

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Class Action Settlement Agreement and Release is entered into between and among (1) the Named Plaintiffs, on behalf of themselves and as representatives of the Settlement Class and (2) Defendant Similasan Corporation in order to effect a full and final settlement and dismissal with prejudice of all claims against Defendant alleged in the Action on the terms set forth below and to the full extent reflected herein.

I. DEFINITIONS

Capitalized terms, as used throughout this Agreement, have the meanings set forth below:

1. “Action” or “Consolidated Action” means the consolidated class action lawsuit in the United States District Court for the District of Colorado, Case No. 1:23-cv-02511, on behalf of Plaintiffs David Plowden Mario Ortega and Kamille Faye Vinluan-Jularbal against Defendant Similasan Corporation.

2. “Agreement” or “Settlement Agreement” means this Settlement Agreement and Release, including all exhibits hereto.

3. “Approved Claim” means a Claim Form submitted by a Settlement Class Member that is (a) submitted timely and in accordance with the directions on the Claim Form and the provisions of this Agreement; (b) is fully completed and executed by the Settlement Class Member under penalty of perjury and provides all required information (including, to the extent applicable, Valid Proof of Purchase); and (c) is approved for payment by the Claims Administrator pursuant to the terms of this Agreement.

4. “Attorneys’ Fees and Costs” means the total award of attorneys’ fees, costs and expenses sought by Class Counsel and allowed by the Court.

5. “CCAC” means the Consolidated Class Action Complaint filed with the Court in the Action on December 22, 2023.

6. “CAFA Notices” means the notice of this Settlement to be served, or caused to be served, by Defendant upon State and Federal regulatory authorities as required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

7. “Calculated Cash Award Total” means the total aggregate Cash Award amount calculated by the Claims Administrator for all Approved Claims.

8. “Cash Award” means the cash payment(s) to Settlement Class Members pursuant to Section V.

9. “Claim(s)” means the act of requesting a Cash Award. To make a Claim, Settlement Class Members must timely complete and submit a Claim Form as described in the Settlement Agreement.

10. “Claim Deadline” means ninety days (90) days after the Fairness Hearing as scheduled in the Preliminary Approval Order, which date shall be specified in the Class Notice.

11. “Claim Form” means the Claim Form that Settlement Class Members must complete and submit on or before the Claim Deadline to be eligible for the benefits described herein, which document shall be substantially in the form of Exhibit A hereto. The Claim Form shall require a sworn signature (which may be an electronic signature) under penalty of perjury, but shall not require a notarization or any other form of verification. No more than one Claim per household shall be submitted or allowed as an Approved Claim.

12. “Claim Period” means the time in which the Settlement Class may file Claim Forms, up to and including the Claim Deadline.

13. “Claimant” means a purchaser of any Covered Product who submits a Claim Form, limited to no more than one Claim Form per household.

14. “Claims Administrator” means Angeion Group which was selected by Class Counsel and Defense Counsel after a competitive bidding process to work at their direction to administer specific components of the Settlement, including the oversight of publication of Class Notice, maintaining the Settlement Website, processing of Claim Forms in connection with this Settlement, and ensuring that Cash Awards are paid from the Escrow Account.

15. “Class Counsel” means Melissa S. Weiner of Pearson Warshaw, LLP, Nick Suciu III of Milberg Coleman Bryson Phillips Grossman PLLC, Rachel Soffin of Milberg Coleman Bryson Phillips Grossman PLLC, Jonas Jacobson of Dovel Luner LLP and William H. Anderson of Handley, Farah & Anderson PLLC.

16. “Class Member Payment List” means the list of Settlement Class Members who have been determined by the Claims Administrator pursuant to Section IV below to be eligible to receive Cash Awards.

17. “Class Notice” means the Court-approved form of notice to Settlement Class Members, in substantially the same form as Exhibit B, which will notify Settlement Class Members of the Preliminary Approval of the Settlement and the scheduling of the Fairness Hearing, among other things.

18. “Class Notice Program” means the form and manner of providing the Class Notice to the Settlement Class, including the media plan, as detailed in Exhibit C.

19. “Class Period” means the period from September 11, 2017 until the Preliminary Approval Date.

20. “Court” means the United States District Court for the District of Colorado.

21. “Covered Products” or “Covered Product” means the Similasan Products and the Private Label Products and consist of the homeopathic eye products manufactured, distributed or

sold by Defendant under the Similasan brand names “Dry Eye Relief,” “Dry Eye Nighttime Gel,” “Allergy Eye Relief,” “Kids Allergy Eye Relief,” “Pink Eye Relief,” “Kids Pink Eye Relief,” “Pink Eye Nighttime Gel,” “Aging Eye Relief,” “Computer Eye Relief,” “Stye Eye Relief,” “Complete Eye Relief,” “Red Eye Relief,” under the CVS brand name “CVS Pink Eye Drops,” and under the Walgreens brand names “Walgreens Stye Eye Drops,” “Walgreens Pink Eye Drops,” and “Walgreens Allergy Eye Drops,” as these are further described on the list attached hereto as Appendix 1.

22. “*Cy Pres* Recipient” means Public Justice contingent upon approval by the Court.

23. “*Cy Pres* Contribution Amount” means amounts remaining in the Net Settlement Fund, if any, following payment of all amounts due to be distributed under this Agreement. Without limiting the foregoing, the *Cy Pres* Contribution Amount shall include all uncashed Cash Awards made by check.

24. “Days” means calendar days, except that, when computing any period of time prescribed or allowed by this Agreement, the day of the act, event or default from which the designated period of time begins to run shall not be included. Further, when computing any period of time prescribed or allowed by this Agreement, the last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or federal legal holiday.

25. “Defendant” means Similasan Corporation.

26. “Defense Counsel” means Defendant’s attorneys John C. Dougherty, Arameh O’Boyle and Katherine Galle of Mintz Levin, and Greg Hearing and Melissa Jones of Gordon Rees, collectively.

27. “Deposit Amount” means the sum of one-hundred thousand dollars (\$100,000.00), which amount Defendant shall pay, or cause to be paid, into the Escrow Account within ten (10) days after the Preliminary Approval Date for the purpose of pre-paying certain of the Claims Administrator’s fees and costs. Payment of the Deposit Amount shall constitute a credit in-like amount against the Settlement Amount.

28. “Effective Date” means the first business day after which the Final Order and Judgment becomes a final, non-appealable judgment approving the Settlement Agreement in all respects, as more fully set forth in Section XVI, below.

29. “Escrow Account” means the separate, interest-bearing escrow account to be established by the Settlement Administrator within the meaning of Treasury Regulations 1.468B-1 through 1.468B-5, 26 C.F.R. 1.468B-1 through 1.468B-5 (1992), under the terms agreed upon with Class Counsel and Defense Counsel. The costs of administering and maintaining the Escrow Account shall be paid from the Settlement Amount.

30. “Fairness Hearing” means the hearing conducted by the Court to determine (a) whether to approve this Settlement, and (b) whether to certify the Settlement Class of purposes of the Settlement, and (c) the fairness, adequacy and reasonableness of this Settlement.

31. “Final,” when referring to a judgment or order, means: (a) the judgment is a final, appealable judgment; and (b) either (i) no appeal has been taken from the judgment as of the date on which all times to appeal therefrom have expired, or (ii) an appeal, or other review, proceeding of the judgment having been commenced, such appeal, or other review, is finally concluded and no longer is subject to review by any court, whether by appeal, petitions or rehearing or re-argument, petitions for rehearing *en banc*, petitions for writ of *certiorari* or otherwise, and such

appeal, or other review, has been finally resolved in a manner that affirms the Final Order and Judgment in all material respects.

32. “Final Order and Judgment” means the order defined in Section XIV, except that any enhancement or reduction to an award of Attorneys’ Fees and Costs, or to Service Awards shall not constitute a material alteration, provided any such adjustments do not result in Defendant being required to pay more than the Settlement Amount.

33. “Household” means the same mailing address, same payment account or other evidence of a shared residence.

34. “Mediator” means Bruce Friedman who currently serves as a Mediator for JAMS in complex litigation matters and who has extensive experience mediating and resolving complex class action lawsuits similar to the Action.

35. “Named Plaintiffs” means David Plowden, Mario Ortega and Kamille Faye Vinluan-Jularbal.

36. “Net Settlement Fund” means the Settlement Amount minus any Court-approved Attorneys’ Fees and Costs, Service Awards and Notice and Administrative Costs.

37. “Notice and Administrative Costs” means the reasonable and authorized costs and expenses of publishing and disseminating the Class Notice and making available the Class Notice in accordance with the Preliminary Approval Order, including the Deposit Amount and any and all other reasonable and approved costs to carry out the approved Class Notice Program, as well as all reasonable and authorized costs and expenses incurred by the Claims Administrator in administering the Settlement, including, but not limited to, costs and expenses associated with assisting Settlement Class Members, processing claims, escrowing funds, issuing and mailing Cash Awards, paying Taxes and Tax Expenses and other reasonable and authorized fees and

expenses of the Claims Administrator. Notice and Administrative Costs shall also include, subject to mutual agreement by the Parties, recommended reasonable and best efforts by the Claims Administrator to stimulate and maximize the claims rate for the Settlement Class to ensure that the maximum amount of the Net Settlement Fund goes to the Settlement Class, as possible.

38. “Notice Date” means the first day on which the Claims Administrator, or its designee, publishes or otherwise disseminates the Class Notice, which shall be no later than thirty (30) days after the Preliminary Approval Date.

39. “Opt-Out” or “Opt-Outs” shall refer to a member of the Settlement Class who properly and timely submits a request for exclusion from the Settlement Class as set forth in Section X. An Opt-Out may rescind a request for exclusion by timely submitting a Claim Form to the Claims Administrator to obtain benefits of the Settlement.

40. “Opt-Out List” shall refer to the list compiled by the Claims Administrator pursuant to Section X, Paragraph 12, identifying those members of the Settlement Class who properly Opt-Out.

41. “Opt-Out and Objection Date” means the date by which a request for exclusion must be sent to the Claims Administrator in order for a Settlement Class Member to be excluded from the Settlement Class, and the date by which Settlement Class Members must file objections with the Court, if any, to the Settlement. The Opt-Out and Objection Date means ninety-five (95) days after the Preliminary Approval Date.

42. “Parties” means the Named Plaintiffs and the Defendant. The Named Plaintiffs shall be referred to as one “Party,” with Defendant being the other “Party.”

43. “Person” means an individual, corporation, partnership, limited partnership, limited liability company, association, member, joint stock company, estate, legal representative, trust,

unincorporated association, any business or legal entity, and such individual's or entity's spouse, heirs, predecessors, successors, representatives and assignees.

