

## **STIPULATED CLASS SETTLEMENT AGREEMENT AND RELEASE**

This Stipulated Class Settlement Agreement and Release (“Agreement”) is entered into by and between Plaintiff Danielle Skarpnes (“Plaintiff”), on the one hand, and Defendant Elixir Cosmetics OPCO, LLC (“Elixir” or “Defendant”), on the other hand (collectively referred to as the “Parties” or singularly “Party”) to effect the settlement set forth herein subject to Court approval.

### **RECITALS**

**A.** Plaintiff will file a putative class action complaint in the Superior Court of California, County of Solano no later than October 16, 2023. The complaint will allege Elixir failed to disclose material information regarding its Babe Lash Essential Lash Serum, Babe Lash Eyelash Serum, Babe Amplifying Brow Serum and Babe Brow Serum products (the “Products”) containing isopropyl cloprostenate (“IC”) and the potential side effects and risks of adverse reactions allegedly presented by IC. Plaintiff’s complaint will allege claims on behalf of herself and a class of consumers for violations of the California Consumers Legal Remedies Act (California Civil Code section 1750, *et seq.*), the California Unfair Competition Law (Cal. Bus. & Prof. Code § 17200, *et seq.*), the California False Advertising Law (Cal. Bus. & Prof. Code § 17500, *et seq.*), and claimed express and implied warranties through marketing and sale of the Products. The case will be styled “*Danielle Skarpnes v. Elixir Cosmetics OPCO, LLC*, Case No. CU23-04638 (Superior Court of California, County of Solano” (the “Action”). The Action will not name any other defendants except Elixir.

**B.** Elixir denies the allegations that will be asserted in the Action and any fault, wrongdoing or liability of any kind associated with the claims asserted by Plaintiff or the Settlement Class Members (defined herein) for monetary damages or other relief. Elixir stands behind the safety, as well as the regulatory status of, the Products as cosmetics. Elixir denies that it has marketed the Products for anything other than cosmetic uses, and maintains that these Products were never intended to affect the structure and/or function of the human body, as those terms are used at 21 U.S.C. § 321(g)(1)(C) and in Cal. Health & Safety Code § 109925(c). By entering into this Agreement, Elixir further denies that the class as defined in the Action is appropriate for class treatment, but does not oppose certification of a settlement class for the sole purpose of settling the Action and believes that the proposed settlement is desirable in order to avoid the significant burden, expense, risk, and inconvenience of protracted litigation, and the distraction and diversion of its personnel and resources.

**C.** Plaintiff and Elixir conducted a thorough investigation of the facts and analyzed the relevant legal issues regarding the claims to be asserted in the Action.

**D.** In light of the above and in order to avoid the expense, risks and uncertainty of litigation, and after extensive arms-length negotiations, the Parties have reached agreement to resolve the Action and have agreed to the terms set forth in this Agreement.

### **AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants, promises, warranties,

representations, agreements and other consideration set forth in this Agreement, the value and sufficiency of which is hereby acknowledged, the Parties hereby agree, subject to Court approval, to the resolution of the Action under the following terms and conditions:

**1. DEFINITIONS.** In addition to the definitions included in the Recitals above, and in later sections of this Agreement, the following shall be defined terms for purposes of this Agreement. Some of the definitions in this section use terms that are defined later in the section. All defined terms are capitalized and listed in alphabetical order:

**1.1** As used herein, the term “*Authorized Claimant*” means any Settlement Class Member who does not validly request exclusion from the Class and who timely submits a completed and valid Claim Form in accordance with the terms of this Agreement.

**1.2** As used herein, “*Cash Benefit*” means the cash payment that each Settlement Class Member who submits a valid and timely Claim will receive from the Net Settlement Fund.

**1.3** As used herein, the term “*Cash Repeat Purchaser Benefit*” means the Cash Benefit that will be distributed to Settlement Class Members who bought more than one unit of the Products and submitted a timely and valid Claim with documentary proof of multiple purchases or a Settlement Class Member that Elixir’s internal records confirm made multiple purchases.

**1.4** As used herein, the term “*Cash Settlement Fund*” means the \$2,300,000 non-reversionary cash settlement fund.

**1.5** As used herein, the term “*Claim*” means a request made by a Settlement Class Member in order to receive a Settlement Benefit pursuant to the procedures stated in Section 5.3.

**1.6** As used herein, the term “*Claim Filing Deadline*” means the deadline by which Settlement Class Members must submit a Claim under the Agreement by filing a Claim Form no later than thirty (30) days before the Final Approval Hearing.

