

**IN THE CIRCUIT COURT OF DUPAGE COUNTY, ILLINOIS
18TH JUDICIAL CIRCUIT**

JOSEFINA DARNALL, GEORGE WYANT,
DEXTER COBB, and CHERYL RUTKOWSKI
individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

DUDE PRODUCTS, INC.,

Defendant.

Case No. 2023LA000761

CLASS ACTION SETTLEMENT AGREEMENT

This Agreement (“Agreement” or “Settlement Agreement”) is entered into by and among (i) Plaintiffs George Wyant, Josefina Darnall, Cheryl Rutkowski, and Dexter Cobb (“Plaintiffs”); (ii) the Settlement Class (as defined herein); and (iii) Defendant, Dude Products, Inc. (“Defendant” or “Dude Products”). The Settlement Class and Plaintiffs are collectively referred to as the “Plaintiffs” unless otherwise noted. The Plaintiffs and the Defendant are collectively referred to herein as the “Parties.” This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined herein), upon and subject to the terms and conditions of this Agreement, and subject to the final approval of the Court.

RECITALS

A. This putative class action was filed on July 20, 2023, in the Circuit Court of DuPage County, Illinois, 18th Judicial Circuit, and brought claims on behalf of a nationwide class for violations of consumer protection laws, including those of Illinois, New York, and California; and breach of express warranty, regarding Dude Products’ allegedly false and

misleading advertising concerning the use of the term “flushable” on the labeling of its Dude Wipes Product.

B. Prior to filing the instant Action, the Parties agreed to engage in private mediation.

C. As part of the mediation, and to competently assess their relative negotiating positions, the Parties exchanged discovery pertaining to issues such as the size and scope of the putative class. This information was sufficient to assess the strengths and weaknesses of the claims and defenses.

D. On June 14, 2022, the Parties conducted a full-day mediation before the Hon. Wayne R. Andersen (Ret.) of JAMS, an experienced class action mediator. At the conclusion of the mediation, the Parties were unable to reach an agreement.

E. The Parties continued to negotiate with the assistance of Judge Andersen for more than a year, including a second mediation on May 22, 2023, until they reached an agreement on all material terms of a class action settlement and executed a term sheet.

F. At all times, Defendant has denied and continues to deny any wrongdoing whatsoever and has denied and continues to deny that it committed, or threatened or attempted to commit, any wrongful act or violation of law or duty alleged in the Action. Defendant believes that the claims asserted in the Action do not have merit and that Defendant would have prevailed at summary judgment or trial. Nonetheless, taking into account the uncertainty and risks inherent in any litigation, Defendant has concluded that it is desirable and beneficial that the Action be fully and finally settled and terminated in the manner and upon the terms and conditions set forth in this Agreement. This Agreement is a compromise, and the Agreement, any related documents, and any negotiations resulting in it will not be construed as or deemed to be evidence of or an admission or concession of liability or wrongdoing on the part of

Defendant, or any of the Released Parties (defined below), with respect to any claim of any fault or liability or wrongdoing or damage whatsoever or with respect to the certifiability of a litigation class.

G. Plaintiffs believe that the claims asserted in the Action against Defendant have merit and that they would have prevailed at summary judgment and/or trial. Nonetheless, Plaintiffs and Class Counsel recognize that Defendant has raised factual and legal defenses that present a risk that Plaintiffs may not prevail. Plaintiffs and Class Counsel also recognize the expense and delay associated with continued prosecution of the Action against Defendant through class certification, summary judgment, trial, and any subsequent appeals. Plaintiffs and Class Counsel also have taken into account the uncertain outcome and risks of litigation, especially in complex class actions, as well as the difficulties inherent in such litigation. Therefore, Plaintiffs believe that it is desirable that the Released Claims be fully and finally compromised, settled, and resolved with prejudice. Based on its evaluation, Class Counsel has concluded that the terms and conditions of this Agreement are fair, reasonable, and adequate to the Settlement Class, and that it is in the best interests of the Settlement Class to settle the claims raised in the Action pursuant to the terms and provisions of this Agreement.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Plaintiffs, the Settlement Class, and each of them, and Defendant, by and through its undersigned counsel that, subject to final approval of the Court after a hearing or hearings as provided for in this Settlement Agreement, in consideration of the benefits flowing to the Parties from the Agreement set forth herein, that the Action and the Released Claims will be finally and fully compromised, settled, and released, and the Action will be dismissed with prejudice, upon and subject to the terms and conditions of this Agreement.

AGREEMENT

1. DEFINITIONS.

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

1.1 “Action” means *Darnall, et al. v. Dude Products, Inc.*, Case No. 2023LA000761, pending in the Circuit Court of DuPage County, Illinois, 18th Judicial District.

1.2 “Approved Claim” means a Claim Form submitted by a Settlement Class Member that: (a) is submitted timely and in accordance with the directions on the Claim Form and the provisions of the Settlement Agreement; (b) is fully and truthfully completed by a Settlement Class Member with all of the information requested in the Claim Form; (c) is signed by the Settlement Class Member, physically or electronically; and (d) is approved by the Settlement Administrator pursuant to the provisions of this Agreement.