44. "Preliminary Approval Date" means the date the Preliminary Approval Order has been executed and entered by the Court.

45. "Preliminary Approval Order" means the order by which the Court directs Notice be issued to the Settlement Class after reviewing information sufficient to enable the Court to determine whether to provide notice of the proposed Settlement, which is attached hereto without material alteration as Exhibit D.

46. "Private Label Products" means "CVS Pink Eye Drops," "Walgreens Styel Eye Drops," "Walgreens Pink Eye Drops," "Walgreens Allergy Eye Drops," whose ingredients are substantially similar to the Similasan Products, and which were supplied by Similasan to, respectively, CVS Pharmacy, Inc. and Walgreens Boots Alliance, Inc., and sold by those companies and their affiliates to consumers.

47. "Release" means the full and final release and discharge, as of the Effective Date, by the Named Plaintiffs and all Settlement Class Members (and their respective successors and assigns) who have not excluded themselves from the Settlement Class of the Released Persons (defined below) of and from all Released Claims (defined below). The Release shall include the agreement and commitment by the Named Plaintiffs and all Settlement Class Members that they will not now, or thereafter, initiate, maintain or assert against the Released Persons any of the Released Claims, whether in the Action or in any other court action or before any administrative body (including any regulatory entity or organization), tribunal, arbitration panel or other adjudicating body.

48. “Released Claims” means any and all claims, actions, causes of action, rights, demands, suits, debts, liens, contracts, agreements, offsets or liabilities, whether known or unknown, legal, equitable or otherwise, that pertain to the claims and allegations set forth, or which based upon the claims or allegations could have been set forth, in the Action by the Named Plaintiffs and/or any Settlement Class Member up to the Preliminary Approval Date, including, but not limited to, claims based upon, arising from, sounding in, or seeking recovery for tort, breach of express warranty, breach of implied warranty, breach of contract, breach of the duty of good faith and fair dealing, unjust enrichment, breach of statutory duties, actual or constructive fraud, misrepresentations, fraudulent inducement, fraudulent concealment, statutory and consumer fraud, breach of fiduciary duty, unfair business or trade practices, restitution, rescission, compensatory and punitive damages, injunctive or declaratory relief, attorneys’ fees, interests, costs, penalties, under any theory of recovery. This Release does not include any claims for personal injuries.

49. “Released Persons” means Defendant, Defendant’s affiliates and members, and their respective past, present and future predecessors, successors, assigns, parents, subsidiaries, affiliates, joint venturers, partnerships, limited liability companies, corporations, subcontractors, unincorporated entities, divisions, groups, directors, officers, shareholders, members, employees, partners, agents, insurers, reinsurers, co-insurers, attorneys, and any and all vendors, retailers, sellers, re-sellers of the Covered Products, including but not limited to CVS Pharmacy, Inc. and Walgreens Boots Alliance, Inc. and their respective affiliates.

50. “Releasing Persons” means the Named Plaintiffs, on behalf of themselves and all Settlement Class Members, who have not excluded themselves from the Settlement Class, each of the Settlement Class Members who have not excluded themselves from the Settlement Class, and

the respective heirs, administrators, representatives, agents, partners, successors and assigns of each of the Named Plaintiffs and the Settlement Class Members who have not excluded themselves from the Settlement Class.

51. “Service Awards” means compensation for the Named Plaintiffs in the Action for their time and effort undertaken in this Action as defined in Section XI, which shall be subject to Court approval.

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

53. “Settlement Amount” means the sum of Three Million Five Hundred and Seventy-Five Thousand Dollars (\$3,575,000.00), which shall be used to pay Cash Awards, Notice and Administration Costs (including the Deposit Amount), Attorneys’ Fees and Costs and Service Awards.

54. “Settlement Class” or “Class” means all Persons in the United States, its territories and/or the District of Columbia who purchased, for personal use and not for resale, any Covered Product from September 11, 2017 until the Preliminary Approval Date, subject to the exclusions set forth in Section III, Paragraph 1(i)-(v) below. Defendant agrees to certification of a Class for settlement purposes only, and denies that any such Class could otherwise be properly certified.

55. “Settlement Class Member” means a Person who falls within the definition of the Settlement Class set forth in Section III, Paragraph 1.

56. “Settlement Website” means the website dedicated to the Settlement to be created and maintained by the Claims Administrator, which will contain relevant documents and information and shall provide, at a minimum: (i) information concerning deadlines for filing a Claim Form, and the dates and locations of relevant Court proceedings, including the Fairness Hearing; (ii) the toll-free telephone number applicable to the Settlement; (iii) copies of the

Settlement Agreement, the Class Notice, the Claim Form, Court Orders regarding this Settlement and other relevant Court documents, including Class Counsel’s Motion for Approval of Attorneys’ Fees, Cost and Service Awards; and (iv) information concerning the submission of Claim Forms, including the ability to submit Claim Forms electronically.

57. “Settling Parties” means, collectively, the Released Persons, the Releasing Persons and all Settlement Class Members.

58. “Similasan Products” means the homeopathic eye care products sold under the Similasan brand names “Dry Eye Relief,” “Dry Eye Nighttime Gel,” “Allergy Eye Relief,” “Kids Allergy Eye Relief,” “Pink Eye Relief,” “Kids Pink Eye Relief,” “Pink Eye Nighttime Gel,” “Aging Eye Relief,” “Computer Eye Relief,” “Stye Eye Relief,” “Complete Eye Relief,” and “Red Eye Relief.”

59. “Taxes” shall mean all taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Escrow Account.

60. “Tax Expenses” shall mean expenses and costs incurred in connection with the operation and implementation of the Settlement Fund (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns).

61. “Valid Proof of Purchase” means verifiable documentation of a transaction that reflects the purchase of one or more Covered Products, on or before the Preliminary Approval Date. Examples may include, but are not limited to, store receipts, packaging or any other contemporaneous record of purchase that is objectively verifiable.

62. The plural of any defined term includes the singular, and the singular of any defined term includes the plural, as the case may be.

II. RECITALS

63. On September 26, 2023, Plaintiff David Plowden, through his attorneys, Handley Farah & Anderson PLLC; Milberg Coleman Bryson Phillips Grossman, PLLC; and Pearson Warshaw, LLP; filed a complaint against Defendant in the District of Colorado alleging that Defendant violated Florida’s Deceptive and Unfair Trade Practices Act (“FDUTP”), other states’ consumer protection laws and was unjustly enriched by falsely, deceptively and unlawfully labeling and advertising the Similasan Products as defective and unapproved drugs. (the “*Plowden Action*”).

64. On November 1, 2023, Plaintiffs Mario Ortega and Kamille Faye Vinluan-Jularbal filed their complaint against Defendant in the District of Colorado, alleging Defendant violated California’s Unfair Competition Law (“UCL”), the California Legal Remedies Act (“CLRA”), and California’s False Advertising Law (“FAL”), other states’ consumer protection laws, breached its express and implied warranties, committed fraudulent omission and was unjustly enriched by falsely, deceptively and unlawfully labeling and advertising the Similasan Products as mislabeled, defective and unapproved drugs, along with a notice of related cases, identifying the previously filed *Plowden Action*. (the “*Ortega et al. Action*”).

65. On November 16, 2023, Defendant filed a motion to dismiss the *Plowden Action*, arguing that Plaintiff Plowden’s complaint lacked Article III standing and that Plaintiff Plowden failed to state a viable cause of action. In addition, Defendant sought to strike Plaintiff Plowden’s request for punitive damages.

66. On November 28, 2023, Plaintiff Plowden filed an unopposed motion to continue the case management conference and file a consolidated complaint due to the filing of the *Ortega et al Action*.

67. On December 18, 2023, Plaintiff Plowden filed an unopposed motion to consolidate the *Plowden* Action and *Ortega et al.* Action. On the same date, Plaintiffs Ortega and Faye Vinluan-Jularbal filed a corresponding notice of filing of motion to consolidate in the *Ortega et al.* Action.

68. On December 19, 2023, the *Plowden* Action and *Ortega et al.* Action were consolidated pursuant to Court order.

69. On December 22, 2023, the Named Plaintiffs filed their CCAC against Defendant alleging that Defendant violated the UCL, CLRA, FAL and FDUTP, other states' consumer protection laws, breached its express and implied warranties, committed fraudulent omission and was unjustly enriched by falsely, deceptively and unlawfully labeling and advertising the Similasan Products as defective and unapproved drugs.

70. On January 31, 2024, Defendant filed its motion to dismiss the Named Plaintiffs' Consolidated Class Action Complaint, arguing that the Named Plaintiffs' CCAC lacked Article III standing and that the Named Plaintiffs failed to state a viable cause of action. In addition, Defendant sought to strike the Named Plaintiffs' request for punitive damages.

71. On February 24, 2024, the Named Plaintiffs served Defendant with their Rule 26(a)(1)(A) initial disclosures.

72. On March 13, 2024, the Named Plaintiffs filed their amended opposition to Defendant's motion to dismiss the consolidated class action complaint, arguing: (1) the Named Plaintiffs have standing for their claims; (2) the Named Plaintiff sufficiently allege that Defendant's marketing of the Similasan Products as drugs is "deceptive," "unfair," "unlawful" and is misleading to reasonable consumers; (3) the Named Plaintiffs' fraud claims are pled with sufficient particularity under Rule 9(b), where applicable; (4) the Named Plaintiffs' claim are not

implicitly preempted by federal law; (5) the Named Plaintiffs sufficiently pled their claims; and (6) the Named Plaintiffs sufficiently pled their claims for damages.

73. On March 29, 2024, Defendant served the Named Plaintiffs with its Rule 26(a)(1)(A) initial disclosures.

74. On April 10, 2024, the Named Plaintiffs served Defendant with their first set of requests for production of documents.

75. On or about April 2024, the Parties agreed to participate in early mediation and engage in limited and confidential settlement discovery.

76. On July 1, 2024, the Named Plaintiffs served their first set of interrogatories upon Defendant.

77. On August 1, 2024, the Parties attended mediation with Bruce A. Friedman of JAMS to facilitate settlement discussions.

78. The Parties continued to negotiate open matters through the Mediator. During the course of those negotiations, Class Counsel conducted additional mediation discovery regarding the Similasan Products, including discovery of retail sales data, frequency of purchase and Similasan's role in manufacturing products substantially similar to the Similasan Products.

79. Specifically, discovery revealed that in addition to the Similasan Products, Defendant also manufactured, distributed and sold the Private Label Products, and that the labeling and ingredients of the Private Label Products were substantially similar to the Similasan Products. Discovery also revealed that Similasan's indemnification obligations to the seller retailers of the Similasan Products and the Private Label Products for the Released Claims. Class Counsel obtained settlement discovery regarding the sales of all the Covered Products that substantiates the relief to Settlement Class Members for the Covered Products.

