

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (“Agreement”) is entered into between Plaintiffs Wendy Baldyga, Marisa Cohen, Tami Nunez, Stephanie Williams, Erika Martinez-Villa, Tahira Shaikh, Marcy McCreary, Lauren Petersen, Jody Shewmaker, Diana Hall and Alanna Hall (“Plaintiffs”), individually and in their capacity as representative plaintiffs (“Class Representatives”) on behalf of the putative Class Members (defined below); Defendant Deva Concepts, LLC (“Deva Concepts” or “Defendant”) (Plaintiffs and Defendant, individually a “Party” and collectively, the “Parties”); Mason Lietz & Klinger LLP and Levin, Sedran & Berman, LLP, Court-appointed Co-Lead Counsel for Plaintiffs and the putative Class Members; and Greenberg Traurig, LLP, counsel for Defendant.

**WHEREAS**, the following putative class actions were consolidated before the Honorable Gregory H. Woods in the United States District Court for the Southern District of New York as *In re Deva Concepts Products Liability Litigation* under Master File No. 1:20-cv-1234 (the “Litigation”) via an Order dated April 21, 2020:

1. *Dixon v. Deva Concepts, LLC*, No. 1:20-cv-01234-GHW (“*Dixon*”), filed February 12, 2020;
2. *Ciccia v. Deva Concepts, LLC*, No. 1:20-cv-01520-GHW (“*Ciccia*”), filed February 20, 2020;
3. *Schwartz v. Deva Concepts, LLC*, No. 1:20-cv-06157-GHW (“*Schwartz*”), filed February 25, 2020;
4. *Bolash v. Deva Concepts, LLC*, No. 1:20-cv-02045-GHW (“*Bolash*”), filed March 6, 2020;
5. *Abdulahi v. Deva Concepts, LLC*, No. 1:20-cv-02047-GHW (“*Abdulahi*”), filed March 6, 2020;

6. *Reilly v. Deva Concepts, LLC*, No. 1:20-cv-02156-GHW (“*Reilly*”), filed March 10, 2020;
7. *Orner v. Deva Concepts, LLC*, Case No. 1:20-cv-02662-GHW (“*Orner*”) filed March 30, 2020; and
8. *Souza v. Deva Concepts, LLC*, No. 1:20-cv-02930-GHW (“*Souza*”) filed April 9, 2020.

**WHEREAS**, the following additional putative class actions were consolidated with the Litigation before the Honorable Gregory H. Woods in the United States District Court for the Southern District of New York:

9. *Crawley v. Deva Concepts, LLC*, No. 1:20-cv-03152-GHW (“*Crawley*”), filed April 21, 2020, consolidated June 23, 2020;
10. *Calabrese v. Deva Concepts, LLC*, No. 1:20-cv-03309-GHW (“*Calabrese*”), filed April 28, 2020, consolidated June 25, 2020;
11. *Przybylski v. Deva Concepts, LLC*, No. 1:20-cv-03630-GHW (“*Przybylski*”), filed May 8, 2020, consolidated June 26, 2020;
12. *Biles v. Deva Concepts, LLC*, No. 1:20-cv-03537-GHW (“*Biles*”), filed May 6, 2020, consolidated June 30, 2020; and
13. *Bell v. Deva Concepts, LLC*, No. 1:20-cv-07136-GHW (“*Bell*”), filed June 1, 2020, consolidated November 5, 2020.

**WHEREAS**, Plaintiffs filed a Consolidated Amended Complaint (“*Complaint*” or “*CAC*”) on October 2, 2020, alleging that Defendant designed, manufactured, distributed and sold haircare products that caused Plaintiffs and others similarly situated to incur economic damages and personal injuries such as scalp irritation, excessive shedding, hair loss, thinning, and breakage;

**WHEREAS**, the Complaint sought certification of a nationwide class of all persons who purchased or used Defendant's products within the United States or its territories;

**WHEREAS**, Defendant vigorously denies all liability with respect to the individual and class claims alleged in the Litigation and vigorously denies all allegations of wrongdoing asserted in the Litigation;

**WHEREAS**, the Parties participated in arms'-length settlement negotiations including two lengthy mediation sessions with the Honorable Federal Magistrate Judge (Ret.) Diane Welsh, a mediator with JAMS, on January 6, 2021, and February 9, 2021, and dozens of subsequent negotiations through Judge Welsh over almost 6 months. The Parties subsequently agreed to a global and final resolution of all issues pertaining to the Litigation as set forth in this Agreement;

**WHEREAS**, Plaintiffs, on behalf of themselves and on behalf of the putative Class Members, and Defendant desire to compromise and settle all issues, disputes and claims asserted or which could have been asserted in the Litigation whether known or unknown;

**WHEREAS**, after investigating the facts and carefully considering applicable law, the Plaintiffs and Co-Lead Counsel (defined below) have concluded that it would be in the best interests of the putative Class Members to enter into this Agreement in order to avoid the uncertainties of litigation, particularly complex litigation such as this, and to assure meaningful benefits to the Class, and that the terms and conditions of this Agreement, and the Settlement contemplated hereby, are fair, reasonable, and adequate and in the best interests of all members of the Settlement Class;

**WHEREAS**, Defendant has vigorously denied and continues to deny all of the claims and contentions alleged in the Litigation, denies any wrongdoing on its part or the part of others, and denies all liability to the Plaintiffs or the putative Class Members. Defendant has also conducted a

thorough investigation with its counsel and its independent experts and evaluated the risks and potential cost of litigating the issues raised in the Litigation and the benefits of the Agreement and proposed Settlement (defined below) described herein. Based on its evaluation and desire to avoid the time, expense and inherent uncertainties of litigation, Defendant desires to settle the Parties' dispute and the Litigation pursuant to the terms and conditions in this Agreement;

**WHEREAS**, the Parties agree that the Settlement proposed in this Agreement is fair, adequate, and reasonable.

**NOW, THEREFORE**, for adequate consideration as set forth herein, it is hereby stipulated and agreed, by and among the Parties, that: (i) the Parties desire to fully and finally resolve the Litigation and shall seek Court approval of their Settlement as required by Federal Rule of Civil Procedure 23(e); and (ii) upon such approval by the Court, a final order and judgment shall be entered fully and finally resolving the Litigation upon the terms and conditions set forth herein, or as modified by the Court and approved by the Parties as provided herein.

## **I. DEFINITIONS**

As used in this Agreement, the following terms shall have the meanings set forth below, unless the context clearly indicates otherwise. Where appropriate, the terms used in the singular shall be deemed to include the plural and vice versa.

A. "Administrator" or "Settlement Administrator" means a third-party agent or administrator selected by Co-Lead Counsel and Defendant's Counsel (defined below) to help implement and effectuate the terms of this Agreement.

B. "Administration Account" or "Common Fund" means the account into which Defendant will pay the Gross Settlement Amount (defined below) and upon funding will be used for the purposes of (i) paying settlement administration costs; (ii) distributing settlement benefits to Claimants (defined below); (iii) distributing any Court-approved awards of Attorneys' Fees and

Costs, and Service Awards (defined below) in accordance with the terms of this Agreement; and (iv) the payment of any necessary taxes and expenses incurred in connection with the maintenance of the Administration Account.

C. “Aggregate Settlement Benefits” equals the sum of all claims of Class Members that the Settlement Administrator has accepted, including standard fixed award claims (Tier 1 Claims) and significant adverse reaction claims and claims for out-of-pocket expenses (Tier 2 Claims).

D. “Attorneys’ Fees and Costs” shall mean the portion of the Fund set aside to compensate Co-Lead Counsel and other Plaintiffs’ counsel for their time and to reimburse them for their reasonable expenses utilized to prosecute the Litigation on behalf of the Class Representatives and the Class, as further defined in Section V, below.

E. “Claim Form” means the document(s) to be submitted by Class Members seeking payment pursuant to this Agreement that will accompany the Class Notice and will be available online at the Settlement Website, substantially in the form of **Exhibit 1** and as discussed in Section VII of this Agreement.

