2023
Date

/s/ Alan M. Mansfield
Counsel for Jody McIntyre

5/12/2023
Date

/s/ Alan M. Mansfield
Counsel for Mayra Duarte

5/12/2023
Date

/s/ Alan M. Mansfield
Counsel for Lucas Pichardo

5/12/2023
Date

/s/ Alan M. Mansfield
Counsel for Amy Robinson

5/12/2023
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/s/ Alan M. Mansfield
Counsel for Kenneth Scantlin

5/12/2023
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/s/ Alan M. Mansfield
Counsel for Mark Sophocles

5/12/2023
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/s/ Alan M. Mansfield
Counsel for Donald Boorman

5/12/2023
Date

/s/ Alan M. Mansfield
Counsel for Shelley Howe

5/12/2023
Date

Counsel for Virgin Scent, Inc.

Date