80. Following further discussions, the Parties resolved all open matters.

81. The Parties did not discuss the payment of attorneys' fees and costs until the relief to the Settlement Class was resolved.

82. On September 16, 2024, the Parties notified the Court of Settlement and the Court denied Defendant's motion to dismiss as moot.

83. Class Counsel have made a thorough investigation of the facts and circumstances surrounding the allegations asserted in the CCAC.

84. The Named Plaintiffs and Class Counsel have examined the benefits to be obtained under the terms of this Agreement, have considered the substantial risks associated with the continued prosecution of the Consolidated Action and the likelihood of success on the merits, have confirmed through discovery that the Covered Products are no longer on the market, being sold to consumers and believe that it is in the best interests of the Settlement Class as a whole that the claims asserted in the Consolidated Action be resolved on the terms and conditions set forth in this Agreement. Class Counsel reached that conclusion after considering the factual and legal issues presented in the Consolidated Action, the substantial benefits that Settlement Class Members will receive as a result of the Settlement, the substantial risks and uncertainties of continued litigation, the expense that would be necessary to prosecute the Consolidated Action through trial and any appeals that might be taken, and the likelihood of success at trial.

85. Defendant has denied, and continues to deny, each and every allegation of liability, wrongdoing and damage. Defendant further denies that the Consolidated Action may properly be maintained as a class action except for settlement purposes. Nonetheless, without admitting or conceding any liability or damages whatsoever, without admitting any wrongdoing, and without conceding the appropriateness of class treatment for claims asserted in the Consolidated Action

(except for settlement purposes in the Consolidated Action), Defendant has agreed to settle the Consolidated Action on the terms and conditions set forth in this Agreement to avoid the substantial expense, inconvenience, burden and disruption of continued litigation.

86. The Parties agree and understand that neither this Agreement, nor the Settlement it represents, shall be construed as an admission by Defendant of any wrongdoing whatsoever, including, without limitation, any admission of any violation of any statute or law or any admission of liability based on any of the claims or allegations asserted in the Consolidated Action.

87. The Parties agree and understand that neither this Agreement, nor the settlement it represents, shall be construed or admissible as an admission by Defendant in the Consolidated Action or any other similar claims are or would be suitable for class treatment if the Consolidated Action proceeded through both litigation and trial.

88. The Parties desire to compromise and settle all issues and claims that have been brought, or could have been brought, against the Released Persons arising out of, or related to, the claims asserted in the Consolidated Action.

III. PRELIMINARY CERTIFICATION OF SETTLEMENT CLASS

1. The Parties stipulate to certification, for settlement purposes only, of a Settlement Class defined as follows:

All Persons in the United States, its territories and/or the District of Columbia, who purchased, for personal use and not for resale, any Covered Product from September 11, 2017 until the Preliminary Approval Date.

Specifically excluded from the Settlement Class are the following persons:

- (i) Defendant and its respective subsidiaries and affiliates, members, employees, officers, directors, agents and representatives and their family members;
- (ii) Class Counsel;

- (iii) The judges who have presided over the Action;
- (iv) Local, municipal, state and federal governmental agencies;
and
- (v) All persons who have timely elected to become Opt-Outs
from the Settlement Class, in accordance with the Court's
orders.

2. Solely for the purpose of implementing this Agreement and effectuating the Settlement, Defendant stipulates to the Court entering an order preliminarily certifying the Settlement Class, appointing the Named Plaintiffs as representatives of the Settlement Class and appointing the following as Class Counsel for the Settlement Class:

Melissa S. Weiner
Pearson Warshaw, LLP
328 Barry Ave. S, Suite 200
Wayzata, Minnesota 55391
Telephone: (612) 389-0600

Rachel Soffin
**Milberg Coleman Bryson Phillips
Grossman, PLLC**
800 S. Gay Street, Suite 1100
Knoxville, TN 37929
Telephone: (865) 247-0080

Nick Suciu
**Milberg Coleman Bryson Phillips
Grossman, PLLC**
6905 Telegraph Rd., Suite 115
Bloomfield Hills, MI 48301
Telephone: (313) 303-3472

Jonas Jacobson
Dovel & Luner, LLP
201 Santa Monica Blvd., Suite 600
Santa Monica, CA 90401
Telephone: (310) 656-7066

William H. Anderson
Handley Farah & Anderson PLLC
5353 Manhattan Circle, Suite 204
Boulder, CO 80305
Telephone: (303) 800-9109

3. Solely for the purpose of implementing this Agreement and effectuating the Settlement, the Parties stipulate that Angeion Group will be appointed as Claims Administrator.

4. Solely for the purpose of implementing this Agreement and effectuating the Settlement, Defendant stipulates that the Named Plaintiffs and Class Counsel are adequate representatives of the Settlement Class.

IV. SETTLEMENT FUND

1. Settlement Payment. Pursuant to the terms and conditions set forth below, and in consideration of the promises, agreements and undertaking of the Named Plaintiffs and Settlement Class set forth herein, Defendant agrees to pay, or cause to be paid, the Settlement Amount into the Escrow Account. Payment of the Settlement Amount shall be “ALL-IN” and in full satisfaction of all Settlement costs including, without limitation, Cash Awards, the Deposit Amount, Notice and Administration Costs, Attorneys’ Fees and Costs and Service Awards. In no event shall Defendant be obligated to contribute any amount in excess of the Settlement Amount to satisfy their Settlement payment obligations under this Agreement.

2. Establishment of Escrow Account. Within ten (10) days after the Preliminary Approval Date, Defendant will pay, or cause to be paid, the Deposit Amount into the Escrow Account. Within thirty (30) days after the Effective Date, Defendant will wire transfer, or cause to be wire transferred, the balance of the Settlement Amount (minus fees, costs, service awards, and any other amounts previously advanced by Defendant to the Claims Administrator for Notice and Administrative Costs) into the Escrow Account. Any interest that accrues on the Settlement Amount in the Escrow Account shall be added to the Settlement Amount.

3. Cash Awards to Settlement Class Members. In accordance with the terms of this Agreement, the Claims Administrator will distribute the Net Settlement Fund to Settlement Class Members who submit Approved Claims and have not submitted a valid and timely request for exclusion from the Settlement Class. Claimants may submit no more than one (1) Claim Form per household as follows:

a. Claim Form. To make a Claim under the terms of this Agreement, Settlement Class Members must submit, during the Claim Period, a Claim Form substantially similar to the Claim Form attached hereto as Exhibit A. The Parties shall work

with the Claims Administrator to ensure that the Claim Form is easy to understand and complete, that the Claim Form is offered in English and Spanish, and can be translated to other language upon request, consistent with guidance from the Federal Judicial Center's *Managing Class Action Litigation: A Pocket Guide for Judges* and that the Claim Form is adapted for online use. The online Claim Form will include a drop-down menu that allows Claimants to make Claims, subject to the amount limits described below, for Cash Awards equal to twenty-five percent (25%) of the average retail purchase price of their Covered Product purchases made from September 11, 2017, until on, or before, the Preliminary Approval Date. Claimants shall use the drop-down menu to identify the types and number of Covered Products they purchased from September 11, 2017, until on, or before, the Preliminary Approval Date. All Claimants will be required to execute the Claim Form under penalty of perjury, affirming that they made the claimed purchases of Covered Products, as determined by the Parties.

b. Cash Award Amounts.

i. Claimants without Valid Proof of Purchase. Claimants without Valid Proof of Purchase shall be eligible to receive \$2.50 for each Covered Product purchased during the Class Period, subject to a maximum Cash Award of \$10.00 per claim (i.e. each Household can claim a Cash Award for a maximum of 4 Covered Products). Claims are limited to one per Household.

ii. Claimants with Valid Proof of Purchase. Claimants with Valid Proof of Purchase for each purchase of a Covered Product shall be eligible to receive \$2.50 for each Covered Product purchased during the Class Period with no cap or limitation. Claims are limited to one per Household.

4. Claim Submission. Any Settlement Class Member who wishes to submit a Claim must timely complete, sign (by hard copy or electronic signature) and submit a Claim Form and provide the Claims Administrator with all requested information (including, to the extent applicable, Valid Proof of Purchase). Claimants shall complete an electronic Claim Form, substantially in the form of Exhibit A hereto for their purchases of Covered Products during the Class Period. If submitted by United States mail, the Claim Form must be postmarked no later than the Claim Deadline. Online Claim Forms must be submitted no later than the Claim Deadline. All Claim Forms shall be submitted to the Claims Administrator under penalty of perjury.

5. Claim Review. The Claims Administrator shall review and evaluate each Claim Form, including any Valid Proof of Purchase submitted therewith, for validity, timeliness and completeness. A Claimants' failure to provide all information requested on the Claim Form will not result in immediate denial or nonpayment of a Claim. Instead, the Claims Administrator will take reasonable and customary steps to notify the Claimant of the Claim deficiency, including but not limited to, written e-mail notification when possible, requesting the additional information necessary to demonstrate eligibility. If, in the determination of the Claims Administrator, the Claimant completes a timely, but incomplete Claim Form (*e.g.*, the Claim Form is not signed; there is no Valid Proof of Purchase when it appears the Claimant intended to provide one or more Valid Proofs of Purchase; or there is an inadequate Valid Proof of Purchase), the Claims Administrator will take such steps to notify the Claimant of the Claim deficiency within thirty (30) days after the Claim Deadline or within thirty (30) days of receipt of a timely postmarked response, whichever is later. To cure the deficiency, the Claim Form deficiency response must be submitted via the online claim portal or postmarked within thirty (30) days after the mailing date of the notice of defect by the Claims Administrator and must cure the core defect of the Claim or the Claim will

be denied. If the Claimant cures the deficiencies identified by the Claims Administrator within the thirty (30) day period following notice by the Claims Administrator, and the Claims Administrator thereafter determines that the Claimant's Claim is complete and valid, the Claims Administrator shall include the Claimant in the Class Member Payment List. Claim Forms shall be reviewed and evaluated for deficiencies in the order in which they are received, to the extent practicable. Class Counsel and Defense Counsel shall have the right to review the Claim files of the Claims Administrator at any time. The Claims Administrator shall have the right to confer with Class Counsel and Defense Counsel with respect to any Claim.

6. Fraudulent or Suspicious Claims. The Claims Administrator will use adequate and customary procedures and standards to prevent the payment of fraudulent Claims and to pay only Valid Claims. The Claims Administrator will approve Valid Claims and issue payment based upon the terms and conditions of this Agreement or may reject Claims that are not Valid Claims.