F. “Claimant” means a Class Member who submits a Claim Form for payment as described in Section VII of this Agreement.

G. ““Class” or “Settlement Class” shall mean all persons who purchased and/or used any of the Products in the United States between February 8, 2008 and such date that is thirty (30) days after the Preliminary Approval Date, excluding (a) any officers, directors or employees, or immediate family members of the officers, directors or employees, of Defendant or any entity in which Defendant has a controlling interest, (b) any legal counsel or employee of legal counsel for Defendant, (c) the presiding Judge in the Lawsuit, as well as the Judge’s staff and their immediate

family members, and (d) all persons who timely and properly exclude themselves from the Class as provided in the Settlement.

H. “Class Members” shall mean the purchasers and users making up the Class.

I. “Class Notice” shall mean the program to provide notice to Class Members, including: (i) a full, long-form notice in the form attached to this Agreement as Exhibit 5, which shall be posted on the Settlement Website and a copy of which shall be mailed to any Class Member upon request made by the Class Member to the Settlement Administrator; (ii) a short-form notice in the form attached to this Agreement as Exhibit 6, which shall be sent to Class Members for whom the Parties have a valid address (regular mail or email); (iii) a publication notice described below, and (iv) a Settlement Website described below.

J. “Class Period” shall mean the period from February 8, 2008 to such date that is thirty (30) days after the Preliminary Approval Date.

K. “Co-Lead Counsel” or “Settlement Counsel” shall mean Gary E. Mason of Mason Lietz & Klinger LLP and Charles E. Schaffer of Levin, Sedran & Berman, LLP.

L. “Court” shall mean the federal district court handling the Litigation.

M. “Defendant’s Counsel” shall mean Keith E. Smith, Jaclyn DeMais and the law firm Greenberg Traurig, LLP.

N. “Effective Date” shall mean thirty (30) days after the Court’s entry of the Final Judgment and Order if no document is filed within that time period seeking appeal, review, or any other relief in connection with the Agreement and/or the Final Judgment and Order. If any such document is filed, then the Effective Date shall be thirty (30) days after the date upon which all proceedings relating to such appeal, review, and other relief have fully and finally terminated in such a manner so as to permit full implementation of the Agreement and the Final Judgment and

Order without any further risk that the Agreement and/or the Final Judgment and Order could be further challenged.

O. “Final Judgment and Order” shall mean the final judgment and order, substantially in the form attached as **Exhibit 2**, issued by the Court that gives full and final approval to the Agreement, and all aspects of the Settlement.

P. “Gross Settlement Amount” refers to the payment by Defendant of the sum of \$5,200,000.00 in full satisfaction of any claims asserted in the Litigation by Plaintiffs or Class Members who do not opt out of the Settlement pursuant to Section XI below, inclusive of Attorneys’ Fees and Costs, any Service Award, and Notice and Administration Costs and all other costs or expenses.

Q. “Lien” or “Medical Lien” means any statutory lien of a Governmental Payor or any lien, pledge, charge, security interest, assignment, encumbrance, subrogation right, reimbursement claim, right to payment, third-party interest or adverse claim, of any nature whatsoever, in each case whether statutory or otherwise, held or asserted by any person, in relation to payment of medical bills for hair loss, balding, and significant scalp irritation allegedly from use of the Products.

R. “Lien Administrator” means that person(s), agreed to and jointly recommended by Co-Lead Counsel and Counsel for the Defendant, and appointed by the Court, to perform the responsibilities assigned to the Lien Administrator under the Agreement, including, without limitation, as set forth in Section X.

S. “Litigation” shall mean the case captioned *In re Deva Concepts Products Liability Litigation* under Master File No. 1:20-cv-1234 and the underlying cases consolidated under the Litigation caption.

T. “Medicaid Program” means the federal program administered by the states under which certain medical items, services, and/or prescription drugs are furnished to Medicaid beneficiaries under Title XIX of the Social Security Act, 42 U.S.C. § 1396–1, et seq.

U. “Medicare Program” means the federal program administered by the Centers for Medicare & Medicaid Services (“CMS”) under which certain medical items, services, and/or prescription drugs furnished to Medicare beneficiaries are reimbursed under Title XVIII of the Social Security Act, 42 U.S.C. § 1395, et seq. This program includes Part A and Part B, directly administered by CMS, and two parts administered by private entities that contract with CMS to serve Medicare beneficiaries on a capitated basis: Medicare Part C, which includes Medicare Advantage, Medicare cost, and Medicare health prepayment plans, and Medicare Part D, under which CMS contracts for coverage of certain outpatient prescription drugs.

V. “MSP Laws” means the Medicare Secondary Payer Act set forth at 42 U.S.C. § 1395y(b), as amended from time to time, and implementing regulations, and other applicable written CMS guidance.

W. “Net Settlement Amount” refers to the portion of the Gross Settlement Amount available to pay settlement benefits to Claimants after payment of Notice and Administrative Costs (defined below), any Court-awarded Attorneys’ Fees and Costs, any Court-awarded Service Award, and the payment of any necessary taxes and expenses incurred in connection with the maintenance of the Administration Account.

X. “Notice and Administrative Costs” means the reasonable and Court-authorized costs and expenses of disseminating and publishing Class Notice in accordance with the Preliminary Approval Order, and all reasonable and authorized costs and expenses incurred by the Settlement Administrator in administering the Settlement, including but not limited to costs and



expenses of escrowing funds, mailing the settlement benefits to the Claimants, and performing all other tasks assigned to the Settlement Administrator pursuant to this Agreement, including the costs of a Special Master to assist in evaluating Tier 2 Claims (defined below) and the costs of the Lien Administrator.

Y. “Notice Date” shall mean the date when the Settlement Administrator first implements the Class Notice set forth in Section IV. The Notice Date and all settlement deadlines should be prominently displayed on the homepage of the Settlement Website.

Z. “Notice of Intention to Appear” shall mean the document that any Class Member must file with the Court if the Class Member has an Objection to the Agreement or any of the terms of the Settlement or court filings contemplated herein, and wishes to appear at the hearing on the Final Judgment and Order.

AA. “Objection” shall mean a written notice, signed by the individual Class Member, of objection to any aspect of the Agreement or any of the terms of the Settlement or court filings contemplated herein by or on behalf of a Class Member.

BB. “Objection Date” shall mean the deadline, to be set in the Preliminary Approval Order, by which an Objection must be filed with the Court and served on Co-Lead Counsel and Defendant’s Counsel if not filed electronically through the Court’s electronic filing system.

CC. “Other Insurer” means any person other than a Governmental Payor, a provider, a patient, or a relative or guardian of a patient that is obligated, under contract, agreement or otherwise, to pay health care costs of a Settlement Class Member, including, without limitation, a self-insured plan operated by an employer or a corporate or association health insurer or liability insurer.

DD. “Preliminary Approval Date” shall mean the date when the Court preliminarily

approve this Agreement.

EE. “Preliminary Approval Order” shall mean the order of the Court preliminarily approving this Agreement and authorizing the Class Notice, substantially in the form attached as **Exhibit 3**.

FF. “Products” shall mean any DevaCurl products sold between February 8, 2008 and thirty (30) days after the Preliminary Approval Date, including the products listed in **Exhibit 4** to this Agreement.

GG. “Released Claims” shall mean the claims released under this Agreement as set forth in more detail in Section IX below.

HH. “Released Parties” shall mean Defendant and any individual or entity involved in the design, development, manufacture, distribution, or sale of any of the Subject Products (defined below), as well as all of its/their past, present and current respective parents, subsidiaries, affiliates, predecessor and successors, officers, employees, directors, shareholders, attorneys, and insurers, as well as all salons, hair care professionals, stylists, distributors, retailers, sellers, resellers, and wholesalers of the Subject Products (defined below).

II. “Request for Exclusion” shall mean a written request signed by the individual Class Member for exclusion from the Settlement.

JJ. “Service Award” shall mean any Court-approved amount to be paid to Plaintiffs for their service as representatives of the Class, which shall not exceed the amount agreed to by the Parties.

KK. “Settlement” shall mean the terms and conditions of this Agreement.