1.3 “Claim Form” means the document to be submitted by Settlement Class Members seeking a benefit pursuant to this Settlement Agreement. The Claim Form will be available online at the Settlement Website (defined at Section 1.37 below) and the contents of the Claim Form will be substantially in the form attached hereto as Exhibit A, approved by the Court.

1.4 “Claimant” means a Settlement Class Member who submits a claim for payment benefit as described in Section 2 of this Settlement Agreement.

1.5 “Claims Deadline” means the date by which all Claim Forms must be postmarked or received to be considered timely and will be set as a date no later than sixty (60) days after the Notice Date. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order as well as in the Class Notice and the Claim Form.

1.6 “**Class Counsel**” means the law firms of Bursor & Fisher, P.A., and Milberg Coleman Bryson Phillips Grossman, PLLC.

1.7 “**Class Notice**” means the Court-approved “Notice of Class Action Settlement.”

1.8 “**Class Period**” means the period of time from February 5, 2015, to and through the date of the Preliminary Approval Order.

1.9 “**Class Representatives**” mean the named Plaintiffs in this Action, specifically, Josefina Darnall, George Wyant, Cheryl Rutkowski, and Dexter Cobb.

1.10 “**Court**” means the Circuit Court of DuPage County, Illinois, 18th Judicial District, the Honorable Timothy J. McJoynt, presiding, or any judge who will succeed him as the Judge in this Action.

1.11 “**Defendant**” means Dude Products, Inc.

1.12 “**Defendant’s Counsel**” means the law firm of Barnes & Thornburg LLP.

1.13 “**Dude Wipes Products**” means all Dude Wipes-brand individual and multi-pack “flushable” wipe products.

1.14 “**Fee Award**” means the amount of attorneys’ fees and reimbursement of expenses and costs awarded by the Court to Class Counsel, which will be paid by Defendant pursuant to the terms set forth herein.

1.15 “**Final Approval Hearing**” means the hearing before the Court where the Parties will request the Settlement Approval Order and Final Judgment to be entered by the Court approving the Settlement Agreement, and where Plaintiffs will request the Court to approve the Fee Award and the Service Awards to the Class Representatives.

1.16 “**Final Settlement Approval Date**” means one business day following the latest of the following events: (i) the date upon which the time expires for filing or noticing any appeal of the Court’s Settlement Approval Order and Final Judgment approving the Settlement

Agreement, if no appeal has been filed; (ii) if there is an appeal or appeals, other than an appeal or appeals solely with respect to the Fee Award, the date of completion, in a manner that finally affirms and leaves in place the Settlement Approval Order and Final Judgment without any material modification, of all proceedings arising out of the appeal or appeals (including, but not limited to, the expiration of all deadlines for motions for reconsideration or petitions for review and/or *certiorari*, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal or appeals following decisions on remand); or (iii) the date of final dismissal of any appeal or the final dismissal of any proceeding on *certiorari*.

1.17 “Household” means those Persons who occupy the same residential housing unit, whether they are related to each other or not.

1.18 “Material Modification” means a non-trivial modification of the settlement, by the Court or on appeal or remand, which includes but is not limited to: (1) any change to the scope of the released claims and/or settlement class; (2) any non-trivial increase in the cost of the settlement to be borne by Defendant; or (3) any non-trivial change to the benefit, class notice, claim form, or claim process.

1.19 “Media Plan” means the Settlement Administrator’s plan to disseminate Class Notice to Settlement Class Members. The Media Plan will include an email notice, a long form notice that will be available on the Settlement Website, and internet banner notice. *See also* Section 4.

1.20 “Notice and Other Administrative Costs” means all costs and expenses actually incurred by the Settlement Administrator in the publication of Class Notice, establishment of the Settlement Website, the processing, handling, reviewing, and paying of valid claims made by Claimants, and paying taxes and tax expenses related to the Settlement Fund (including all federal, state, or local taxes of any kind and interest or penalties thereon, as well as expenses

incurred in connection with determining the amount of and paying any taxes owed and expenses related to any tax attorneys and accountants).

1.21 “Notice Date” means the date of publication of notice pursuant to Section 4 of this Agreement.

1.22 “Objection/Exclusion Deadline” means the date by which a written objection to this Settlement Agreement or a request for exclusion submitted by a Person within the Settlement Class must be made, which shall be designated as a date no later than forty-five (45) days after the Notice Date, or such other date as ordered by the Court.

1.23 “Person” means a natural person, or the estate, legal representative, trust, heir, successor, or assign of any such natural person, and excludes, without limitation, any corporation, partnership, limited partnership, limited liability company, association, joint stock company, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity. “Person” is not intended to include any governmental agency or governmental actor, including, without limitation, any state Attorney General office.

1.24 “Plaintiffs” means George Wyant, Josefina Darnall, Cheryl Rutkowski, Dexter Cobb, and the Settlement Class Members.

1.25 “Preliminary Approval” means the Court’s entry of an order preliminarily approving the terms and conditions of this Settlement Agreement, including the manner of providing, and content of, the Settlement Class Notice.