- The Claims Administrator may request additional information to validate suspicious or potentially fraudulent Claim Forms if, and as, the Claims Administrator deems necessary.
- The Claims Administrator in reasonable consultation with Class Counsel and Defense Counsel, will reject claims identified as fraudulent without further notification.
- Claim Forms must be submitted by the Settlement Class Member. Except for claims submitted by an authorized individual on behalf of a Settlement Class Member that is a minor, an incapacitated person, or those expressly permitted by the terms of this Agreement, Claim Forms not submitted by the Settlement Class Member shall be rejected without an opportunity to provide additional information or challenge the Claims Administrator's determination.

- The Claims Administrator shall approve or deny all Claims, and its decision shall be final, binding and non-appealable by any Settlement Class Member, while remaining subject to review by the Court, Class Counsel and Defense Counsel.

7. Defendant's Dealings with Settlement Class Members. If contacted during the Claim Period regarding this Settlement Agreement or a Claim by a Settlement Class Member or a Claimant regarding this Settlement, Defendant will use reasonable efforts to refer that person to the Claims Administrator by providing to that person the name of the Claims Administrator, the domain name of the Settlement Website, and the established toll-free telephone number regarding the Settlement.

8. Distribution to Eligible Claimants. The Claims Administrator shall begin paying timely, valid and Approved Claims within the later of sixty (60) days after the Effective Date or sixty (60) days after all potential invalid claims discussed in this Agreement have been resolved, whichever is later. The Claims Administrator shall provide Claimants with options to receive Cash Awards that will maximize how the Net Settlement Fund is distributed to the Settlement Class, including offering payment by electronic means to the extent possible. Settlement Payments issued by check will remain valid for 180 days, and such expiration period shall be printed on the face of each check. Settlement Class Members shall not be entitled to request a reissued check after expiration of the 180-day period. Cash Awards issued by check will be deemed void once the 180-day period expires.

V. PLAN OF ALLOCATION OF CASH AWARDS

1. No later than sixty (60) calendar days after all deadlines for correcting deficiencies pursuant to this Agreement have passed, the Claims Administrator will provide to Class Counsel and Defense Counsel a report containing all of the following:

- a. The total number of Claims filed and the total number of Approved Claims;

b. The total aggregate Cash Award amount calculated for all Approved Claims without Valid Proof of Purchase;

c. The total aggregate Cash Award amount calculated for all Approved Claims with Valid Proof of Purchase;

d. The total aggregate Cash Award amount calculated for all Approved Claims both without Valid Proof of Purchase and with Valid Proof of Purchase;

e. The Calculated Cash Award Total, which amount shall be equal to the sum of the total aggregate Cash Award amounts set forth in Section V.1 (b), (c), and (d); and

f. The amount of the Net Settlement Fund.

2. If the Calculated Cash Award Total exceeds the Net Settlement Fund, then each Cash Award shall be proportionately reduced on a *pro rata* basis to exhaust the Net Settlement Fund.

3. If the Net Settlement Fund is greater than the Calculated Cash Award Total, then each Cash Award shall be proportionately increased on a *pro rata* basis until the Net Settlement Fund is exhausted.

4. The Parties agree that any public statement relating to any Cash Award available under the Settlement shall be limited to the terms and content of the Official Notice.

VI. CHARITABLE *CY PRES* CONTRIBUTION

1. The *Cy Pres* Contribution Amount shall be donated to the Public Justice Foundation¹. The organization selection is subject to approval by the Court. In calculating the *Cy*

¹ The Public Justice Foundation (“Public Justice”) is a 501(c)(3) non-profit charitable public foundation dedicated to advancing the public interest in areas such as consumer rights, access to justice, workers’ rights and beyond and has represented consumer interests for misleading marketing and deceptive practices. More extensive background information on Public Justice and its work to protect consumers is available on its website at <https://www.publicjustice.net/what-we-do/consumers-rights/>

Pres Contribution Amount, the Claims Administrator shall also include all uncashed Cash Awards made by check. No remaining amounts shall revert back to the Defendant.

2. Payments to *Cy Pres* Recipients. Payments to the *Cy Pres* Recipient, if any, shall be made by the Claims Administrator, from the Escrow Account ninety (90) days after the date by which the Claims Administrator completes the process for stopping payment on any Cash Award checks that remain uncashed.

VII. NOTICE AND ADMINISTRATIVE COSTS

1. Defendant shall pay, or cause to be paid, all Notice and Administrative Costs, as provided in the Preliminary Approval Order and in Section IV, Paragraph 2, and Section XII, and all such Notice and Administrative Costs shall be credited against the Settlement Amount.

2. If the Court does not approve the Settlement following the Fairness Hearing, or if the Settlement is terminated, or fails to become effective, in accordance with the terms of this Agreement, Defendant shall not be entitled to recover the Deposit Amount or any amounts advanced by Defendant to the Claims Administrator for Notice and Administrative Costs. If the Court approves of the Settlement, Defendant shall not under any circumstances be obligated to pay any amounts in addition to the Settlement Amount.

3. Under no circumstances will the Named Plaintiffs, Class Counsel or any Settlement Class Member have any liability for Notice and Administrative Costs, the cost of Defendant's defense of the Action or the cost of Defendant's discharge of any of its respective obligations under the Settlement.

VIII. TAX TREATMENT OF SETTLEMENT ACCOUNT; CONSEQUENCES OF TERMINATION

1. The Parties will treat the Escrow Account as a “qualified settlement fund” within the meaning of Treasury Regulations 1.468B-1 through 1.468B-5, 26 C.F.R. 1.468B-1 through 1.468B-5 (1992). The Parties will treat the Escrow Account as a qualified settlement fund for all reporting purposes under the federal tax laws. In addition, the Claims Administrator and, as required Defendant, will jointly and timely make the “relation-back election” (as defined in Treasury Regulation 1.468B-1) back to the earliest permitted date. Such election will be made in compliance with the procedures and requirements contained in such regulations. It will be the responsibility of the Claims Administrator to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

2. The Claims Administrator shall act as the Escrow Agent within the meaning of section 468B of the Internal Revenue Code of 1986 and Treasury Regulation 1.468B for the Escrow Account. The Claims Administrator will timely and properly file all informational and other tax returns necessary or advisable with respect to the Escrow Account (including without limitation the returns described in Treasury Regulation 1.468B-2(k)). Such returns (as well as the election described in Section VIII(1)) will be consistent with this Paragraph and Section VIII(1), and in any event, will reflect that all taxes (including any estimated taxes, interest or penalties) on the income earned by the Escrow Account will be paid out of the Escrow Account.

3. All Taxes and Tax Expenses will be paid out of the Escrow Account; in no event will Defendant have any liability or responsibility for the Taxes, the Tax Expenses or the filing of any tax returns or other documents with the Internal Revenue Service or any other state or local taxing authority. The Claims Administrator will indemnify and hold Defendant and Defense

Counsel harmless for Taxes and Tax Expenses (including, without limitation, Taxes payable by reason of any such indemnification). Furthermore, Taxes and Tax Expenses will be timely paid by the Claims Administrator out of the Escrow Account without prior Court order, and the Claims Administrator will be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Claimants any funds necessary to pay such amounts (as well as any amounts that may be required to be withheld under Treasury Regulation 1.468B-2(1)-(2)); Defendant is not responsible for, and shall have no liability therefor, or for any reporting requirements that may relate thereto. The Parties agree to cooperate with the Claims Administrator, each other and their respective tax attorneys and accountants, to the extent reasonably necessary, to carry out the provisions of this Section and the Agreement.

IX. CLAIMS ADMINISTRATOR

1. Selection and Appointment of Claims Administrator. The Parties have agreed to have Angeion Group serve as the Claims Administrator and will request that the Court appoint the Claims Administrator. The Claims Administrator was selected following a competitive bidding process that involved solicitation of two notice and claims administration proposals. The Claims Administrator has provided Class Counsel and Defense Counsel with a Class Notice Program. The Class Notice Program sets forth a detailed estimate and a price for performing all tasks and duties regarding this settlement. A copy of the Class Notice Program is attached hereto as Exhibit C.

2. Once approved by the Court, the Claims Administrator will be an agent of the Court and will be subject to the Court's supervision and direction as circumstances may require. The Claims Administrator shall cause the Class Notice Program to be carried out after Preliminary Approval, including the Class Notice to be published to Settlement Class Members who can be identified through reasonable effort as well as a process, subject to mutual agreement by the Parties, to stimulate Claims made by Settlement Class Members, administer the Settlement

Website and Claim Forms process and oversee the distribution of Cash Awards to Settlement Class Members in accordance with the terms of the Settlement and orders of the Court.

3. Claims Administration. The Claims Administrator shall administer the monetary relief for Settlement Class Members pursuant to the terms of this Agreement and shall seek to resolve issues with Claim Forms in a cost effective and timely manner. The Claims Administrator will facilitate Notice to Settlement Class Members pursuant to the Class Notice Program and accomplish such other purposes as may be approved by Defense Counsel and Class Counsel; and the Parties shall reasonably cooperate with such requests.

4. Claims Administrator Discretion. The Claims Administrator shall review and validate all Claim Forms submitted by Settlement Class Members. The Claims Administrator shall have the discretion to accept or reject, in whole or in part, the Claim Forms submitted by Settlement Class Members with the objectives of efficiency and effecting substantial justice to the Parties and the Settlement Class Members. Issues regarding the validity of Claim Forms that cannot be resolved by the Claims Administrator shall be submitted to Defense Counsel and Class Counsel for resolution and, if no resolution is reached, to the Court.

5. No Liability for Claims Administered Pursuant to Settlement Agreement. No person shall have any claim against Defendant, Defense Counsel, Named Plaintiffs, Class Counsel, the Released Parties and/or the Claims Administrator based on any determinations, distributions or awards made with respect to any Claim. For the avoidance of doubt, in no event shall Named Plaintiffs, Class Counsel, Defendant or Defense Counsel, have any liability for any claims of wrongful conduct (whether intentional, reckless or negligent) on the part of the Claims Administrator or its agents.

6. Claims Administrator Duties. The Claims Administrator shall:

a. Use personal information acquired as the result of this Settlement Agreement solely for purposes of evaluating and paying Claims under this Settlement Agreement.

b. Assign a manager to oversee the protection and appropriate management of personal information including, without limitation, for purposes of maintaining its confidentiality, and review its internal system to manage the protection of personal information to ensure consistent performance and constant improvement.

c. Take security countermeasures to prevent unauthorized access to personal information and the loss, destruction, falsification and/or exposure of personal information.

d. If outsourcing the handling of personal information, determine that outsourced entities take steps to ensure appropriate management of the information to prevent leaks of personal or confidential information, and prohibit reuse of information for other purposes.

e. Respond immediately with appropriate measures when necessary to disclose, correct, stop using or eliminate contents of information.

f. Within one hundred and twenty (120) days after the closure of the Escrow Account, and in compliance with applicable retention law, destroy all personal information obtained in connection with this Settlement in a manner most likely to guarantee that such information shall not be obtained by unauthorized persons.