**1.7** As used herein, the term “*Claim Form*” means the form Settlement Class Members must complete to submit a Claim under this Agreement. The Claim Form must be signed by the Settlement Class Member under penalty of perjury, and shall be substantially similar to the form attached hereto as **Exhibit E**.

**1.8** As used herein, the term “*Class Representative Service Payment*” means the amount awarded by the Court to Plaintiff for serving as the representative of the Settlement Class.

**1.9** As used herein, the term “*Court*” means the Superior Court of California, County of Solano.

**1.10** As used herein, the terms “*Defendant*” and “*Elixir*” mean the named Defendant Elixir Cosmetics OPCO, LLC in the Action.

**1.11** As used herein, the terms “*Defendant’s Counsel*” and “*Elixir’s Counsel*” mean the law firm of Locke Lord LLP.

**1.12** As used herein, the term “*Email Notice*” means the legal notice summarizing the proposed terms of this Agreement, as approved by Plaintiff’s Counsel, Elixir’s Counsel, and the Court, to be provided to Settlement Class Members under Section 5.2(d) of this Agreement via electronic mail. The Email Notice shall be substantially similar to the form attached as **Exhibit C**.

**1.13** As used herein, the term “*Exclusion Deadline*” means the date by which Class

Members must file any request for exclusion from the Settlement, in accordance with the procedures set forth herein and/or in any order from the Court, which will be at least sixty days (60) days after entry of preliminary approval, and at least thirty (30) days prior to the Final Approval Hearing.

**1.14** As used herein, the term “*Final Approval Hearing*” means the hearing to be held by the Court to consider and determine whether the Agreement should be approved as fair, reasonable, and adequate, and whether the Final Order and Judgment approving the Agreement should be entered.

**1.15** As used herein, the term “*Final Order and Judgment*” means the Court’s entry of a final order approving the Agreement and awarding the Class Representative Service Payment and Plaintiff’s Counsel’s Fees and Expenses, and Judgment following the Final Approval Hearing. The proposed Final Order and Judgment that Plaintiff submits to the Court for its approval shall be substantially similar to the form attached as **Exhibit G**.

**1.16** As used herein, the term “*Long Form Notice*” means the full legal notice summarizing the proposed terms of this Agreement, as approved by Plaintiff’s Counsel, Elixir’s Counsel, and the Court, to be provided to Settlement Class Members under Section 5.2(b) of this Agreement. The Long Form Notice shall be substantially similar to the form attached as **Exhibit B**.

**1.17** As used herein, the term “*Injunctive Relief*” means the injunctive relief set forth in **Exhibit F**.

**1.18** As used herein, the term “*Internet Notice*” means a social media campaign and/or Banner Advertisements that (combined with the Email Notice and Mailed Notice will provide at least a 70% reach) will direct people to the Settlement Website to complete an online Claim Form.

**1.19** As used herein, the term “*Mailed Notice*” means the postcard legal notice summarizing the proposed terms of this Agreement, as approved by Class Counsel, Elixir’s Counsel and the Court, to be provided to Settlement Class Members under Section 5.2(e) of this Agreement via regular postal mail. The Mailed Notice shall be substantially similar to the form attached as **Exhibit D**.

**1.20** As used herein, the term “*Net Settlement Fund*” means the amount distributed to Settlement Class Members who submit valid and timely Claims for the Cash Benefit and is the amount of the Cash Settlement Fund less the Class Representative Service Payment and Plaintiff’s Counsel’s Fees and Expenses.

**1.21** As used herein, the term “*Notice Period*” means the period starting thirty (30) days after entry of the Preliminary Approval Order and continuing until the Claim Filing Deadline. The Notice Period shall be at least sixty (60) days in duration.

**1.22** As used herein, the term “*Objection Deadline*” means the date by which Settlement Class Members must file any objections to the Agreement, in accordance with the procedures set forth herein and/or in any order from the Court, which will be at least sixty (60) days after entry of the Preliminary Approval Order, and at least thirty (30) days prior to the Final Approval Hearing.

**1.23** As used herein, the terms “*Plaintiff’s Counsel*” and “*Class Counsel*” mean the law firm of Farnese P.C.

**1.24** As used herein, the terms “*Plaintiff’s Counsel’s Fees and Expenses*” mean the amount awarded by the Court to Plaintiff’s Counsel as reasonable attorneys’ fees and expenses reasonably incurred in the Action.