1.26 “Preliminary Approval Date” means the date on which the Court enters an order entering the Preliminary Approval Order.

1.27 “Preliminary Approval Order” means the order preliminarily approving the Settlement Agreement, certifying the Settlement Class for settlement purposes only, and directing notice thereof to the Settlement Class, which will be agreed upon by the Parties and

submitted to the Court in conjunction with Plaintiffs' motion for preliminary approval of this Agreement.

1.28 “Proof of Purchase” means a receipt, removed UPC code, or other documentation that establishes the fact and date of the Dude Wipes Product purchase during the Class Period in the United States.

1.29 “Released Claims” means the claims released pursuant to Section 6.1 of this Agreement.

1.30 “Released Parties” means Dude Products, Inc., as well as any and all of its current, former, and future parents, predecessors, successors, affiliates, assigns, subsidiaries, divisions, or related corporate entities, and all of their respective current, future, and former employees, officers, directors, shareholders, assigns, agents, trustees, administrators, executors, insurers, attorneys, vendors, contractors, and distributors.

1.31 “Releasing Parties” means Plaintiffs, those Settlement Class Members who do not timely opt out of the Settlement Class, and all of their respective present or past heirs, executors, estates, administrators, successors, assigns, insurers, legal representatives, trusts, and anyone claiming through them or acting or purporting to act on their behalf.

1.32 “Service Awards” means any award approved by the Court that is payable to the Plaintiffs by the Defendant pursuant to the terms set forth herein.

1.33 “Settlement Administrator” means Kroll Settlement Administration LLC, or any such other reputable administration company that has been selected jointly by the Parties and approved by the Court to perform the duties set forth in this Agreement, including but not limited to overseeing the distribution of Notice, as well as the processing and payment of Approved Claims to the Settlement Class as set forth in this Agreement, and disbursing all approved payments out of the Settlement Fund, and handling the determination, payment, and filing of

forms related to all federal, state, and or local taxes of any kind (including any interest or penalties thereon) that may be owed on any income earned by the Settlement Fund.

1.34 “Settlement Class Members” or “Settlement Class” means:

All Persons in the United States (including its states, districts, or territories) who purchased one or more units of Dude Wipes “flushable” wipes products (the “Dude Wipe Products”) from February 5, 2015, to and through the date of the Preliminary Approval Order, excluding Persons who purchased for the purpose of resale. Excluded from the Settlement Class are (1) any Judge presiding over this Action and members of their families; (2) the Defendant, Defendant’s subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and their current or former officers, directors, agents, attorneys, and employees; (3) Persons who properly execute and file a timely request for exclusion from the class; and (4) the legal representatives, successors, or assigns of any such excluded Persons.

1.35 “Settlement Fund” means the total cash commitment of Defendant for purposes of this settlement, as described in Section 2 of this Settlement Agreement, with a total value of up to nine million dollars (\$9,000,000.00 USD), which shall be the maximum amount of money that Defendant shall be obligated to pay for the benefit of the Settlement Class, inclusive of all Approved Claims, all Settlement Administrator costs, any Fee Award and Service Awards, and any other costs, expenses, and fees associated with the Settlement pursuant to the terms set forth in this Agreement. Any monies from the Settlement Fund not paid for Approved Claims, all Settlement Administrator costs, any Fee Award and Service Awards, and any other costs, expenses, and fees associated with the Settlement pursuant to the terms set forth in this Agreement, shall be retained by Defendant and shall not otherwise be considered “Residual Funds” under 735 ILCS 5/2-807.

1.36 “Settlement Approval Order and Final Judgment” means an order and judgment issued and entered by the Court, approving the Settlement Agreement as binding upon the Parties and the Settlement Class Members, dismissing the Action with prejudice, and setting

any Fee Award to Class Counsel by the Court, and the amount of any Service Awards to Plaintiffs by the Court. The Settlement Approval Order and Final Judgment will constitute a final judgment of dismissal of the Action with prejudice.

1.37 “Settlement Website” means a website, referenced in Section 4(d) below, to be established, operated, and maintained by the Settlement Administrator for purposes of providing notice and otherwise making available to the Settlement Class Members the documents, information, and online claims submission process referenced in.

1.38 “Unknown Claims” means claims that could have been raised in the Action and that any or all of the Releasing Parties do not know or suspect to exist, which, if known by him or her, might affect his or her agreement to release the Released Parties or the Released Claims or might affect his or her decision to agree, object, or not to object to the Settlement. Upon the Final Settlement Approval Date, the Releasing Parties will be deemed to have, and will have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of § 1542 of the California Civil Code, which provides as follows:

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.

Upon the Final Settlement Approval Date, the Releasing Parties also will be deemed to have, and will have, waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code. The Releasing Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but that it is their intention to finally and forever settle and release

the Released Claims, notwithstanding any Unknown Claims they may have, as that term is defined in this paragraph.