7. Claims Administrator Accounting. The Claims Administrator shall maintain a complete and accurate accounting of all receipts, expenses (including Notice and Administration

Costs) and payments made pursuant to this Settlement Agreement. The accounting shall be made available on reasonable notice to Class Counsel and Defense Counsel.

8. Removal of Claims Administrator. If the Claims Administrator fails to perform adequately, the Parties may agree to remove the Claims Administrator by jointly petitioning the Court to do so.

9. Class Notice Program. The Class Notice Program used to provide Notice of this Settlement to the Settlement Class shall be that which is approved in the Court's Preliminary Approval Order. The cost of the Class Notice Program shall be paid from the Settlement Amount, which shall be deposited into the Escrow Account in accordance with Section IV, Paragraph 2. The Claims Administrator shall commence the Class Notice Program no later than thirty (30) days after the Preliminary Approval Date. The Class Notice Program shall be effectuated by the Claims Administrator, and it shall include, at a minimum:

a. Digital Notice. The Claims Administrator shall design and implement a plan for notification of the Settlement to members of the Settlement Class through digital/internet publication designed to target purchasers of the Covered Products to satisfy the due process rights of the Settlement Class. The Class Notice will be substantially in the forms attached hereto as Exhibit B. The Parties have also discussed certain claim stimulation efforts, if necessary, to be implemented as may be agreed, following a review of Claim submissions twenty-one days after the Class Notice Program commences.

b. Settlement Website. No later than thirty (30) days after the Preliminary Approval Date, the Claims Administrator shall establish and make live the Settlement Website, which shall be an internet website concerning the Settlement utilizing an easily-recognized domain name. The Settlement Website shall be maintained by the Claims

Administrator until one hundred and twenty (120) days after all deadlines for correcting deficiencies in the Claim Form pursuant to Section IV, Paragraph 5 have passed. The domain name of the Settlement Website shall be included in all Class Notice. The Settlement Website shall provide, at a minimum: (i) information concerning deadlines for filing a Claim Form, and the dates and locations of relevant Court proceedings, including the Fairness Hearing; (ii) the toll-free telephone number applicable to the Settlement; (iii) copies of the Settlement Agreement, the Notice of Settlement, the Claim Form, Court Orders regarding this Settlement and other relevant Court documents, including Class Counsel's Motion for Approval of Attorneys' Fees, Cost and Service Awards; and (iv) information concerning the submission of Claim Forms, including the ability to submit Claim Forms electronically, including proof of purchase.

c. Toll-Free Telephone Number No later than thirty (30) days after the Preliminary Approval Date, the Claims Administrator shall establish toll-free telephone number and facility that will provide members of the Settlement Class with information and direct them to the Settlement Website. The toll-free telephone number shall be included on the Settlement Website and in the Notice of Settlement. The facility shall be capable of providing general information concerning deadlines for filing a Claim Form, opting out of, or objecting to, the Settlement, and the dates and locations of relevant Court proceedings, including the Fairness Hearing. The toll-free telephone number shall be maintained by the Claims Administrator during the time period that the Settlement Website is active.

10. Proof of Compliance with Class Notice Program. The Claims Administrator shall provide Class Counsel and Defense Counsel with a declaration detailing all of its efforts regarding the Class Notice Program, its timely completion of the Class Notice Program and its reach to the

members of the Settlement Class, to be filed along with Plaintiffs' Motion for Final Approval of Class Action Settlement.

11. Claims Administrator Database. The Claims Administrator shall maintain and preserve records of all of its activities, in a computerized database with easily retrievable records, relative to the Settlement, including logs of all telephone calls, emails, faxes, mailings, visits to the Settlement Website and all other contacts with actual and potential members of the Settlement Class. The database shall also include a running tally of the number and types of materials mailed, or disseminated by, the Claims Administrator. The Claims Administrator shall provide Class Counsel and Defense Counsel with weekly written reports throughout the Claim Period summarizing all statistics and actions taken by the Claims Administrator in connection with administering the Settlement.

X. SETTLEMENT NOTICE, OBJECTIONS AND OPT-OUT RIGHTS

1. Within thirty (30) days after entry of the Preliminary Approval Order, the Claims Administrator shall commence dissemination of the Class Notice as described in the Class Notice Program.

2. The Class Notice shall:

- a. contain a short, plain statement of the background of the Action and the proposed Settlement;
- b. describe the proposed Settlement relief as set forth in this Agreement;
- c. inform Settlement Class Members that, if they do not exclude themselves from the Settlement Class, they may be eligible to receive relief and will release their claims;

d. describe the procedures for participating in the Settlement and advise Settlement Class Members of their rights, including their right to file a Claim Form to receive a Cash Award under the Settlement, to Opt-Out of the same, or object thereto;

e. explain the impact of the proposed Settlement on any existing litigation, arbitration or other proceeding;

f. state that any Cash Award to Settlement Class Members under the Settlement is contingent on the Court's final approval of the proposed Settlement;

g. explain the procedures for opting-out of the Settlement;

h. specify that Opt-Outs shall be allowed on an individual basis only, and that so-called "mass" or "class" Opt-Outs shall not be allowed; and

i. provide that any objection to the Settlement, and any papers submitted in support of said objection, will be considered only if the Settlement Class Member making an objection has followed the guidelines for objecting as set forth in the Agreement. A Class Member who fails to follow the procedures and deadlines set forth in the Class Notice for submitting their comments to the proposed Settlement, will waive their right to be heard by the Court and will waive their right to appeal.

3. Subject to mutual agreement by the Parties, the Parties agree to follow guidance provided by the Claims Administrator concerning reasonable best practices consistent with the Class Notice Program and this Settlement Agreement to encourage the filing of valid and timely Claim Forms.

4. Nothing in this Agreement shall limit the ability of Class Counsel to communicate orally, or in writing, with Settlement Class Members regarding the provisions of this Settlement and, in fact, Class Counsel are authorized to do so.

5. The Settlement Website shall be maintained by the Claims Administrator until one hundred and twenty (120) days after all deadlines for correcting deficiencies in the Claim Form pursuant to Section IV, Paragraph 5 have passed.

6. Prior to the Fairness Hearing, the Claims Administrator shall provide to the Parties documentation reflecting that the Class Notice Program has been executed in accordance with the Preliminary Approval Order, which will be provided to the Court.

7. Any Settlement Class Member who intends to object must do so on, or before, the Opt-Out and Objection Date. In order to object, the Settlement Class Member must file the objection with the Court (or mail the objection to the Clerk of Court postmarked by the Opt-Out and Objection Deadline at Clerk's Office, Alfred A. Arraj United States Courthouse, Room A-105, 901 19th Street, Denver, Colorado 80294-3589) on, or before, the Opt-Out and Objection Deadline. The objection must provide the following:

- a. the Settlement Class Member's printed name, address and telephone number;
- b. whether the Settlement Class Member is represented by counsel and, if so, contact information for their counsel;
- c. evidence showing that the objector is a Settlement Class Member;
- d. whether the objection applies to that Settlement Class Member or to a specific subset of the Settlement Class, or to the entire Settlement Class, and state with specificity the grounds for the objection;
- e. any other supporting papers, materials or briefs that the Settlement Class Member wishes the Court to consider when reviewing the objection;

f. the actual written or electronic signature of the Settlement Class Member making the objection; and

g. a statement on whether the objecting Settlement Class Member and/or their counsel intend to appear at the Fairness Hearing.

8. Any Settlement Class Member who fails to timely file a written objection and, if planning to appear, a notice of their intent to appear at the Fairness Hearing, pursuant to the above Paragraph, and as detailed in the Class Notice, shall not be permitted to object to the approval of the Settlement at the Fairness Hearing and shall be foreclosed from seeking any review of the Settlement or the terms of the Agreement by appeal or other means.

9. A Settlement Class Member who wishes to Opt-Out of the Settlement Class must do so on, or before, the Opt-Out and Objection Date. To Opt-Out, a Settlement Class Member must inform the Claims Administrator in writing that they wish to be excluded from the Settlement Class and must send that request to the Claims Administrator by United States mail, post-marked no later than the Opt-Out and Objection Date. The request for exclusion must be personally signed by the Settlement Class Member requesting exclusion and contain the Settlement Class Member's name, address, telephone number, a brief statement explaining the Covered Products the Settlement Class Member purchased to confirm membership in the Settlement Class and a statement that indicates a desire to be excluded from the Settlement Class. A Settlement Class Member may Opt-Out on an individual and personal basis only; so-called "mass" or "class" Opt-Outs shall not be allowed.

10. Except for those Settlement Class Members who timely and properly file a request for exclusion, all other Settlement Class Members will be deemed to be Settlement Class Members

for all purposes under the Agreement, and upon the Effective Date, will be bound by its terms, regardless of whether they file a Claim or receive any monetary relief.

11. Any Settlement Class Member who properly Opts Out of the Settlement Class shall not: (a) be bound by any orders or judgments entered in the Action or relating to the Settlement; (b) be entitled to relief under, or be affected by, the Agreement; (c) gain any rights by virtue of the Agreement; or (d) be entitled to object to any aspect of the Settlement. Any statement or submission purporting, or appearing, to be both an objection and an Opt-Out shall be treated as a request for exclusion.

12. The Claims Administrator shall provide Class Counsel and Defense Counsel with copies of all requests for exclusion on a weekly basis by email and will provide the Opt-Out List on, or before, one hundred and five days (105) after the Preliminary Approval Date.

XI. ATTORNEYS' FEES, EXPENSES, AND REPRESENTATIVE PLAINTIFFS' SERVICE AWARDS

1. Within the time period established by the Court, and no later than sixty days (60) days after the Preliminary Approval Order, Class Counsel will file a Motion for Approval of Attorneys' Fees and Costs, and Service Awards to be paid from the Settlement Amount, which shall be included on the Settlement Website. The Class Notice Program shall inform the Settlement Class Members that Class Counsel may apply for attorneys' fees not to exceed one-third (1/3) of the Settlement Amount and, in addition to fees, seek reimbursement of verifiable litigation costs. The procedure for, and the allowance or disallowance by the Court of, any application for Attorneys' Fees and Costs is not a material term of the Settlement or Agreement and is not a condition of this Agreement that any particular application for Attorneys' Fees and Costs be approved. If an application for Attorneys' Fees and Costs is approved by the Court, Class Counsel shall provide W-9 Forms to the Claims Administrator prior to such payment.