LL. “Settlement Website” shall mean the website maintained by the Administrator with a URL of “www.curlyhairsettlement.com” as more fully described in Section IV(E).

MM. “Tricare” means the federal program managed and administered by the United States Department of Defense through the Tricare Management Activity under which certain medical items, services, and/or prescription drugs are furnished to eligible members of the military services, military retirees, and military dependents under 10 U.S.C. § 1071, et seq.

NN. “Tier 1 Claim” shall mean a claim for a one-time payment of up to \$20 as compensation for claims of personal injury after using the Products and/or for any claim related to the labeling or advertising of the Products, including, without limitation, for alleged failure to warn of potential harm regarding the Products.

OO. “Tier 2 Claim” shall mean a claim against the Common Fund for significant personal injury including hair loss, balding, and significant scalp irritation as an alleged result of using the Products and reimbursement of actual and documented amounts spent to redress alleged injuries, designed to compensate the Claimant for any alleged injuries sustained, up to a maximum of \$18,000 per Claimant for personal injuries and up to a maximum of \$1,000 for provable expenses.

PP. “Tier 2 Claim Award” shall mean an award calculated by the Settlement Administrator based upon the criteria and procedures set forth in Section VII.

QQ. “United States” means the fifty States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands of the United States, the Commonwealth of the Northern Mariana Islands, any other territory or possession of the United States, and any United States military or diplomatic establishment wherever located.

## **II. SETTLEMENT BENEFITS**

A. Gross Settlement Amount. In full satisfaction of any claims asserted in this Litigation by Plaintiffs or Class Members who do not opt out of the Settlement pursuant to Section XI below, Defendant will pay the sum of Five Million, Two-Hundred Thousand Dollars

(\$5,200,000), which shall constitute the Gross Settlement Amount. Defendant shall pay the Gross Settlement Amount into the Administration Account no later than sixty (60) days after the Effective Date. Under no circumstances will Defendant be required to pay anything more than the Gross Settlement Amount, which shall provide the sole source to pay all settlement benefits to be paid to the Claimants, Notice and Administrative Costs, Co-Lead Counsels' and other Plaintiffs' Attorneys' Fees and Costs (to the extent awarded by the Court), Service Awards (to the extent awarded by the Court), and payment of any necessary taxes and expenses incurred in connection with the maintenance of the Administration Account.

B. Tax Treatment. The Administrative Account is intended to be a "qualified settlement fund" within the meaning of United States Treasury Regulation § 1.468B-1 ("QSF"). Neither the Parties nor the Settlement Administrator shall take a position in any filing or before any tax authority that is inconsistent with treating the Settlement Fund as a QSF. Defendant shall be the "transferor" and the Settlement Administrator shall be the "administrator" of the Settlement Fund within the meaning of United States Treasury Regulations §§ 1.468B-1(d)(1) and 1.468B-2(k)(3), respectively. As a result, the Settlement Administrator will be responsible for all tax withholding and reporting obligations of any payments made from the Settlement Fund, including any reporting required on IRS Form 1099, if any, for distributions made from the Settlement Fund. The Parties agree to take all necessary and reasonable actions to qualify the Settlement Fund as a QSF.

C. Common Fund. Defendant will make a one-time payment of the Gross Settlement Amount of \$5,200,000 into a Common Fund. Class Members wishing to file a claim can make a claim against the Common Fund for personal injury claims, failure to warn claims, out-of-pocket expenses and past purchases of the Products of up to \$19,000. All payments of claims, costs of

administration of the Settlement, Attorneys' Fees and Costs and Service Awards shall be paid only from this Common Fund. In no event will Defendant pay more than the amount of the Common Fund. All Claimants must submit a Claim Form, and Claimants must provide evidence in support of their claims. Claims will be evaluated based on criteria as generally set forth herein with discretion being placed with the Settlement Administrator and Special Master to implement the agreed-upon criteria and award a recovery within the range set forth in Section VII. For less significant claims or claims with undocumented proof of purchase or damages, the amount will be up to \$20 per Claimant.

D. Equitable Relief. All new products manufactured by Defendant after July 1, 2021, and for a period of at least two (2) years thereafter, will, where physically possible (taking into consideration packaging format and size), add to the labels (in the United States and Canada) of all relevant Products language substantially similar to: "Scan for education, how-tos and product safety information." with an accompanying QR code directing consumers to a targeted landing page with further information consistent with that description.

### **III. PRELIMINARY APPROVAL**

A. As soon as practicable after this Agreement is fully executed, for settlement purposes only, the Plaintiffs and Co-Lead Counsel shall request the Court to make preliminary findings, enter the Preliminary Approval Order granting conditional certification of the Class, subject to final findings and ratification in the Final Order and Judgment, and appoint the Plaintiffs as class representatives and Co-Lead Counsel as counsel for the Class. Neither Defendant nor Defendant's Counsel will object to such requests for the purposes of effectuating the Settlement. Such agreement not to object to class certification shall extend only as necessary to effectuate the Settlement. As set forth in the draft Preliminary Approval Order, the Plaintiffs shall request the Court to enter an order:

1. preliminarily approving and finding this Agreement and the Settlement as being fair, reasonable, and adequate;
2. conditionally certifying the Litigation as a settlement class action under Rule 23(b)(3) and (e) of the Federal Rules of Civil Procedure;
3. appointing Plaintiffs as class representatives and Co-Lead Counsel as counsel for the Class;
4. preliminarily approving the form, manner, and content of the Class Notice, as provided herein, and finding that notice is fair, reasonable, and the best notice practicable under the circumstances in connection with notifying the Class Members of their rights and responsibilities under the Settlement and satisfying due process and Rule 23 of the Federal Rules of Civil Procedure;
5. appointing the Settlement Administrator to send Class Notice and administer the Settlement;
6. providing that Class Members will have until a date certain to object to or file a request for exclusion from the Settlement, as provided herein;
7. establishing dates by which all papers in support of the motion for final approval of the Settlement, an application for payment of the Attorneys' Fees and Costs and Service Award, and/or any response to any valid and timely Objections shall be filed and served;
8. preliminarily approving the form of the Final Order and Judgment;
9. providing that all Class Members will be bound by the Final Order and Judgment fully and finally resolving the Litigation on the terms and conditions contained herein;

10. staying all proceedings against Defendant until the Court renders a final decision on approval of the Settlement;
11. preliminarily enjoining Class Members from commencing or prosecuting, either directly or indirectly, any action asserting any of the Released Claims;
12. setting the date and time of the Final Approval Hearing, subject to the availability of the Court, Co-Lead Counsel, and Defendant's Counsel, which date may be continued without necessity of further notice to the Class Members; and
13. entering a protective order, if necessary, to safeguard any information provided to the Settlement Administrator concerning the Class Members.

B. Unless otherwise agreed to by the Parties in writing, Co-Lead Counsel shall provide Defendant's Counsel with drafts of the moving papers requesting preliminary approval for review at least five (5) business days before the papers are filed.

C. In the event that the Court fails to issue either the Preliminary Approval Order substantially in the form of the attached **Exhibit 3**, or the Final Approval Order, the Parties agree that this Agreement is voidable by either Party by providing written notice to the other Party within fifteen (15) days of the Court's action declining to enter either such order. In such event, subject to the provisions regarding termination of the Agreement in Section XV below, each Party shall return to its respective pre-settlement posture without prejudice or waiver to any Party's pre-settlement position on any legal or factual issue.

D. The Parties shall cooperate with each other in good faith to carry out the purposes of and to effectuate this Agreement, and they shall take any and all actions and execute and deliver any and all additional documents reasonably necessary or appropriate to carry out the terms of this Agreement and the transactions contemplated hereby.