2. SETTLEMENT RELIEF.

2.1 Payments to Settlement Class Members.

(a) Defendant will pay a total of up to nine million dollars (\$9,000,000.00) for payment of the following: (i) Approved Claims for benefits submitted by Settlement Class Members pursuant to Section 2.3 below; (ii) the Notice and Other Administrative Costs actually incurred by the Settlement Administrator as described in Section 4.3 below; (iii) the Fee Award, as may be ordered by the Court and as described in Section 3.1 below; and (iv) any Service Award to the Plaintiffs, not to exceed five thousand dollars (\$5,000.00) each, as may be ordered by the Court and as described in Section 3.3 below.

2.2 Schedule of Payments into Settlement Fund. Defendant will make payments in accordance with the following schedule:

(a) *Notice and Other Administrative Costs.* Amounts for the Notice and Other Administrative Costs, to be paid within thirty (30) days of when such amounts are invoiced to Defendant and become due and owing.

(b) *Fee Award.* An amount equal to the Fee Award as ordered by the Court, to be paid as described at Section 3.1, below.

(c) *Service Awards.* An amount equal to Plaintiffs' Service Awards as ordered by the Court, to be paid as described at Section 3.3, below.

(d) *Payment of Valid Approved Claims.* An amount not to exceed nine million dollars (\$9,000,000.00) for valid Approved Claims is to be paid by the later of (i) sixty (60) days after the Claims Deadline, (ii) thirty (30) days after the Settlement Administrator provides a pay deck, or (iii) the Final Settlement Approval Date, less the sum of (i) the payments

for Notice and Other Administrative Costs, (ii) the Fee Award paid by Defendant, and (iii) any Service Awards paid by Defendant.

2.3 Claims Process. Each Settlement Class Member will be entitled to submit a Claim Form for payment, consistent with this paragraph and as determined by the Court.

(a) *Payment.* Each Settlement Class Member may file a Claim Form that will, if valid after it is completed by the Settlement Class Member submitting the Claim Form, entitle him or her to a benefit payment based on Dude Wipes Products purchased during the Settlement Class Period. Settlement Class Members with Proof of Purchase will be entitled to submit a claim for a refund of up to \$0.50 per Household for each Dude Wipes Product purchased during the Class Period, up to a maximum of \$20.00 (*i.e.* a maximum of forty (40) packages).

Settlement Class Members without Proof of Purchase will be entitled to submit a claim up to \$0.50 per Household for each Dude Wipes Product purchased during the Class Period, up to a maximum of \$2.50 (*i.e.* a maximum of five (5) packages). Settlement Class Members may not submit a claim for refund for products bought both with and without proofs of purchase.

(b) *Method of Payment.* Each Settlement Class Member may choose to receive his or her payment via check, Venmo, PayPal, or other electronic payment methods. Payment by check will be the default payment method in the event that a Settlement Class Member does not state a preferred method of payment.

(c) *Pro Rata Adjustment.* If the total value of all Approved Claims exceeds the funds available for distribution to Class Members, then the amounts of the payments will be reduced *pro rata*.

2.4 Proof of Claim. A maximum of one claim, submitted on a single Claim Form, may be submitted by each Settlement Class Member's Household. A Claimant must include information in the Claim Form – completed online or in hard copy mailed to the Settlement

Administrator – confirming under penalty of perjury the following: (i) the number of qualifying Dude Wipes Product purchased, and (ii) that the purchase(s) were made within the Settlement Class Period.

2.5 Review of Claims. The Settlement Administrator will be responsible for reviewing all Claim Forms to determine their validity. The final determination of whether a claim is valid or not will rest solely with the Settlement Administrator. The Settlement Administrator will reject any Claim Form that does not comply in any material respect with the instructions on the Claim Form or the terms of Sections 2.3 and 2.4, above, or is submitted after the Claims Deadline. The Settlement Administrator shall send one (1) notice of deficiency and give the Settlement Class Member one (1) reasonable opportunity to cure any deficiency. The Settlement Class Member shall have twenty-one (21) days to provide further information or cure the deficiency identified by the Settlement Administrator. If the Settlement Class Member does not cure the deficiency within twenty-one (21) days after the date the notice of deficiency is sent to the satisfaction of the Settlement Administrator, in its sole discretion, then any such claim shall be denied.

2.6 Benefit Payment – Uncleared Checks. Those Settlement Class Members whose benefit checks are not cleared within one hundred eighty (180) days after issuance will be ineligible to receive a settlement benefit, and Defendant will have no further obligation to make any payment pursuant to this Settlement Agreement or otherwise to such Settlement Class Members. Unpaid funds from uncleared checks will not revert back to the Defendant. Any unpaid funds from uncleared checks remaining after administration of the Settlement Agreement will be donated as *cy pres* to the Chicago Bar Foundation; a non-sectarian, not-for-profit *pro bono* legal organization; or another non-sectarian, not-for-profit organization(s) recommended by the Parties and approved by the Court.

3. CLASS COUNSEL’S ATTORNEYS’ FEES AND REIMBURSEMENT OF COSTS AND EXPENSES; INCENTIVE AWARD.

3.1 Class Counsel may receive, subject to Court approval, attorneys’ fees, costs, and expenses not to exceed one-third (1/3) of the Settlement Fund, *i.e.*, three million dollars (\$3,000,000). Class Counsel will petition the Court for an award of such attorneys’ fees and Defendant agrees to not object to or otherwise challenge, directly or indirectly, Class Counsel’s petition for reasonable attorneys’ fees and for reimbursement of costs and expenses if limited to this amount. Class Counsel, in turn, agrees to seek no more than this amount from the Court in attorneys’ fees and for reimbursement of costs and expenses.