2. Attorneys' Fees and Costs approved by the Court shall be paid within five (5) days after the Effective Date. Class Counsel shall thereafter distribute attorneys' fees and costs as they deem appropriate. Under no circumstances will Defendant be liable to Class Counsel, or any other attorney or law firm, for, because of, relating to, concerning or as a result of any payment or allocation of attorneys' fees made in accordance with this Settlement Agreement; and Class Counsel, and each of them, release Defendant from any and all disputes or claims because of, relating to, concerning or as a result of any payment or allocation of attorneys' fees and costs made pursuant to this Settlement Agreement.

3. Class Counsel shall move for Service Awards of two thousand and five-hundred dollars (\$2,500.00) to each of the Named Plaintiffs in the Action, as may be approved by the Court. If approved by the Court, such Service Awards will be paid from the Settlement Amount no later than five (5) days after the Effective Date.

4. Any order or proceedings relating to the application for Attorneys' Fees and Costs and Service Awards, or any appeal from any order relating thereto, or reversal or modification thereof, will not operate to terminate or cancel this Agreement, or affect or delay the finality of Judgment approving the Agreement and the Settlement.

XII. NOTICES

1. All Notices (other than the Class Notice and CAFA Notices) required by the Agreement, shall be made in writing and mailed to the following addresses:

All Notices to Class Counsel shall be sent to Class Counsel, c/o:

Melissa S. Weiner
Pearson Warshaw, LLP
328 Barry Ave. S, Suite 200
Wayzata, Minnesota 55391
Telephone: (612) 389-0600

Rachel Soffin
**Milberg Coleman Bryson Phillips
Grossman, PLLC**
800 S. Gay Street, Suite 1100
Knoxville, TN 37929
Telephone: (865) 247-0080

Nick Suci
**Milberg Coleman Bryson Phillips
Grossman, PLLC**
6905 Telegraph Rd., Suite 115
Bloomfield Hills, MI 48301
Telephone: (313) 303-3472

Jonas Jacobson
Dovel & Luner, LLP
201 Santa Monica Blvd., Suite 600
Santa Monica, CA 90401
Telephone: (310) 656-7069

William H. Anderson
Handley Farah & Anderson PLLC
5353 Manhattan Circle, Suite 204
Boulder, CO 80305
Telephone: (303) 800-9109

All Notices to Defense Counsel provided herein shall be sent to Defense Counsel,

c/o:

John C. Dougherty
Katherine N. Galle
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
One Financial Center
Boston, Massachusetts 02111
Telephone: 617-542-6000

Arameh Z. O'Boyle
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
Century Plaza Towers
2049 Century Park East
Suite 300
Los Angeles, California 90067
Telephone: 310-586-3200

Greg S. Hearing
Megan A. Jones
Gordon Rees Scully Mansukhani, LLP
555 Seventeenth St.
Suite 3400
Denver, CO 80202

Telephone: 303-534-5160

2. The notice recipients and addresses designated above may be changed by written notice, exclusively.

3. Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of comments, objections, requests for exclusion or other documents or filings received as a result of the Class Notice.

XIII. SETTLEMENT APPROVAL PROCESS

1. After execution of this Agreement, the Parties shall promptly move the Court to enter the Preliminary Approval Order that is without material alteration from Exhibit D hereto, which:

- a. Preliminarily approves this Settlement;
- b. Directs that notice is provided in a reasonable manner, as set forth herein, to all Settlement Class Members who would be bound by the Settlement;
- c. Preliminarily certifies the Settlement Class;
- d. Schedules a Fairness Hearing on final approval of this Settlement and Agreement to consider the fairness, reasonableness and adequacy of the proposed Settlement and whether it should be finally approved by the Court, such Fairness Hearing to be no earlier than one hundred eleven (111) days after the Preliminary Approval Date, subject to Court approval;
- e. Finds that the proposed Settlement is sufficiently fair, reasonable and adequate to warrant providing Notice to the Settlement Class;
- f. Appoints the Claims Administrator in accordance with the provisions of Section IX;

g. Approves the Class Notice, the content of which is without material alteration from Exhibit B hereto, and directs the Claims Administrator to publish the Class Notice in accordance with the Class Notice Program provided for in this Agreement that is without material alteration from Exhibit C hereto;

h. Approves the Claim Form, the content of which is without material alteration from Exhibit A hereto, and sets a Claim Deadline;

i. Approves the creation of the Settlement Website as defined in Section IX, Paragraph 9(b) above;

j. Finds that the Class Notice Program implemented pursuant to this Agreement: (i) is the best practicable notice, (ii) is reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action and of their right to object to, or to exclude themselves from, the proposed Settlement, (iii) is reasonable and constitutes due, adequate and sufficient notice to all persons entitled to receive notice, and (iv) meets all applicable requirements of applicable law;

k. Requires the Claims Administrator to file proof of publication of the Class Notice and proof of maintenance of the Settlement Website at, or before, the Fairness Hearing;

l. Requires each Settlement Class Member who wishes to be excluded from the Settlement Class to submit an appropriate, timely request for exclusion, postmarked no later than ninety-five (95) days after the Preliminary Approval Date, or as the Court may otherwise direct, to the Claims Administrator at the address on the Notice;

m. Preliminarily enjoins all Settlement Class Members unless, and until, they have timely excluded themselves from the Settlement Class from: (i) filing, commencing,

prosecuting, intervening in or participating as plaintiff, claimant or class member in any other lawsuit or administrative, regulatory, arbitration or other proceeding in any jurisdiction based on, relating to, or arising out of, the claims and causes of action or the facts and circumstances giving rise to the Action and/or the Released Claims arising on, or before, the Preliminary Approval Date; (ii) filing, commencing or prosecuting a lawsuit or administrative, regulatory, arbitration or other proceeding as a class action on behalf of any Settlement Class Members who have not timely excluded themselves (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action), based on, relating to, or arising out of, the claims and causes of action or the facts and circumstances giving rise to the Action and/or the Released Claims arising on, or before, the Preliminary Approval Date; and (iii) attempting to effect Opt-Outs of a class of individuals in any lawsuit or administrative, regulatory, arbitration or other proceeding based on, relating to, or arising out of, the claims and causes of action or the facts and circumstances giving rise to the Action and/or the Released Claims. This Agreement is not intended to prevent Settlement Class Members from participating in any action or investigation initiated by a state or federal agency.

n. Orders that any Settlement Class Member who does not submit a timely, written request for exclusion from the Settlement Class (*i.e.*, becomes an Opt-Out) will be bound by all proceedings, orders and judgments in the Action, even if such Settlement Class Member has previously initiated, or subsequently initiates, individual litigation or other proceedings encompassed by the Release;

o. Requires each Settlement Class Member who is not an Opt-Out and who wishes to object to the fairness, reasonableness or adequacy of this Agreement or the

proposed Settlement or to the Attorneys' Fees and Costs, to file with the Court (or mail to the Clerk of Court postmarked by the Opt-Out and Objection Deadline) no later than ninety-five (95) days after the Preliminary Approval Date or as the Court may otherwise direct, a statement of the objection signed by the Settlement Class Member containing the information outlined in Section X, Paragraph 7, above.

p. Provides that any response to an objection shall be filed with the Court no later than seven (7) days before the Fairness Hearing.

q. Specifies that any Settlement Class Member who does not file a timely written objection to the Settlement, or who fails to otherwise comply with the requirements of Section XI Paragraph 7, shall be foreclosed from seeking any adjudication or review of this Settlement by appeal or otherwise.

r. Requires that any attorney hired by a Settlement Class Member be at the Settlement Class Member's expense for the purpose of objecting to this Agreement, the proposed Settlement or the Attorneys' Fees and Costs;

s. Requires that any attorney hired by a Settlement Class Member for the purpose of objecting to the proposed Settlement or to the Attorneys' Fees and Costs, who timely files a written objection and who intends to make an appearance at the Fairness Hearing, file with the Clerk of the Court a notice of intention to appear no later than the Opt-Out and Objection Date, or as the Court may otherwise direct;

t. Directs the Claims Administrator to establish a post office box in the name of the Claims Administrator to be used for receiving requests for exclusion, objections, notices of intention to appear and any other communications and providing that only the Claims Administrator, Class Counsel, Defense Counsel, Defendant, the Court, the Clerk of

the Court and their designated agents shall have access to this post office box, except as otherwise provided in this Agreement;

u. Directs the Claims Administrator to promptly furnish Class Counsel and Defense Counsel with copies of any and all written requests for exclusion, notices of intention to appear or other communications that come into its possession, except as expressly provided in this Agreement;

v. Directs that Class Counsel shall file their applications for the Attorneys' Fees and Costs and Named Plaintiffs' Service Awards in accordance with the terms set forth in Section XI;

w. Orders the Claims Administrator to provide the Opt-Out List to Class Counsel and Defense Counsel no later than one hundred and five (105) days after the Preliminary Approval Date, and then Plaintiffs' counsel will file with the Court the Opt-Out List with an affidavit from the Claims Administrator attesting to the completeness and accuracy thereof no later than three (3) business days thereafter (or no later than one hundred and eight (108)) days after the Preliminary Approval Date or on such other date as the Parties may direct; and

x. Contains any additional provisions agreeable to the Parties that may be necessary or advisable to implement the terms of this Agreement and the proposed Settlement.

XIV. FINAL ORDER AND JUDGMENT AND RELEASES

1. Pursuant to the schedule set by the Court in its Preliminary Approval Order and no later than sixty (60) days after the Preliminary Approval Date, Class Counsel shall file a motion and supporting papers requesting that the Court grant final approval of this Settlement Agreement and for entry of a Final Order and Judgment.