#### IV. NOTICE

A. Class Notice shall include (i) a full, long-form notice in the form attached to this Agreement as **Exhibit 5**, which shall be posted on the Settlement Website and a copy of which shall be mailed to any Class Member upon request made by the Class Member to the Settlement Administrator; and (ii) a short form notice in the form attached to this Agreement as **Exhibit 6**, which shall be sent to Class Members for whom the Parties have a valid address (regular mail or email). As to any direct-mail notice, the Settlement Administrator shall conduct a National Change of Address (“NCOA”) update to verify the physical mailing addresses for the Class Members if such address is to be used. The Settlement Administrator shall not be required to send such Direct-Mail Notice to any Class Member whose last known street address, as updated through the National Change of Address registry, is determined to be undeliverable pursuant to one of the following mailing codes: F (foreign move, no new address available), G (postal box closed, no new address available), or K (move, left no forwarding address).

B. The Parties shall ensure that the Settlement Administrator receives the names of any Class Members and any available physical mailing addresses and/or e-mail address for such Class Members.

C. Notice will also be provided by advertisements in appropriate digital social and electronic media as agreed to by the Parties.

D. The Settlement Administrator, as a condition of its retention as Settlement Administrator, will keep all information it receives from Defendant concerning Class Members strictly confidential except as necessary to carry out the Settlement Administrator’s functions in administering this Settlement. In the event any Class Member contacts Co-Lead Counsel concerning this Settlement, the Settlement Administrator may provide any information to Co-Lead Counsel concerning such Class Member to the extent necessary for Co-Lead Counsel to



communicate with the Class Member concerning the Settlement. No later than 60 days after the last settlement benefit check to any Class Member expires, the Settlement Administrator will segregate and keep confidential any records provided by Defendant and Claimants in a manner that ensures the data is not available through the internet or otherwise vulnerable to unauthorized access in any fashion.

E. No later than the mailing of the Class Notice, the Settlement Administrator shall establish a Settlement Website, which shall contain copies of the motion for preliminary approval and all documents filed in support thereof, including the Settlement Agreement and Exhibits thereto (including the Class Notice). The Settlement Website shall also contain other significant pleadings from the Action, including the operative complaint. The Settlement Website shall also contain the contact information for Co-Lead Counsel so that Class Members may contact Co-Lead Counsel with any questions regarding the Settlement. The Settlement Website at [www.curlyhairsettlement.com](http://www.curlyhairsettlement.com) shall include the capability for Class Members to submit a claim using an online Claim Form, substantially in the form set forth in **Exhibit 1** to the Agreement, and to upload any documents in support of the claim, including but not limited to: medical records, Claimant's personal statement, witness statements, proof of purchase, photographs and/or videos.

F. The Settlement Website shall remain open and accessible until sixty (60) days after the expiration of the last settlement benefit check mailed to any Claimant, except the on-line claim form shall be disabled no later than ten (10) days after the end of the Claims Period.

G. The Parties agree that any communications or publications by Co-Lead Counsel regarding the issues addressed in this Agreement will be consistent with the terms of this Agreement, the Class Notice, the Preliminary Approval Order, and the Final Judgment and Order.

#### **V. ATTORNEYS' FEES/COSTS AND SERVICE AWARD**

A. Counsel for the Class has indicated its intention to seek the Court's approval of the

payment of Attorneys' Fees and Costs to be paid from the Common Fund in the amount of up to one third (33.33%) of the Gross Settlement Amount. Defendant has not agreed to or consented to the payment of Attorneys' Fees and Costs in any amount and reserves the right to oppose any application once filed. Co-Lead Counsel agrees that they will not seek Attorneys' Fees and Costs from the Court that exceed those sums.

B. Defendant agrees to take no position on Plaintiff's and Co-Lead Counsel's application for an Service Award to Plaintiffs to be paid from the Gross Settlement Amount so long as the Service Awards do not exceed \$600 per Class Representative, subject to Court approval, and Plaintiffs and Co-Lead Counsel agree that they will not seek a Service Award that exceeds that sum. Any Service Award approved by the Court for Plaintiffs will be in addition to, and not in lieu of, the settlement benefits to which Plaintiffs are entitled pursuant to Section II of this Agreement.

C. The Settlement Administrator will pay any Court-approved award of Attorneys' Fees and Costs. This amount will be paid to Co-Lead Counsel no later than sixty (60) days following the Effective Date pursuant to their written instructions.

D. The Settlement Administrator will pay any Court-approved Service Awards by way of checks made payable to each Class Representative no later than sixty (60) days following the Effective Date.

## **VI. SETTLEMENT ADMINISTRATOR**

A. The Parties will engage KCC Class Action Services LLC (the "Settlement Administrator") to implement the Notice Plan and to administer the settlement and claims process. The Notice Plan will be substantially similar to the KCC Proposal dated May 20, 2021, and the *In re Deva Concepts Notice Plan Highlights* document dated June 3, 2021. The Notice Plan will be designed to reach at least 85% of the possible Class Members, including approximately 50% of

the estimated 665,000 Class Members to receive direct notice by email or postal mail from Defendant's records.

B. Under no circumstances will any of Defendant's wholesale or retail customers or distributors be requested or compelled to supply customer personal identifying information (including names, addresses or email addresses of their customers) or to post any in-store notice of this Settlement.

C. The Settlement Administrator shall coordinate with Defendant and Co-Lead Counsel on the timing of Notice which will be implemented as soon as practicable as agreed to by the Parties.

D. Costs of the Notice Plan consistent with all applicable requirements that satisfy the standards for due process (including direct notice, publication and media notice) will be paid from the Common Fund. The Common Fund will be used to pay for claims administration, including, if necessary, the use of a Special Master.

E. Co-Lead Counsel and Defendant's Counsel will coordinate with the Settlement Administrator to provide the Class Notice to the Class Members, as provided by the Preliminary Approval Order. The Settlement Administrator shall administer the Settlement in accordance with the terms of this Settlement Agreement and, without limiting the foregoing, shall treat any and all documents, communications, and other information and materials received in connection with the administration of the Settlement as confidential and shall not disclose any or all such documents, communications, or other information to any person or entity except to counsel for the Parties, as provided for in this Settlement Agreement or by Court order.

## **VII. CLAIMS PROCESS**

A. Tier 1 - Undocumented Minor Adverse Reaction and Economic Loss Claims. Any Class Member who purchased at least one of the Products identified in the Litigation, and who

does not timely request to opt-out from the Settlement Class, may submit a Tier 1 Claim for a one-time payment of up to \$20 as compensation for claims of personal injury after using the Products and/or for any claim related to the labeling or advertising of the Products, including, without limitation, for alleged failure to warn of potential harm regarding the Products. Tier 1 Claimants must submit a Claim Form and provide all of the information required therein to meet the requirements of a Tier 1 Claim. If Tier 1 Claims made against the Common Fund collectively exceed \$750,000, payments made to each Class Member who submitted a valid Tier 1 Claim will be reduced on a *pro rata* basis.

B. Tier 2 - Documented Significant Adverse Reaction Claims. Any Class Member who alleges to have suffered significant personal injury including hair loss, balding, and significant scalp irritation as a result of using the Products, and does not timely request to opt-out from the Settlement Class, may make a claim against the Common Fund for reimbursement of actual and documented amounts spent to redress such alleged injuries, as well as an injury award designed to compensate the Claimant for any alleged injuries sustained, up to a maximum of \$18,000 per Claimant for injuries and \$1,000 for provable expenses, as set forth below. In order to make a Tier 2 Claim, the Class Member must submit a valid and complete Claim Form, along with Supporting Documentation as described therein.

C. Proof of Significant Adverse Reaction Damages. To be eligible for a payment from the Common Fund for a Tier 2 Significant Adverse Reaction Claim, Claimant must submit to the Settlement Administrator, in addition to a completed Tier 2 Claim Form declaration, appropriate evidence documenting the injuries alleged to be suffered after using the Products. Without limitation, the following forms of documents will be considered “Supporting Documentation” and shall be received by the Settlement Administrator in support of a Tier 2 Claim:

1. Before and after photographs showing the damage to Claimant's hair and/or scalp. Each photo submitted must be dated and labeled as either a "before" or "after" photo.
2. Video testimony of the Claimant describing the claimed injury.
3. Medical records, doctor's notes, test results, and/or a statement from a licensed medical professional indicating damage to the Claimant's hair or scalp after using the Products as well as any pre-existing conditions that may have caused the alleged hair loss.
4. Written or video statement from the Claimant's hair stylist(s) indicating the amount of hair loss suffered and any lasting effects. If written, this statement must be dated and signed by the hair stylist(s).
5. Written or video statements from other witnesses that can testify about the damage to Claimant's hair or scalp and its effect on Claimant (e.g., spouse, family, friends). Any statement must include the witness's name, address and their relationship to the Claimant. If written, these statements must be dated and signed by the witness.