3.2 The Fee Award will be payable by Defendant within ten (10) days after entry of the Court’s Settlement Approval Order and Final Judgment, subject to Class Counsel executing the Undertaking Regarding Attorneys’ Fees and Costs (the “Undertaking”) attached hereto as Exhibit D, and providing all payment routing information and tax I.D. numbers for Bursor & Fisher, P.A., as agent for Class Counsel. Payment of the Fee Award will be made by wire transfer to Bursor & Fisher, P.A., as agent for Class Counsel, for distribution to and among counsel for Plaintiffs and the Settlement Class, in accordance with wire instructions to be provided by Bursor & Fisher, P.A., and completion of necessary forms, including but not limited to W-9 forms. Notwithstanding the foregoing, if for any reason the Settlement Approval Order and Final Judgment or any part of it is vacated, overturned, reversed, or rendered void as a result of an appeal, or the Settlement Agreement is voided, rescinded, or otherwise terminated for any other reason, then any Persons or firms who shall have received the funds shall be severally liable for payments made pursuant to this subparagraph, and shall return funds to the Defendant. Additionally, should any parties to the Undertaking dissolve, merge, declare bankruptcy, become insolvent, or cease to exist prior to the final payment to Class Members, those parties shall

execute a new undertaking guaranteeing repayment of funds within fourteen (14) days of such an occurrence.

3.3 Subject to Court approval, the Plaintiffs may be paid Service Awards by the Defendant, in addition to any settlement payment as a result of an Approved Claim pursuant to this Agreement, and in recognition of their efforts on behalf of the Settlement Class, in the amount of five thousand dollars (\$5,000.00) each. Defendant will not object to or otherwise challenge, directly or indirectly, Class Counsel's application for the service awards to the Class Representatives if limited to this amount. Class Counsel, in turn, agrees to seek no more than this amount from the Court as the service awards for the Class Representatives. Such awards will be paid by Defendant (in the form of checks to the Class Representatives that are sent care of Class Counsel) within twenty-one (21) days after Settlement Approval Order and Final Judgment becomes final if no appeal is taken, or, if an appeal is taken, within ten (10) days after all appeals have expired or been exhausted in such manner as to affirm the Court's order.

4. NOTICE TO THE CLASS AND ADMINISTRATION OF SETTLEMENT.

4.1 Class Notice. The Class Notice will conform to all applicable requirements of the Illinois Code of Civil Procedure, the United States and Illinois Constitutions (including the Due Process Clauses), and any other applicable law, and will otherwise be in the manner and form approved by the Court.

4.2 Notice Terms. The Class Notice shall consist of at least the following:

(a) *Settlement Class List.* No later than ten (10) days after the entry of the Preliminary Approval Order, Defendant shall produce an electronic list from its records that includes all of the names, last known email addresses, to the extent the foregoing exists in Defendant's records, belonging to Persons within the Settlement Class. This electronic document shall be called the "Class List," and shall be provided to the Settlement Administrator;

(b) *Direct Notice via Email.* No later than thirty-five (35) days from the entry of the Preliminary Approval Order, the Settlement Administrator will send Class Notice via email substantially in the form attached as Exhibit B, along with an electronic link to the Claim Form and Settlement Website, to all Settlement Class Members for whom a valid email address is in the Class List. This shall be the only direct notice provided via email, unless transmission of the email notice results in any “bounce-backs,” in which case the Settlement Administrator will, if possible, correct any issues that may have caused the “bounce-back” to occur and make a second attempt to re-send the email notice.

(c) *Settlement Website.* Within thirty (30) days from entry of the Preliminary Approval Order, Notice will be provided on a website at an available settlement URL which will be obtained, administered, and maintained by the Settlement Administrator and will include the ability to file Claim Forms online, provided that such Claim Forms, if signed electronically, will be binding for purposes of applicable law and contain a statement to that effect. The Class Notice provided on the Settlement Website will be substantially in the form of Exhibit C hereto.

(d) *Online Notice.* Within thirty-five (35) days from the entry of the Preliminary Approval Order, Online Notice will be provided according to the Media Plan.

4.3 Responsibilities of Settlement Administrator. The Parties will retain a Settlement Administrator (including subcontractors) to help implement the terms of the proposed Settlement Agreement. The Settlement Administrator will be responsible for administrative tasks, including, without limitation, (a) arranging, as set forth in the Media Plan, for distribution of Class Notice (in the form approved by the Court) and Claim Forms (in a form approved by the Court) to Settlement Class Members, (b) designing appropriate safeguards on the claim form and in the claims process to minimize waste, fraud, and abuse, (c) requesting additional information to validate suspicious or potentially fraudulent claims, and claims may also be validated against

Proof of Purchase, (d) answering inquiries from Settlement Class Members and/or forwarding such written inquiries to Class Counsel or their designee, (e) receiving and maintaining on behalf of the Court and the Parties any Settlement Class Member correspondence regarding requests for exclusion from the settlement, (f) establishing the Settlement Website that posts notices, Claim Forms, and other related documents by the Notice Date, (g) receiving and processing claims and distributing payments to Settlement Class Members, and (h) otherwise assisting with implementation and administration of the Settlement Agreement terms.