2. If this Agreement (including any amendment or modification made with the consent of the Parties, as provided herein) is approved by the Court following the Fairness Hearing, scheduled by the Court in its Preliminary Approval Order, the Parties shall request that the Court enter a mutually-agreeable Final Order and Judgment pursuant to the Federal Rules of Civil Procedure and all applicable laws, that, among other things:

a. Finds that the Court has personal jurisdiction over the Parties and all members of the Settlement Class and that the Court has subject matter jurisdiction to approve this Settlement and Agreement and all Exhibits thereto;

b. Makes specific findings concerning the satisfaction of the requirements of Fed. R. Civ. P. 23(a) and (b)(3), and certifies a Settlement Class solely for purposes of this Settlement;

c. Makes specific findings concerning the satisfaction of the requirements of Fed. R. Civ. P. 23(e) and grants final approval to this Agreement as being fair, reasonable and adequate as to all Settling Parties and consistent and in compliance with all requirements of due process and applicable law, as to, and in the best interests of, all Settling Parties and directs the Parties and their counsel to implement and consummate this Agreement in accordance with its terms and provisions;

d. Declares this Agreement and the Final Order and Judgment to be binding on, and claim preclusive effect in, all pending and future lawsuits or other proceedings encompassed by the Release (as set forth in Section I, Paragraph 47) maintained by, or on behalf of, the Named Plaintiffs and all Settlement Class Members, as well as their respective agents, heirs, executors or administrators, successors and assigns;

e. Finds that the Class Notice Program implemented pursuant to this Agreement: (i) constituted the best practicable notice, (ii) constituted notice that was reasonably calculated under the circumstances to apprise Settlement Class Members of the pendency of the Action, of their right to object to, or exclude themselves from, the proposed Settlement, of their right to appear at the Fairness Hearing and of their right to seek monetary and other relief, (iii) constituted reasonable, due, adequate and sufficient notice to all persons entitled to receive notice, and (iv) met all applicable requirements of due process and any other applicable law;

f. Approves the Claim Form that was distributed to Settlement Class Members, the content of which was without material alteration from Exhibit A hereto;

g. Finds that Class Counsel and the Named Plaintiffs adequately represented the Settlement Class for purposes of entering into and implementing the Settlement and Agreement;

h. Dismisses the Action now pending before the Court on the merits, and with prejudice, and without fees or costs except as provided herein, in accordance with the terms of the Final Order and Judgment, as set forth herein;

i. Adjudges that the Named Plaintiffs and the Settlement Class have conclusively compromised, settled, dismissed and released any and all Released Claims against Defendant and the Released Persons to the full extent provided by the Release set forth in this Settlement Agreement;

j. Approves payment of the Attorneys' Fee and Costs to Class Counsel and the Named Plaintiffs' Service Awards in a manner consistent with Section XI;

k. Without affecting the finality of the Final Order and Judgment for purposes of appeal, reserves jurisdiction over the Claims Administrator, Defendant, the Named Plaintiffs and the Settlement Class as to all matters relating to the administration, consummation, enforcement and interpretation of the terms of the Settlement and Final Order and Judgment and for any other necessary purposes;

l. Provides that upon the Effective Date, the Named Plaintiffs and all Settlement Class Members who have not been excluded from the Settlement Class, whether or not they return a Claim Form within the time and in the manner provided for, shall be barred from asserting any Released Claims against Defendant and/or any Released Persons, and any such Settlement Class Members shall have released any and all Released Claims as against Defendant and all Released Persons to the full extent provided by the Release set forth in this Settlement Agreement;

m. Determines that the Agreement and the Settlement provided for herein, and any proceedings taken pursuant thereto, are not, and should not, in any event be offered or received as evidence of, a presumption, concession or an admission of liability or of any misrepresentation or omission in any statement or written document approved or made by Defendant or any Released Person or of the suitability of these or similar claims to class treatment in active litigation and trial; provided, however, that reference may be made to this Agreement and the Settlement provided for herein in such proceedings as may be necessary to effectuate the Agreement;

n. Bars and permanently enjoins all Settlement Class Members who have not been properly excluded from the Settlement Class from: (i) filing, commencing, prosecuting, intervening in or participating (as class members or otherwise) in any other

lawsuit or administrative, regulatory, arbitration or other proceeding in any jurisdiction based on, relating to, or arising out of, the claims and causes of action or the facts and circumstances giving rise to the Action or the Released Claims arising between September 11, 2017, until on, or before, the Preliminary Approval Date, and (ii) organizing Settlement Class Members who have not been excluded from the Settlement Class into a separate class for purposes of pursuing as a purported class action any lawsuit or arbitration or other proceeding (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action) based on, relating to, or arising out of, the claims and causes of action or the facts and circumstances giving rise to the Action and/or the Released Claims arising between September 11, 2017 until the Preliminary Approval Date, except that Settlement Class Members are not precluded from participating in any investigation or suit initiated by a state or federal agency;

o. Approves the Opt-Out List and determines that the Opt-Out List is a complete list of all Settlement Class Members who have timely requested exclusion from the Settlement Class and, accordingly, shall neither share in, nor be bound by, the Final Order and Judgment except for Opt-Outs who subsequently submit Claim Forms during the Claim Period; and

p. Authorizes the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of this Agreement and all Exhibits hereto as (i) shall be consistent in all material respects with the Final Order and Judgment, and (ii) do not limit the rights of the Parties or Settlement Class Members.

3. As of the Effective Date, the Releasing Persons are deemed to have fully released and forever discharged the Released Persons of, and from, all Released Claims by operation of

entry of the Final Judgment and Order of Dismissal to the full extent provided by the Release set forth in this Settlement Agreement.

4. Subject to Court approval, all Settlement Class Members who have not excluded themselves from the Settlement Class shall be bound by this Agreement and the Release, and all of their respective claims shall be dismissed with prejudice and released, irrespective of whether they received actual notice of the Action or this Settlement.

5. Without in any way limiting the scope of the Release, this Release covers any and all claims for attorneys' fees, costs or disbursements incurred by Class Counsel or any other counsel representing the Named Plaintiffs or Settlement Class Members (outside of the Attorneys' Fees and Costs), or any Named Plaintiffs or Settlement Class Members, in connection with, or related in any manner to, the Action, the Settlement, the administration of such Settlement and/or the Released Claims, as well as any and all claims for Service Awards to Named Plaintiffs.

6. As of the Effective Date, the Released Persons are deemed to have fully released and forever discharged by operation of the entry of the Final Order and Judgment the Named Plaintiffs, the Settlement Class Members, Class Counsel or any other counsel representing the Named Plaintiffs or Settlement Class Members, or any of them, of and from any claims arising out of the Action and/or the Settlement.

7. As of the Effective Date, the Released Persons are deemed to have fully released and forever discharged each other by operation of entry of the Final Order and Judgment of and from any claims they may have against each other arising from the claims asserted by the Releasing Persons in the Action, including any claims arising out of the investigation, defense or Settlement of the Action.

8. The Releasing Persons and the Released Persons expressly acknowledge that they are familiar with principles of law such as Section 1542 of the Civil Code of the State of California, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Notwithstanding California or other law, the Releasing Persons and the Released Persons hereby expressly agree that the provisions, rights and benefits of Section 1542 and all similar federal or state laws, rights, rules or legal principles of any other jurisdiction that may be applicable herein and are hereby knowingly and voluntarily waived, released and relinquished to the fullest extent permitted by law solely in connection with unknown claims that are the same as, substantially similar to, or overlap the Released Claims, and the Releasing Persons and the Released Persons hereby agree and acknowledge that this is an essential term of the Releases. In connection with the Releases, the Releasing Persons and the Released Persons acknowledge that they are aware that they may hereafter discover claims currently unknown and unsuspected or facts in addition to or different from those which they now know or believe to be true with respect to matters released herein, and that such claims, to the extent that they are the same as, substantially similar to, or overlap the Released Claims, are hereby released, relinquished and discharged.

9. Nothing in the Releases shall preclude any action to enforce the terms of this Agreement, including participation in any of the processes detailed herein.

XV. WITHDRAWAL FROM OR TERMINATION OF SETTLEMENT

1. Within fifteen (15) days after the occurrence of any of the following events and upon written notice to counsel for all Parties, a Party shall have the right to withdraw from the Settlement and terminate this Agreement:

a. If the Court fails to approve the Agreement as written, or if the Court's approval is reversed or modified on any appeal;

b. If the Court materially alters any of the terms of the Agreement; or

c. If the Preliminary Approval Order, as described in Section XIII, or the Final Order and Judgment, as described in Section XIV, is not entered by the Court or is reversed or modified on appeal, or otherwise fails for any reason.

d. If the number of Settlement Class members appearing on the Opt-Out list provided by the Claims Administrator constitutes at least ten percent (10%) the number of Claimants.

e. A Party's decision to withdraw from the Settlement and terminate this Agreement pursuant to this Section, shall provide all other Parties a written notice of that decision.

f. In the event of a withdrawal pursuant to this Section, any certification of a Settlement Class will be vacated, without prejudice to any Party's position on the issue of class certification and the amenability of the claims asserted in the Action to class treatment, and the Parties shall be restored to their litigation position existing immediately before the execution of this Agreement.

XVI. EFFECTIVE DATE

1. The Effective Date of this Agreement shall be the first business day after each and all of the following conditions have occurred:

- a. This Agreement has been fully executed by all Parties and their counsel;
- b. Orders have been entered by the Court certifying the Settlement Class, granting preliminary approval of this Agreement and approving the form of Class Notice and Claim Form, all as provided above;
- c. The Court-approved Class Notice has been duly published and Settlement Website has been duly created and maintained as ordered by the Court;
- d. The Court has entered a Final Order and Judgment finally approving this Agreement, as provided above; and
- e. The Final Order and Judgment has become Final.

2. If, for any reason, this Agreement fails to become Final pursuant to this Section XVI, the orders, judgment and dismissal to be entered pursuant to this Agreement shall be vacated, and the Parties will be returned to the status *quo ante* with respect to the Action as if the Parties had never entered into this Agreement.

XVII. ADDITIONAL PROVISIONS

1. Settlement Purposes Only. This Agreement is for settlement purposes only. Neither the fact of, nor any provision contained in, this Agreement nor any action taken hereunder shall constitute or be construed as an admission of the validity of any claim or any fact alleged in the Action or of any wrongdoing, fault, violation of law or liability of any kind on the part of Defendant or any admission by Defendant of any claim or allegation made in any action or proceeding against Defendant or any concession as to the validity of any of the claims asserted by the Named Plaintiffs in the Action. This Agreement shall not be offered, or be admissible, in evidence against the Parties

or cited or referred to in any action or proceeding, except in an action or proceeding brought to enforce its terms. Nothing contained herein is, or shall be, construed or admissible as, an admission by Defendant that the Named Plaintiffs' claims or any similar claims are either valid or suitable for class treatment.

2. Best Efforts. If there are any developments in the effectuation and administration of this Agreement that are not dealt with by the terms of this Agreement, then the Parties shall confer in good faith regarding such matters; and such matters shall be dealt with as agreed upon by the Parties, and if the Parties cannot reach an agreement, as shall be ordered by the Court. The Parties shall execute all documents and use their best efforts to perform all acts necessary and proper to promptly effectuate the terms of this Agreement and to take all necessary or appropriate actions to obtain judicial approval of this Agreement in order to give this Agreement full force and effect. The execution of all such documents must take place prior to the Preliminary Approval Hearing.