D. Proof of Out-of-Pocket Expense Claims. Claimant may make a Claim for documented out-of-pocket expenses. The following forms of Supporting Documentation shall be received by the Settlement Administrator in support of a claim for reimbursement of actual and documented out-of-pocket expenses incurred to redress injury purportedly caused by the Products, up to a maximum of \$1,000:

1. Dated medical bills evidencing payments made by the Claimant related to the Claimant's claimed injury along with medical records indicating the visit related to damage alleged to be caused by use of the Products;
2. Dated receipts for out-of-pocket expenses; dated credit card statements evidencing

payment by the Claimant related to the Claimant's claimed injury;

3. Dated bank statements evidencing payment of out-of-pocket expenses related to the Class Member's claimed injury;
4. Dated receipts and/or declarations supplied by, for example, a medical provider or hair stylist, evidencing amount spent to redress a claimed injury will also be considered.

The Supporting Documentation described above is not intended to provide an exclusive list of the supporting evidence that may be submitted in support of a Tier 2 Claim. The Settlement Administrator shall have discretion to accept forms of evidence in addition to or in place of the examples set forth above.

E. Verification and Investigation. Each Claimant filing a Tier 2 Claim will authorize the Administrator, consistent with HIPAA and other applicable privacy laws, to verify facts and details of any aspect of the Claim and/or the existence and amounts, if any, of any Liens. The Administrator, at its sole discretion, may request additional documentation or authorizations, which each Claimant agrees to provide in order to claim a Tier 2 Claim Award. No Claim will be considered complete and eligible for payment of any Tier 2 Claim Award until such time that any additional documentation requested by the Administrator is provided and/or deficiencies are cured. The Administrator will have the discretion to undertake or cause to be undertaken further verification and investigation, including into the nature and sufficiency of any Claim documentation.

F. Administrator's Determination of Tier 2 Claims. The amount of any claim payment will be determined by the Settlement Administrator, who has significant experience in the claims process, using an objective point system agreed upon by the Parties. The Settlement Administrator

will determine the value of all Tier 2 claims, and award points based upon, without limitation, the sufficiency and credibility of the evidence; the severity of the hair loss, balding, thinning and/or scalp irritation; the duration of the hair loss, balding, thinning, and/or scalp irritation; and the amount of documented out-of-pocket expenses. The intent of the settlement is to pay Tier 2 Claimants for any and all injuries they may have allegedly suffered as a result of their use of the Products. As directed by the Parties, the Settlement Administrator shall have authority to assign points by determining the validity, or lack thereof, of any Tier 2 Claims submitted, including the sufficiency of the Class Member's evidence of his or her claimed injury, and any other documentation submitted in support of the Tier 2 Claim. This includes the authority to evaluate, and assign points, if any, on the basis of whether a Claimant suffered hair loss that is clearly attributable to another cause or suffered from another condition that is linked to hair loss.

If necessary, to evaluate a claim, the Settlement Administrator may issue a one-time request to the Claimant to provide any information that is missing or improperly submitted on the Tier 2 Claim Form. The Settlement Administrator shall review any revised Tier 2 Claims and adjust the points assigned, if warranted. The Settlement Administrator shall have full and final authority to award points to a Tier 2 Claim, or no points at all. A Class Member whose Tier 2 Claim is awarded no points shall be considered to have submitted a Tier 1 Claim to be determined under the applicable criteria.

G. Credits for Amounts Previously Paid by Defendants. Claimants who have previously received compensation from Defendant will have the amount of such payments credited against their recovery, if any, in this Settlement. Defendant will provide the Administrator with a database of amounts paid by Defendant to Class Members. To the extent it is determined that a Claimant has previously received payment from Defendant, the Administrator shall determine the

point equivalent of the amount to be credited and reduce the Claimants points awarded. To determine the amount of point reduction, the Administrator shall make a preliminary determination of the value of a point by taking the Net Settlement Amount divided by the total points preliminarily awarded to get the Preliminary Point Value. The Administrator shall then take the amount previously paid by Defendant to a Claimant divided by the Preliminary Point Value to arrive at the Claimant's Point Reduction.

H. Final Award Allocation. The final determination of all points awarded shall be subject to final review by Co-Lead Counsel and counsel for Defendant, either of whom may propose additional adjustments to points awarded. The Special Master will review all claims and points allotted by the Settlement Administrator, the proposed changes by the Parties, if any, and approve a final allocation of points that shall be binding and non-appealable. Each Claimant's final award allocation will be based upon the point value obtained by dividing the Net Settlement Amount by the total number of points allotted.

I. Deadline to Submit Claims. Class Members will have ninety (90) days from the Notice Date of the Settlement to submit either Tier 1 or Tier 2 claims ("Claims Period"). Claims may be reviewed and evaluated throughout the Claims Period. Payments will be made only after the conclusion of the Claims Period and when all claims have been submitted to and evaluated by the Settlement Administrator.

J. Within 30 days after the Court enters the Final Judgment and Order, or as soon thereafter as the Settlement Administrator has completed its evaluation of all submitted claims (hereinafter "Claims Completion Date"), the Settlement Administrator shall calculate the Net Settlement Amount by subtracting from the Gross Settlement Amount (i) all current and anticipated Class Notice and Administration Costs; (ii) any Attorneys' Fees and Costs awarded by



the Court; (iii) any Service Award approved by the Court; (iv) any necessary taxes and tax expenses, and (v) any other costs of administering the Settlement.

K. Within 30 days following the later of the Claims Completion Date or the Effective Date, the Settlement Administrator will send settlement benefit checks by mail or electronically if selected by Claimant, to eligible Claimants (i.e., Claimants the claims for which the Settlement Administrator has accepted and, if a Tier 2 claim, for which all liens have been resolved.).

L. With respect to any amount remaining from the Net Settlement Amount after distribution of (i) any Court-approved Notice and Administration Costs; (ii) any Attorneys' Fees and Costs awarded by the Court; (iii) any Service Award approved by the Court; (iv) any necessary taxes and tax expenses; and (v) settlement benefits to Claimants, the Administrator shall pay any such remaining amount as a *cy pres* fund payment to the National Alopecia Areata Foundation.

M. Under no circumstances shall any portion of the Gross Settlement Amount or the Net Settlement Amount be returned to Defendant unless the Agreement is terminated in accordance with this Agreement.

### **VIII. FINAL APPROVAL**

A. Motion for Final Approval. Plaintiffs must apply for Court approval of the Final Order and Judgment no later than the date set forth in the Preliminary Approval Order, which application shall request final approval of the Settlement Agreement. Unless otherwise agreed to by the Parties in writing, Co-Lead Counsel shall provide Defendant's Counsel with drafts of the moving papers requesting final approval for review at least five (5) business days before the motion is filed.

B. Among other terms mutually agreed by the Parties and approved by the Court, the Final Order and Judgment shall enter a final judgment:

1. determining that the Settlement is fair, reasonable, and adequate;

2. certifying the Litigation as a settlement class action under Rule 23(b)(3) and (e) of the Federal Rules of Civil Procedure;
3. determining that the Class Notice provided through the Settlement Administrator, satisfied due process and Rule 23 of the Federal Rules of Civil Procedure so as to bind the Class Members and fully and finally resolve the Litigation;
4. permanently enjoining Class Members from commencing or prosecuting, either directly or indirectly, any action asserting any of the Released Claims as defined in Sections I and IX; and
5. retaining exclusive jurisdiction over the Parties, the Administrative Account, the Class Members who do not request exclusion pursuant to Section XI of this Agreement, and all objectors to enforce the Settlement Agreement and Final Order and Judgment according to their terms.