4.6 Performance Standards of Settlement Administrator. The contract with the Settlement Administrator will obligate the Settlement Administrator to abide by the following performance standards:

(a) The Settlement Administrator will accurately, objectively, and neutrally describe, and will train and instruct its employees and agents to accurately, objectively, and neutrally describe, the provisions of this Agreement in communications with Settlement Class Members;

(b) The Settlement Administrator will provide prompt, accurate, and objective responses to inquiries from Class Counsel and Defendant's Counsel and will periodically report on claims, objectors, etc.

5. CLASS SETTLEMENT PROCEDURES.

5.1 Exclusions and Objections. The Class Notice will advise all Settlement Class Members of their rights to be excluded from the Settlement or to object to the Settlement.

(a) Any Person who falls within the definition of the Settlement Class but wishes to be excluded from the Settlement may do so by timely mailing a valid opt-out notice, as described in the Class Notice. Any Person who is excluded from the Settlement will not be bound by this Settlement Agreement, will not be eligible to make a claim for any benefit under

the terms of this Settlement Agreement, and will not be permitted to object to the Settlement or to intervene in the Action. At least seven (7) calendar days before the Final Approval Hearing, Class Counsel will prepare or cause the Settlement Administrator to prepare a list of the Persons who have excluded themselves in a valid and timely manner from the Settlement Class (the “Opt-Outs”), and Class Counsel will file that list with the Court.

(b) Any Person who is a Settlement Class Member and who wishes to object to this Agreement must timely serve a written objection, which must be personally signed by the objector, on the Settlement Administrator, Defendant’s Counsel, and Class Counsel postmarked on or before the date specified in the Class Notice. The objection must contain a caption or title that identifies it as “Objection to Class Settlement in *Darnall v. Dude Products, Inc.*,” and must include: (a) contact and address information for the objecting Settlement Class Member; (b) documents sufficient to establish the Person’s standing as a Settlement Class Member (either verification under oath of the date and location of a purchase of Dude Wipes Products within the Settlement Class Period or a receipt reflecting such purchase); (c) the facts supporting the objection, the legal grounds on which the objection is based, including all citations to legal authority and evidence supporting the objection, (d) the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection (the “Objecting Attorneys”); and (e) a statement indicating whether the objector intends to appear at the Final Approval Hearing (either personally or through counsel who files an appearance with the Court). If an objecting Person chooses to appear at the Final Approval Hearing, a notice of intention to appear must be filed with the Court no later than the Objection/Exclusion Deadline.

(c) If a Settlement Class Member who is objecting to the Settlement Agreement or any of the Objecting Attorneys has objected to any class action settlement where the objector or the Objecting Attorneys asked for or received any payment in exchange for dismissal of the objection, or any related appeal, without any modification to the settlement, then the objection must include a statement identifying each such case by full case caption and amount of payment received.

(d) Any Settlement Class Member who does not, in accordance with the terms and conditions of this Agreement, submit an Approved Claim or seek exclusion from the Settlement Class shall not be entitled to receive any payment or benefits pursuant to this Agreement but will otherwise be bound by all of the terms of this Agreement, including the terms of the Final Judgment to be entered in this Action and the Releases provided in the Agreement and will be barred from bringing any action against any of the Released Parties concerning the Released Claims.

5.2 The Final Approval Hearing shall be on a date to be determined by the Court.

5.3 Stay of the Action. The Parties will request that the Court, in connection with Preliminary Approval, issue an immediate stay of the Action.

5.4 Effect If Settlement Not Approved. This Settlement Agreement was entered into only for purposes of settlement, subject to and without waiver of the Parties' respective rights.

(a) If the Court does not enter the Preliminary Approval Order or does not enter the Settlement Approval Order and Final Judgment, or if the Final Settlement Approval Date does not occur, Class Counsel and Defendant's Counsel will endeavor in good faith, consistent with the Settlement Agreement, to cure any defect identified by the Court; provided, however, that Defendant will not be obligated to accept such cure if, in Defendant's sole view, it

increases the cost or burden of the Settlement Agreement to Defendant or any of the other Released Parties in a non-trivial way. The Parties shall have the right to terminate the Settlement Agreement by providing written notice of their election to do so to the other Party if: (i) the Court rejects the Parties' attempt to cure any defect in the proposed Settlement Approval Order and Final Judgment identified by the Court; (ii) the Court makes a Material Modification to the settlement; (iii) the Settlement Approval Order and Final Judgment is vacated, modified, or reversed in a way that results in a Material Modification.

(b) Notwithstanding anything herein, the Parties agree that the Court's failure to approve, in whole or part, the attorneys' fees payment to Class Counsel set forth in Section 3.2 above and/or the incentive award set forth in Section 3.3 above shall not prevent the Agreement from becoming effective, nor shall it be grounds for termination.