3. Administration of Agreement. No person shall have any claim against the Named Plaintiffs, Class Counsel, Defendant, Defense Counsel, the Claims Administrator or the Released Persons or their agents based on administration of the Settlement substantially in accordance with the terms of the Agreement or any order of the Court or any appellate court.

4. Communications. Class Counsel and all other counsel of record for the Named Plaintiffs and Defense Counsel hereby agree not to engage in any communications with the media or the press, on the internet, or in any public forum, orally or in writing, that relate to this Settlement or the Action other than statements that are fully consistent with the Notice or otherwise approved by the Parties.

5. Entire Agreement. This Agreement, including the Recitals, Appendix and Exhibits to this Agreement, which are integral parts of the Settlement and are expressly incorporated and made part of this Agreement, constitutes the entire agreement between and among the Settling Parties with respect to the Settlement of the Action. This Agreement supersedes all prior negotiations and agreements and may not be modified or amended except by a writing signed by the Parties and their respective counsel. The Parties acknowledge, stipulate and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation or understanding concerning any part of the subject matter of this Agreement has been made or relied on except as expressly set forth in this Agreement.

6. Waiver. There shall be no waiver of any term or condition absent an express writing to that effect by the non-waiving Party. No waiver of any term or condition in this Agreement shall be construed as a waiver of a subsequent breach or failure of the same term or condition, or waiver of any other term or condition of this Agreement.

7. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original as against any Party who has signed it and all of which shall be deemed a single agreement. Parties may execute counterparts by manual signature or by electronic signatures.

8. Drafting. This Agreement shall not be construed more strictly against one Party than another merely because this Agreement may have been drafted, or otherwise prepared, in full or substantial part by counsel for one of the Parties, it being recognized that because of the arm's-length negotiations resulting in the Agreement, all Parties hereto have contributed substantially and materially to the preparation of the Agreement. All terms, conditions and Exhibits are material

and necessary to this Agreement and have been relied upon by the Parties in entering into this Agreement.

9. Governing Law. This Agreement shall be construed under and governed by the laws of the State of Colorado without regard to its choice of law provisions.

10. Continuing Jurisdiction. The Court shall retain continuing and exclusive jurisdiction over the Settling Parties to this Agreement for the purpose of the administration and enforcement of this Agreement.

11. Confidentiality. All agreements made and orders entered during the course of the Action relating to the confidentiality of information shall survive this Agreement.

12. Defendant's Attorneys' Fees and Costs. Defendant shall bear their own attorneys' fees and costs in the Action.

13. Return of Documents. Within thirty (30) days after the Effective Date, Class Counsel will return or destroy all documents, information and material produced by Defendant to the producing Defendant.

14. Representation by Counsel. The Parties are represented by competent counsel, and they have had an opportunity to consult, and have consulted, with counsel prior to executing this Settlement Agreement. Each Party represents that it understands the terms and consequences of executing this Settlement Agreement and executes it and agrees to be bound by the terms set forth herein knowingly, intelligently and voluntarily.

15. Mutual Full Cooperation. The Parties agree to cooperate with each other in good faith to accomplish the terms of this Settlement Agreement, including the execution of such documents and such other action as may reasonably be necessary to implement the terms of this

Settlement Agreement and obtain the Court's final approval of the Settlement Agreement, including the entry of an order dismissing the Action with prejudice.

16. No Tax Advice. Neither the Parties nor their counsel intend anything contained herein to constitute legal advice regarding the taxability of any amount paid hereunder. No person shall rely on anything in this Settlement Agreement to provide tax advice, and any person, including, without limitation, Named Plaintiffs and Settlement Class Members, shall obtain their or its own independent tax advice with respect to any payment under this Settlement Agreement.

17. Extensions. The Parties reserve the right, subject to the Court's approval, to agree to any reasonable extensions of time that might be necessary to carry out any of the provisions of this Settlement Agreement.

18. Binding Effect. This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Settling Parties.

19. No Prior Assignment, Transfer or Conveyance of Released Claims. The Named Plaintiffs represent and warrant that no portion of any claim, right, demand, action or cause of action against the Released Persons that the Named Plaintiffs, or any of them, have or may have arising out of any allegations made in any of the actions comprising the Action or pertaining to any of the Released Claims, and no portion of any recovery or settlement to which the Named Plaintiffs, or any of them, may be entitled, has been assigned, transferred or conveyed by, or for, the Named Plaintiffs, or any of them, in any manner; and no person other than the Named Plaintiffs has any legal or equitable interest in the claims, demands, actions, or causes of action referred to in this Agreement as those of the Named Plaintiffs.

20. Headings. The headings used in this Agreement are for the convenience of the reader only and shall not affect the meaning or interpretation of this Agreement. In construing this

Agreement, the use of the singular includes the plural (and *vice-versa*) and the use of the masculine includes the feminine (and *vice-versa*).

21. Stay of Proceedings. The Parties stipulate to stay all proceedings in the Action until the approval of this Agreement has been finally determined, except the stay of proceedings shall not prevent the filing of any motions, affidavits and other matters necessary to obtain and preserve final judicial approval of this Agreement.

22. Authority. Each person executing this Settlement Agreement on behalf of any Party warrants that such person has the authority to do so. This Settlement Agreement shall be binding upon, and inure to the benefit of, each of the Settling Parties' respective agents, heirs, executors, administrators, successors and assigns.

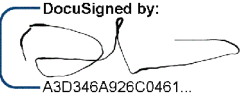
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IN WITNESS WHEREOF, the Parties have executed and caused this Agreement to be executed by their duly authorized attorneys below.

PLAINTIFFS.

DocuSigned by:

By:



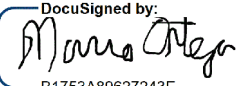
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XX David Plowden

IN WITNESS WHEREOF, the Parties have executed and caused this Agreement to be executed by their duly authorized attorneys below.

PLAINTIFFS:

By:  DocuSigned by:
9842BB5B823F465...
Kamille Faye Vinluan-Jularbal

By:  DocuSigned by:
B1753A89627243E...
Mario Oretga

Approved as to Form:

By: Melissa Weiner
Melissa Weiner (Nov 6, 2024 08:06 CST)
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DEFENDANT SIMILASAN CORP.

By: 
Dan Quail
President
SIMILASAN CORPORATION
1805 Shea Center Dr., Suite 270
Highlands Ranch, CO 80129

Date: November 6, 2024

Approved as to form:

By: 
John C. Dougherty
**MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY AND POPEO, P.C.**
One Financial Center
Boston, Massachusetts 02111

Attorneys for Defendant Similasan Corp.

APPENDIX I (Covered Products)

Allergy & Pink Eye Promo	61005	Clear Clip Strip 6 pc - 3 AER / 3PER in 12 pc tube
Dry Eye Relief	30011	Dry Eye Relief- Trial size
	30013	Dry Eye Relief- 20 Single Use Droppers
	30013X	Dry Eye Relief- 20 Single Use Droppers
	30014	Dry Eye Relief 10ml
	30014X	Dry Eye Relief 10ml
	40014	Dry Eye Relief- 10 ml 4/3 pack (Wal-mart)
	30015	Dry Eye Easy Mist, spray 10ml Liposome Eye Spray
	31003	Dry Eye Relief 10ml Twin Pk (Amazon)
	60014	Dry Eye Relief 10ml
	80014	Dry Eye Relief 10ml 8/3 pack (Wegman's)
Dry Eye Nighttime Gel	30016	Dry Eye Nighttime Gel - 10ml
Allergy Eye Relief	30022	Allergy Eye Relief- Trial Size
	30023	Allergy Eye Relief- 20 Single Use Droppers
	30024	Allergy Eye Relief 10ml
	30025	CVS Allergy Eye Relief 10ml (Blue Box; CVS Only))
	31002	Allergy Eye Relief 10ml Twin Pk (Amazon)
	40024	Allergy Eye Relief - 10 ml 4/3 pack (Wal-mart)
	80024	Allergy Eye Relief 10ml 8/3 pack (Wegman's)
Kids Allergy Eye Relief	30026	Kids Allergy Eye Relief - 10ml
	91001	Children's Allergy Eye Relief - 10ml
Pink Eye Relief	30034	Pink Eye Relief - 10ml
	31004	Pink Eye Relief 10ml Twin Pk (Amazon)
	40034	Pink Eye Relief - 10 ml 4/3 pack (Wal-mart)
	60034	Pink Eye Relief - 10ml
	80034	Pink Eye Relief - 10ml 8/3 pack (Wegman's)
Kids Pink Eye Relief	30035	Kids Pink Eye Relief - 10ml
	40035	Kids Pink Eye Relief - 10ml 4/3 (Wal-mart)
	60035	Kids Pink Eye Relief - 10ml
	91002	Children's Pink Eye Relief 10ml - CVS
Pink Eye Nighttime Gel	30036	Pink Eye Nighttime Gel - 10ml
Aging Eye Relief	30046	Aging Eye Relief 10ml
	31007	Agin Eye Relief 10ml Twin Pk (Amazon)
Computer Eye Relief	30047	Computer Eyes 10ml

	31009	Computer Eye Relief 10 ml Twin Pk (Amazon)
Stye Eye Relief	30054	Stye Eye Relief 10ml
	30054- IRC	Stye Eye Relief w/ IRC -10ml
	40054	Stye Eye Relief - 10 ml 8/3 pack (Wal-mart)
	80054	Stye Eye Relief-10ml 8/3 pack (Wegman's)
	31005	Stye Eye Relief 10ml Twin Pk (Amazon)
Complete Eye Relief	30060	Complete Eye Relief 10ml
	30060X	Complete Eye Relief 10ml
	31000	Complete Eye Relief 10m 3pk (Amazon)
	31001	Complete Eye Relief 10m Twin Pack (Amazon)
	40060	Complete Eye Relief 10ml 4/3 pack (Wal-mart)
	60060	Complete Eye Relief 10ml
	80060	Complete Eye Relief 10ml 8/3 pack (Wegman's)
Red Eye Relief	30063	Redness & Itchy Eye Relief 10 ml
		Redness & Itchy Eye Relief 10 ml 8/3 pack
	80063	(Wegman's)
	31006	Redness & Itchy Eye Relief 10 ml Twin Pk (Amazon)
Private Label CVS and Walgreens		
Stye Eye Relief	135557	Walgreens Stye Eye Drops - NBE
Pink Eye Relief	226581	Walgreens Pink Eye Drops - NBE
Pink Eye Relief	394279	CVS Pink Eye Drops - NBE - 10ml
Allergy Eye Relief	781135	Walgreens Allergy Eye Drops - NBE