C. Litigation Status if Settlement Not Approved. This Settlement Agreement is being entered into for settlement purposes only. If the Court conditions its approval of the Final Order and Judgment on any material modifications of this Settlement Agreement that are not acceptable to Defendant and/or to Plaintiffs, if the Court does not approve the Settlement or enter the Final Order and Judgment, or if the Effective Date does not occur for any reason (including any reversal of the Final Order and Judgment by an appellate court or remand wherein the material terms herein are not reinstated), then this Settlement Agreement and the Settlement will be deemed null and void *ab initio*. In that event: (a) the Preliminary Approval Order, Final Order and Judgment, and any other order post-dating preliminary approval of the Settlement and all of their provisions will be vacated (“Denial Date”), including, but not limited to, the conditional certification of the Class, conditional appointment of Plaintiffs as Class Representatives, and conditional appointment of Co-

Lead Counsel as Settlement Counsel; (b) the Litigation will revert to the status that existed before the Settlement Agreement's execution date and the Parties shall not have waived any of their claims or defenses; (c) no term or draft of this Settlement Agreement or any part of the Parties' settlement discussions, negotiations, or documentation will have any effect, be admissible into evidence, or be subject to discovery for any purpose in the Litigation or any other proceeding; (d) Defendant shall retain all of its rights to object to the maintenance of the Litigation as a class action; and (e) all amounts paid by Defendant into the Administration Account will be returned to Defendant within five (5) calendar days of the Denial Date, subject to the provisions of Section XV of this Agreement.

#### **IX. RELEASES AND ACKNOWLEDGMENTS**

A. Releases. As of the entry of the Final Judgment and Order, Plaintiffs and the Class Members release Defendant and the Released Parties from any and all claims, demands, actions, causes of actions, individual actions, class actions, damages, obligations, liabilities, appeals, reimbursements, penalties, costs, expenses, attorneys' fees, liens, interest, injunctive or equitable claims and/or administrative claims, whether known or unknown, filed or unfiled, asserted or unasserted, regardless of the legal theories involved, that were brought or could have been brought in the Litigation that relate in any manner to the subject matter of the Litigation, including, but not limited to, design, manufacture, distribution, sale, and use in any way of the Products by any Class Member ("Releases").

B. Acknowledgements. Plaintiffs, on behalf of themselves and the Class Members, hereby:

1. acknowledge, represent, covenant, and warrant that the obligations imposed by Releases shall be forever binding, and that the Releases may not be modified, amended, annulled, rescinded, or otherwise changed unless in writing signed and

notarized by duly authorized representative of Defendant to which the modification, amendment, annulment, rescission, or change applies, and which writing expressly refers to the Releases and this Settlement Agreement;

2. acknowledge, represent, covenant, and warrant that they have not made any assignment of any right, claim, or cause of action covered by the Releases to any individual, corporation, or any other legal entity whatsoever;
3. acknowledge, represent, covenant, and warrant that they have full power, competence, and authority to execute and deliver the Releases;
4. acknowledge, represent, covenant, and warrant, to the extent the Releases may be deemed a general release, that Plaintiffs and the Class Members waive and release any and all provisions, rights, and benefits conferred by Section 1542 of the California Civil Code which provides that “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY” or any other similar federal or state law;
5. acknowledge, represent, covenant, and warrant that (i) they fully understand the facts on which the Settlement Agreement is executed may be different from the facts now believed by them and their counsel to be true and expressly accept and assume the risk of this possible difference in facts and agree that this Settlement Agreement remains effective despite any difference in facts that later may be discovered; and (ii) they hereby waive any right or ability to challenge the Settlement upon the discovery

of any new facts, any additional claims, or a change in the law regardless of why or how such facts, claims, or law was/were not otherwise known to them prior to executing and agreeing to this Settlement Agreement;

6. acknowledge, represent, covenant, and warrant that the Releases and acknowledgments above were bargained for and are an essential and material element of this Agreement.

#### **X. MEDICAL LIENS AND OTHER RIGHTS FOR REIMBURSEMENT**

A. The Medicare Program, Medicaid Program, Tricare and Other Insurers reimbursement obligations including, without limitation, all subrogation claims, liens, or other rights to payment, that have been or may be asserted by any governmental entity (hereinafter collectively “Government Liens”) for payment of medical costs or expenses related to treatment for hair loss, balding, and significant scalp irritation from use of the Products, shall be resolved by Claimants with the assistance of their counsel, who will provide proof of satisfaction of said Governmental Lien(s) to Defendant and the Settlement Administrator. Claimants are responsible for all valid, legally enforceable medical, healthcare provider, insurance, employer or attorney liens, including the Government Liens. The Parties will work together to ensure that the interests of Medicare are protected and that all statutory and regulatory requirements are met to ensure compliance with, among other statutes, the MSP Laws. Released Parties are not responsible for any Lien. Co-Lead Counsel shall retain a Lien Administrator to ascertain and resolve the Government Liens or Government subrogation interest obligations, or any other lien obligations, pursuant to this Agreement. Claimant may satisfy the Government Liens or Government subrogation interest obligations of this section with an appropriate holdback amount determined by the Lien Administrator pending final determination by CMS.

- B. Each Claimant and Co-Lead Counsel agree and acknowledge that should there be

any Liens for payment of medical costs and expenses arising out of the Claims for hair loss, balding, and/or scalp irritation from use of the Products, whether by statute or contract, Claimants and Co-Lead Counsel will alone reimburse the lienholder, which may be accomplished through the Lien Administrator, from the proceeds of this Settlement for the amounts of said Liens. Claimants and Co-Lead Counsel agree to indemnify, hold harmless and defend the Released Parties in any suit brought by a lienholder that is related to the Claims, the Litigation, or the surrounding circumstances. Claimants and Co-Lead Counsel further warrant that any outstanding medical bills for treatment related to or arising out of the Claims for hair loss, balding, and/or scalp irritation allegedly from use of the Subject Products, including bills for mental health treatment, will be paid from the proceeds of this Settlement, even if those amounts equal the full Claim Award to the Claimant.

**XI. REQUEST FOR EXCLUSION BY CLASS MEMBERS**

A. Any Class Member may make a request to be excluded from the Settlement (“Request for Exclusion”) by mailing or delivering such request in writing signed by the individual Class Member to the Settlement Administrator.

B. Any Request for Exclusion must be postmarked or actually delivered not later than sixty (60) days after the Notice Date (the “Exclusion Date”). The Request for Exclusion shall (1) state the Class Member’s full name and current address; (2) specifically state the Class Member’s desire to be excluded from the Class; and (3) be signed personally by the Class Member. Failure to comply with these requirements and to timely submit the Request for Exclusion will result in the Class Member being bound by the terms of this Agreement.

C. Any Class Member who submits a timely Request for Exclusion may not file an Objection and shall be deemed to have waived any rights or benefits under this Agreement.

D. The Settlement Administrator shall provide a copy of any Request for Exclusion to

Co-Lead Counsel and Defendant's Counsel within ten (10) days after receipt of such Request for Exclusion.

E. Co-Lead Counsel shall provide the names and addresses of those Class Members seeking exclusion to the Court within 15 days of the Exclusion Date.

F. In the event that more than a confidential number of Class Members submit a proper and timely Request for Exclusion, Defendant shall have the option to void this Agreement by providing written notice to Co-Lead Counsel within fifteen (15) days of the final date by which such exclusions forms are due. In such event, subject to the provisions regarding termination of the Agreement in Section XV, each Party shall return to its respective pre-settlement posture without prejudice or waiver to any Party's pre-settlement position on any legal or factual issue. The actual number of opt outs triggering Defendant's right to withdraw shall be considered Highly Confidential and shall not be disclosed to anyone other than Co-Lead Counsel who are signatories to the Settlement Agreement and the Court. If disclosure to the Court is necessary, all efforts should be made to submit this information under seal.