(c) If the Settlement Agreement is terminated for any reason, the Settlement Approval Order and Final Judgment is not entered by the Court, or the Final Settlement Approval Date does not occur, then no term or condition of the Settlement Agreement, or any draft thereof, or any discussion, negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall have any effect, nor shall any such matter be admissible in evidence for any purpose in the Action, or in any other proceeding, and the Parties will be restored to their respective positions immediately preceding execution of this Settlement Agreement. If the Settlement Approval Order and Final Judgment or any part of it is vacated, overturned, reversed, or rendered void as a result of an appeal, or the Settlement Agreement is voided, rescinded, or otherwise terminated for any other reason, then within thirty (30) days, Class Counsel will return to Defendant all attorneys' fees, costs, and other payments received by Class Counsel under the Settlement Agreement, as set forth in Section 3.2 above. The Parties agree that all drafts, discussions, negotiations, documentation, or other information prepared in relation to the

Settlement Agreement and the Parties' settlement discussions shall be treated as strictly confidential and may not be disclosed to any person other than the Parties' counsel, and only for purposes of the Action. Defendant's rights with respect to class certification expressly are reserved and preserved.

5.5 Execution. The Settlement Agreement will have no effect unless and until this Settlement Agreement is fully executed by all Parties.

6. RELEASE.

6.1 Release by Settlement Class Members. Effective as of the Final Settlement Approval Date, each and all of the Settlement Class Members will release and forever discharge and will be forever barred from asserting, instituting, or maintaining against any or all of the Released Parties, to the extent allowable under the law, any and all past, present, or future, actual, potential, asserted or unasserted, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, causes of action, suits, claims, liens, demands, judgments, expenses, costs, damages, punitive, exemplary or multiplied damages, obligations, attorney fees (except as provided for in the Class Settlement), and all other legal responsibilities in any form or nature, including but not limited to, all claims relating to or arising out of state, local, or federal statute, ordinance, regulation, or claim at common law or in equity, arising out of or in any way allegedly related to purchases of the Dude Wipes Products, including all claims that were brought or could have been brought in the Action. Nothing herein shall be construed to release any claims for bodily injury related to the use of the Dude Wipes Products.

6.2 Effectuation of Settlement. None of the above releases includes releases of claims to enforce the terms of the Settlement Agreement or affects the rights granted by the Settlement Agreement.

6.3 No Admission of Liability. This Settlement Agreement reflects, among other things, the compromise and settlement of disputed claims among the Parties, and neither this Settlement Agreement nor the releases given herein, nor any consideration therefor, nor any actions taken to carry out this Settlement Agreement, are intended to be, nor may they be deemed or construed to be, an admission or concession of liability, or the validity of any claim, defense, or of any point of fact or law on the part of any party. Defendant denies the material allegations of the complaint filed in this Action. Neither this Settlement Agreement, nor the fact of settlement, nor the settlement proceedings, nor the settlement negotiations, nor any related document, will be used as an admission of any fault or omission by any or all of the Released Parties (including Defendant), or be offered or received in evidence as an admission, concession, presumption, or inference of any wrongdoing or liability by any or all of the Released Parties (including Defendant) in any proceeding, other than such proceedings as may be necessary to consummate, interpret, or enforce this Settlement Agreement.

7. PRELIMINARY APPROVAL ORDER AND SETTLEMENT APPROVAL ORDER AND FINAL JUDGMENT.

7.1 Promptly after the execution of this Settlement Agreement, Class Counsel will submit this Agreement together with its exhibits to the Court and will move the Court for Preliminary Approval of the settlement set forth in this Agreement; certification of the Settlement Class for settlement purposes only; appointment of Class Counsel and the Class Representatives; and entry of a Preliminary Approval Order, which order will set a Final Approval Hearing date and approve the Media Plan. The Preliminary Approval Order will also authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications, and expansions of the Settlement Agreement and its implementing documents (including all exhibits to this Agreement) so long as they are consistent in all material

respects with the terms of the Settlement Agreement and do not limit or impair the rights of the Settlement Class, or expand the obligations of Defendant without Defendant's consent.

7.2 At the time of the submission of this Agreement to the Court as described above, Class Counsel will request that, after notice is given, the Court hold a Final Approval Hearing and approve the settlement of the Action as set forth herein.

7.3 After Class Notice is given, and at or before the Final Approval Hearing, the Class Representatives will request and seek to obtain from the Court a Settlement Approval Order and Final Judgment, which will (among other things):

(a) approve the Settlement Agreement and the proposed settlement as fair, reasonable, and adequate as to, and in the best interests of, the Settlement Class Members; direct the Parties and their counsel to implement and consummate the Agreement according to its terms and provisions; and declare the Agreement to be binding on, and have *res judicata* and preclusive effect in, all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiffs and Releasing Parties;

(b) find that the Class Notice and Media Plan implemented pursuant to the Agreement (1) constituted the best practicable notice under the circumstances; (2) constituted notice that was reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action, their right to object to or exclude themselves from the proposed Agreement, and to appear at the Final Approval Hearing; (3) was reasonable and constituted due, adequate, and sufficient notice to all Persons entitled to receive notice; and (4) met all applicable requirements of the Illinois Code of Civil Procedure, the Due Process Clauses of the United States and Illinois Constitutions, and the rules of the Court;

(c) find that the Class Representatives and Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing the Agreement;

(d) dismiss the Action (including all individual claims and Settlement Class Claims presented thereby) on the merits and with prejudice, without fees or costs to any party except as provided in the Settlement Agreement;

(e) incorporate the Release set forth above in Section 6, make the Release effective as of the Final Settlement Approval Date, and forever discharge the Released Parties as set forth herein;

(f) permanently bar and enjoin all Releasing Parties from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in any lawsuit or other action in any jurisdiction based on the Released Claims;

(g) without affecting the finality of the Settlement Approval Order and Final Judgment for purposes of appeal, retain jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of the Settlement Agreement and the Settlement Approval Order and Final Judgment, and for any other necessary purpose; and

(h) incorporate any other provisions as the Court deems necessary and just.

8. MISCELLANEOUS PROVISIONS.

8.1 Change of Time Periods. The time periods and/or dates described in this Settlement Agreement with respect to the giving of notices and hearings are subject to approval and change by the Court or by the written agreement of Class Counsel and Defendant's Counsel, without notice to Settlement Class Members. The Parties reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extension of time that might be needed to carry out any of the provisions of this Settlement Agreement.

8.2 Time for Compliance. If the date for performance of any act required by or under this Settlement Agreement falls on a Saturday, Sunday, or court holiday, that act may be

performed on the next business day with the same effect as if it had been performed on the day or within the period of time specified by or under this Settlement Agreement.

8.3 Governing Law. This Settlement Agreement will be governed by the laws of the State of Illinois.

8.4 Entire Agreement. The terms and conditions set forth in this Settlement Agreement constitute the complete and exclusive statement of the agreement between the parties relating to the subject matter of this Settlement Agreement, superseding all previous negotiations and understandings, and may not be contradicted by evidence of any prior or contemporaneous agreement. The Parties further intend that this Settlement Agreement constitutes the complete and exclusive statement of its terms as between the parties, and that no extrinsic evidence whatsoever may be introduced in any agency or judicial proceeding, if any, involving this Settlement Agreement. Any modification of the Settlement Agreement must be in writing signed by Class Counsel and Defendant's Counsel.

8.5 Advice of Counsel. The determination of the terms and the drafting of this Settlement Agreement have been by mutual agreement after negotiation, with consideration by and participation of all parties and their counsel.

8.6 Binding Agreement. This Settlement Agreement will be binding upon and inure to the benefit of the respective heirs, successors, and assigns of the Parties, the Settlement Class Members and other Released Parties.

8.7 No Waiver. The waiver by any party of any provision or breach of this Settlement Agreement will not be deemed a waiver of any other provision or breach of this Settlement Agreement.

8.8 Execution in Counterparts. This Settlement Agreement will become effective upon its execution by all of the undersigned. The parties may execute this Settlement Agreement

in counterparts, and execution of counterparts will have the same force and effect as if all parties had signed the same instrument. The parties further agree that signatures provided by portable document format (PDF) or other electronic transmission will have the same force and effect as original signatures.

8.9 Enforcement of this Settlement Agreement. The Court will retain jurisdiction, and will have exclusive jurisdiction, to enforce, interpret, and implement this Settlement Agreement and the terms of any order entered pursuant to this Settlement Agreement.

8.10 Notices. All notices to the Parties or counsel required by this Settlement Agreement will be made in writing and communicated by email and mail to the following addresses: Frederick J. Klorczyk III, Bursor & Fisher, P.A., 1330 Avenue of the Americas 32nd Floor, New York, NY 10019, fklorczyk@bursor.com; Paul Olszowka and Christine E. Skoczylas, Barnes & Thornburg LLP, One North Wacker Dr., Ste 4400, Chicago, IL 60606, paul.olszowka@btlaw.com, christine.skoczylas@btlaw.com.

IT IS SO AGREED TO BY THE PARTIES:

Dated: _____

JOSEFINA DARNALL

By: _____
Individually and as representative of the Class

Dated: _____

GEORGE WYANT

By: _____
Individually and as representative of the Class

Dated: _____

CHERYL RUTKOWSKI

By: _____
Individually and as representative of the Class

Dated: _____

DEXTER COBB

By: _____
Individually and as representative of the Class

Dated: _____

DUDE PRODUCTS, INC.

By: _____

Name: _____

Title: _____

IT IS SO STIPULATED BY COUNSEL:

Dated: _____

BURSOR & FISHER, PA

By: _____
Frederick J. Klorczyk III*
1330 Avenue of the Americas, 32nd Floor
New York, NY 10019
Tel: (646) 837-7150
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Walnut Creek, CA 94596
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Dated: _____

**MILBERG COLEMAN BRYSON PHILLIPS
GROSSMAN, PLLC**

By: _____
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Tel. (847) 208-4585

Attorneys for Plaintiffs and the Settlement Class

Dated: _____

BARNES & THORNBURG LLP

By: _____

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