G. Revocation of Request for Exclusion. Prior to entry of the Final Order and Judgment, any Settlement Class Member may seek to revoke his or her Request for Exclusion from the Class and thereby receive the benefits of the Settlement Agreement by submitting a request to the Administrator by email, mail, or through the Settlement Website (who will forward these to Co-Lead Counsel and Defendant's Counsel) stating "I wish to revoke my request to be excluded from the Settlement Class" (or substantially similar clear and unambiguous language), and also containing the Settlement Class Member's printed name, address, phone number, and date of birth. Such revocation shall be effective only with the express written consent of the Defendant (in its sole discretion).

## **XII. OBJECTIONS BY CLASS MEMBERS**

A. As set forth in the Class Notice, any Class Member who wishes to object to any provision of this Agreement must file a written notice of Objection (an “Objection”) with the Court no later than sixty (60) days after the Notice Date (“Objection Date”), or any other date set by the Court in the Preliminary Approval Order and must serve the Objection on Co-Lead Counsel and Defendant’s Counsel.

B. To state a valid Objection, a Class Member must include the following information in the Objection: (1) full name, current address, and current telephone number; (2) documentation sufficient to establish membership in the Class; (3) a statement as to whether the Objection applies only to the objector, to a specific subset of the class, or to the entire class; (4) a statement of the basis for the Objection, including the factual and legal grounds for the position; (5) copies of any documents supporting the Objection; (6) the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the Objection to the Settlement or fee application; (7) any and all agreements that relate to the Objection or the process of objecting—whether written or oral—between objector or objector’s counsel and any other person or entity; and (8) the number of times the objector, the objector’s counsel and/or counsel’s law firm have objected to a class action settlement within the five years preceding the date that the objector files the Objection, the caption of each case in which such prior objections have been made, and a copy of any orders related to or bearing upon such prior objections that were issued by the trial and appellate courts in each listed case. The Class Member must personally sign the Objection (an attorney’s signature is not sufficient).

C. Subject to the approval of the Court, any Class Member filing an Objection may appear, in person or by counsel, at the hearing on the Final Judgment and Order. However, to be eligible for appearance at the hearing, such Class Member must file with the Court and serve upon



all counsel designated in the Class Notice, a notice of intention to appear at the hearing on the Final Judgment and Order (“Notice of Intention to Appear”) by the Objection Date. The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that the Class Member or counsel will present to the Court. Any Class Member who does not provide a Notice of Intention to Appear in complete accordance with these specifications, subject to approval by the Court, may be deemed to have waived any objections to the Agreement and may be barred from speaking or otherwise presenting any views at the hearing on the Final Judgment and Order.

D. Co-Lead Counsel agree that they will be solely responsible for defending this Agreement and the Final Judgment and Order in the event of an appeal or challenge by a Class Member or any other individual or entity. Defendant will make a filing either joining and/or not opposing Co-Lead Counsel’s defense.

### **XIII. EXCLUSIVE REMEDY**

A. This Agreement shall provide the sole and exclusive remedy for any and all Released Claims of Class Members who do not request exclusion pursuant to Section XI of this Agreement. Upon entry of the Final Judgment and Order, each Class Member who does not request exclusion pursuant to Section XI of this Agreement shall be barred from initiating, asserting, or prosecuting against any of the Released Parties any Released Claims.

B. The Court shall retain exclusive and continuing jurisdiction over the Action, over all Parties to the Action, and over Class Members who do not request exclusion pursuant to Section XI of this Agreement to interpret and enforce the terms, conditions, and obligations of the Final Judgment and Order and this Agreement.

### **XIV. REPRESENTATIONS AND WARRANTIES**

A. Co-Lead Counsel represent and warrant that they have the authority, on behalf of Plaintiffs, to execute, deliver, and perform this Agreement and to consummate all of the

transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Co-Lead Counsel and Plaintiffs and constitutes their legal, valid, and binding obligation.

B. Defendant, through its undersigned attorneys, represents and warrants that it has the authority to execute, deliver, and perform this Agreement and to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Defendant and constitutes its legal, valid, and binding obligation.

## **XV. TERMINATION**

A. In addition to the circumstances outlined above that entitle the Parties to terminate this Agreement, either Party shall have the right to terminate this Agreement in the event that the Court or any appellate court rejects, denies approval, or modifies the Agreement or any portion of the Agreement in a material way.

B. If any Party elects to terminate the Agreement under this provision, the Party shall provide the other Party with notice of the termination fifteen (15) days after the event or action that gives rise to the termination. In such event, each Party shall return to its respective pre-settlement posture without prejudice or waiver to any Party's pre-settlement position on any legal or factual issue. No portion of the Gross Settlement Amount that has already been incurred for Notice and Administrative Costs or necessary taxes and expenses in connection with the maintenance of the Administration Account will be returned to Defendant even if the Court does not grant Final Approval or the Effective Date does not occur. Any amount expended prior to termination of this Settlement shall be considered a taxable cost allowed to the prevailing party.

## **XVI. BEST EFFORTS**

A. The Parties and their counsel agree to cooperate fully with one another and to use their best efforts to effectuate the Settlement and administration of the claims hereunder, including,

without limitation, by seeking or not objecting to preliminary and final Court approval of this Settlement Agreement and the Settlement embodied herein, by carrying out the terms of this Settlement Agreement, and by promptly agreeing upon and executing all such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement.

B. The Parties and their counsel understand and agree that the administration of a class action lawsuit can be complex and that, from time to time after the entry of the Final Order and Judgment, unique, non-material issues with respect to individual Class Members may arise that are not directly covered by the terms of this Settlement Agreement. In the event any such non-material issues arise, the Parties and their counsel agree to cooperate fully with one another and to use their respective best efforts to come to agreement, which agreement shall not be unreasonably withheld.

C. Any requests for cooperation shall be narrowly tailored and reasonably necessary for the requesting party to recommend the Settlement to the Court and to carry out its terms.

## **XVII. MISCELLANEOUS PROVISIONS**

A. This Settlement Agreement reflects the Parties' compromise and settlement of disputed claims. Its provisions and all related drafts, communications, discussions, and any material provided by Defendant during the Parties' negotiations cannot be construed as or deemed to be evidence of an admission or concession of any point of fact or law (including, but not limited to, matters respecting class certification) by any person or entity and cannot be offered or received into evidence in any other action or proceeding as evidence of an admission or concession, except as necessary to enforce the Settlement Agreement. Defendant expressly denies (a) any and all liability, culpability, and wrongdoing with respect to the Litigation and matters alleged therein and (b) that the Litigation could be certified and maintained as a class action under Federal Rule of Civil Procedure 23 or other state rule of procedure or law other than by way of settlement.

B. The Recitals are incorporated by this reference and are part of the Settlement Agreement.

C. The headings of the sections and paragraphs of this Agreement are included for convenience only and shall not be deemed to constitute part of this Agreement or to affect its construction.

D. Capitalized words, terms, and phrases are used as defined in Section I, above, or elsewhere in this Agreement.

E. This Agreement may not be modified or amended except in writing and signed by all of the Parties.

F. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

G. Except as otherwise provided in this Agreement, each Party bears his, her, or its own attorneys' fees, costs and expenses of the Litigation and in connection with this Agreement.

H. The Parties to this Agreement reserve the right to correct any inadvertent, non-substantive mistakes or typographical errors contained in the Agreement or the Exhibits.

I. The Parties execute this Agreement voluntarily and without duress or undue influence. All of the Parties warrant and represent that they are agreeing to the terms of this Settlement Agreement based upon the legal advice of their respective counsel, that they have been afforded the opportunity to discuss the contents of this Agreement with their counsel, and that the terms and conditions of this document are fully understood and voluntarily accepted.

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

Agreement or the Final Order and Judgment entered in the Litigation. The administration and consummation of the Settlement embodied in this Agreement shall be under the authority of the Court. The Court shall retain jurisdiction to protect, preserve, and implement the Agreement, including but not limited to, the Release. The Court expressly retains jurisdiction to enter such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of this Agreement. The Parties do not intend by this provision to give the Court authority to change any term or condition of this Agreement over the objection of any Party.

K. The determination of the terms of, and the drafting of, this Agreement has been by mutual agreement after negotiation, with consideration by and participation of all Parties and their counsel. Since this Agreement was drafted with the participation of all Parties and their counsel, the presumption that ambiguities shall be construed against the drafter does not apply. The Parties were represented by competent and effective counsel throughout the course of settlement negotiations and in the drafting and execution of this Agreement, and there was no disparity in bargaining power among the Parties to this Agreement.

L. This Agreement constitutes the entire, fully integrated agreement among the Parties and cancels and supersedes all prior written and unwritten agreements and understandings pertaining to the settlement of the Litigation.

M. Except where time periods set forth herein explicitly reference “business days,” all time periods set forth herein shall be computed in calendar days, inclusive of any weekends and holidays. In computing any period of time prescribed or allowed by this Agreement, the day of the act, or default, from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or Court holiday, in which event the period shall run until the end of the next day that is not one of the

aforementioned days. Each of the Parties reserves the right, subject to the Court's approval, to seek any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement, and to modify or supplement any notice contemplated hereunder.

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

O. All notices to the Parties or counsel required by this Agreement shall be made in writing and communicated by electronic and regular mail to the following addresses (unless one of the Parties subsequently designates one or more other designees):

**For Plaintiffs and Co-Lead Counsel:**

**For Defendant and Defendant's Counsel:**

Gary E. Mason  
MASON LIETZ & KLINGER LLP  
5101 Wisconsin Ave., NW Ste 305  
Washington, DC 20016  
Tel: (202) 429-2290  
gmason@masonllp.com

Keith E. Smith  
GREENBERG TRAUIG, LLP  
1717 Arch Street  
Three Logan Square, Suite 400  
Philadelphia, PA 19103  
Tel: (215) 988-7800  
smithkei@gtlaw.com

Charles E. Schaffer (admitted *pro hac vice*)  
LEVIN, SEDRAN & BERMAN, LLP  
510 Walnut Street, Suite 500  
Philadelphia, PA 19106  
Tel: (215) 592-1500  
cschaffer@lfsblaw.com

IN WITNESS WHEREOF, the Parties and their representatives have executed this Agreement as of the dates(s) indicated on the lines below.

**Co-Lead Counsel**

Dated: Jul 26, 2021

  
\_\_\_\_\_  
Gary Mason (Jul 26, 2021 16:02 EDT)

Gary E. Mason  
MASON LIETZ & KLINGER LLP  
5101 Wisconsin Ave., NW Ste 305  
Washington, DC 20016  
Tel: (202) 429-2290  
[gmason@masonllp.com](mailto:gmason@masonllp.com)

Dated: Jul 26, 2021

  
\_\_\_\_\_  
Charles Schaffer (Jul 26, 2021 11:37 EDT)

Charles E. Schaffer (admitted *pro hac vice*)  
LEVIN, SEDRAN & BERMAN, LLP  
510 Walnut Street, Suite 500  
Philadelphia, PA 19106  
Tel: (215) 592-1500  
[cschaffer@lfsblaw.com](mailto:cschaffer@lfsblaw.com)

**Deva Concepts, LLC**

Dated: Jul 26, 2021

  
\_\_\_\_\_  
Keith E. Smith (Jul 26, 2021 14:07 EDT)

By: Its Attorneys: Keith E. Smith (authorized to execute on behalf of Deva Concepts, LLC)  
GREENBERG TRAUERIG, LLP  
1717 Arch Street  
Three Logan Square, Suite 400  
Philadelphia, PA 19103  
Tel: (215) 988-7843  
[smithkei@gtlaw.com](mailto:smithkei@gtlaw.com)

Dated: Jul 26, 2021

  
\_\_\_\_\_  
Keith E. Smith (Jul 26, 2021 14:07 EDT)


Keith E. Smith  
GREENBERG TRAUERIG, LLP  
1717 Arch Street  
Three Logan Square, Suite 400  
Philadelphia, PA 19103  
Tel: (215) 988-7843  
[smithkei@gtlaw.com](mailto:smithkei@gtlaw.com)

*Counsel for Defendant, Deva Concepts, LLC*

Class Representatives:

  
Wendy Baldyga (Jul 22, 2021 11:17 PDT) Dated: Jul 22, 2021  
Wendy Baldyga

  
Marisa Cohen (Jul 23, 2021 09:56 PDT) Dated: Jul 23, 2021  
Marisa Cohen

  
Tami Nunez (Jul 22, 2021 22:11 EDT) Dated: Jul 22, 2021  
Tami Nunez

  
\_\_\_\_\_ Dated: Jul 22, 2021  
Stephanie Williams

  
Erika Martinez (Jul 23, 2021 11:19 CDT) Dated: Jul 23, 2021  
Erika Martinez-Villa

\_\_\_\_\_ Dated:  
Marcy McCreary

  
Lauren Petersen (Jul 22, 2021 14:37 CDT) Dated: Jul 22, 2021  
Lauren Petersen

\_\_\_\_\_ Dated:  
Jody Shewmaker

\_\_\_\_\_ Dated:  
Diana Hall

  
Alanna Hall (Jul 24, 2021 16:04 EDT) Dated: Jul 24, 2021  
Alanna Hall

\_\_\_\_\_ Dated:  
Tahira Shaikh



Class Representatives:


\_\_\_\_\_ Dated:  
Wendy Baldyga

\_\_\_\_\_ Dated:  
Marisa Cohen

\_\_\_\_\_ Dated:  
Tami Nunez

\_\_\_\_\_ Dated:  
Stephanie Williams

\_\_\_\_\_ Dated:  
Erika Martinez-Villa

 \_\_\_\_\_ Dated: 07/22/2021  
Tahira Shaikh

\_\_\_\_\_ Dated:  
Marcy McCreary

\_\_\_\_\_ Dated:  
Lauren Petersen

\_\_\_\_\_ Dated:  
Jody Shewmaker

\_\_\_\_\_ Dated:  
Diana Hall

\_\_\_\_\_ Dated:  
Alanna Hall

STATE OF NEW YORK  
COUNTY OF ALBANY  
OFFICE OF THE CLERK OF THE SUPREME COURT  
ALBANY, NEW YORK

----- Dated:  
Wendy Baldyga

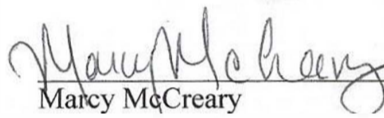
----- Dated:  
Marisa Cohen

----- Dated:  
Tami Nunez

----- Dated:  
Stephanie Williams

----- Dated:  
Erika Martinez-Villa

----- Dated:  
Tahira Shaikh

 Dated:  
Marcy McCreary

----- Dated:  
Lauren Petersen

----- Dated:  
Jody Shewmaker

----- Dated:  
Diana Hall

----- Dated:  
Alanna Hall,

Class Representatives:

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Wendy Baldyga Dated:

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Marisa Cohen Dated:

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Tami Nunez Dated:

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Stephanie Williams Dated:

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Erika Martinez-Villa Dated:

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Tahira Shaikh Dated:

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Marcy McCreary Dated:

-----  
Lauren Petersen Dated:

Jody Shewmaker Dated: 7/7/21  
Jody Shewmaker

-----  
Diana Hall Dated:

-----  
Alanna Hall, Dated:

Class Representatives:

\_\_\_\_\_ Dated:  
Wendy Baldyga

\_\_\_\_\_ Dated:  
Marisa Cohen

\_\_\_\_\_ Dated:  
Tami Nunez

\_\_\_\_\_ Dated:  
Stephanie Williams

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Erika Martinez-Villa

\_\_\_\_\_ Dated:  
Tahira Shaikh

\_\_\_\_\_ Dated:  
Marcy McCreary

\_\_\_\_\_ Dated:  
Lauren Petersen

\_\_\_\_\_ Dated:  
Jody Shewmaker

DocuSigned by:  
*Diana Hall*  
B983F1A7D141443... Dated: 7/23/2021  
\_\_\_\_\_ Dated:  
Diana Hall

\_\_\_\_\_ Dated:  
Alanna Hall