**1.25** As used herein, the term “*Preliminary Approval Order*” means the order provisionally certifying the Settlement Class for settlement purposes only, approving and directing notice, and setting the Final Approval Hearing. The proposed Preliminary Approval Order that Plaintiff submits to the Court for approval shall be substantially similar to the form attached as **Exhibit A**.

**1.26** As used herein, “*Product*” or “*Products*” means Babe Lash Essential Lash Serum, Babe Lash Eyelash Serum, Babe Amplifying Brow Serum and Babe Brow Serum.

**1.27** As used herein, the term “*Proof of Purchase*” means a receipt or other documentation reasonably establishing the fact of purchase of the Products in the United States during the Settlement Class Period. An acceptable Proof of Purchase may be in the form of any reasonably reliable proof customarily provided to the Settlement Administrator to establish proof of purchase for class membership, such as: (a) a printed receipt; (b) an e-mail receipt or order confirmation; (c) a shipping confirmation; (d) any other purchase history documentation to the extent the Settlement Administrator is able to confirm that this purchase history documentation is reasonably reliable, unique to the purchaser, and consistent with industry standard fraud-prevention measures.

**1.28** As used herein, the term “*Released Parties*” means Defendant Elixir and its predecessors, successors, parents, subsidiaries, members, suppliers, indemnitors, insurers, reinsurers, and affiliates, as well as their respective present and former officers, directors, members, shareholders, managers, employees, attorneys, agents and other representatives, as well as each entity to whom Defendant Elixir directly or indirectly distributes, ships, or sells any Product, including but not limited to downstream distributors, wholesalers, retailers, franchisees, franchisors, cooperative members, suppliers, lenders, licensees, and licensors, and all of the foregoing entities’ owners, directors, officers, agents, principals, employees, attorneys, insurers, accountants, representatives, predecessors, successors, and assigns.

**1.29** As used herein, the term “*Settlement*” means the settlement of the Action and related claims effectuated by this Agreement.

**1.30** As used herein, the term “*Settlement Administrator*” means AI Class Solutions (AICS) who will provide notice and claims administration for the Settlement, subject to approval of the Court.

**1.31** As used herein, the term “*Settlement Administration Costs*” means the amount paid to the Settlement Administrator by Elixir (as separate from the Cash Settlement Fund) up to \$300,000 (excluding any postage fees exceeding that amount) for administering the Settlement.

**1.32** As used herein, the term “*Settlement Benefit*” means the Cash Benefit distributed to Settlement Class Members who submit timely and valid Claim Forms in accordance with the terms of this Agreement.

**1.33** As used herein, the term “*Settlement Class*” means, for settlement purposes only, all persons in the United States or its territories who purchased any Elixir Product for personal, family, household, or professional purposes between June 1, 2019 and the date of the entry of an order granting preliminary approval to the Settlement Agreement excluding (a) any individuals

who have pending litigation against Elixir; (b) any Settlement Class Members who file a timely request for exclusion; (c) any officers, directors, or employees, or immediate family members of the officers, directors, or employees, of Elixir or any entity in which Elixir has a controlling interest; (d) any person who has acted as a consultant of Elixir; (e) any legal counsel or employee of legal counsel for Elixir; (f) any federal, state, or local government entities; and (g) any judicial officers presiding over the Action and the members of their immediate family and judicial staff.

**1.34** As used herein, the term “*Settlement Class Member*” means each member of the Settlement Class who does not file a timely request to be excluded from the Settlement.

**1.35** As used herein, the term “*Settlement Class Period*” means between June 1, 2019 and the date of entry of the Preliminary Approval Order.

**1.36** As used herein, the term “*Settlement Date*” means the date on which this Agreement will become effective and on which all of the following have occurred: (a) execution of the Settlement Agreement by all Parties, counsel for Plaintiff, and counsel for Elixir; (b) certification of the proposed Settlement Class for settlement purposes only; (c) entry of a Final Order and Judgment by the Court approving this settlement; and (d) finality of the Judgment by virtue of it having become final and non-appealable through (i) the expiration of all allowable periods for appeal or discretionary appellate review without an appeal or request for discretionary appellate review having been filed, or (ii) final affirmance of the Judgment on appeal or remand, or final dismissal or denial of all such appeals and requests for discretionary review.

**1.37** As used herein, the term “*Settlement Website*” means the website that shall be created for settlement administration purposes and administered by the Settlement Administrator.

## **2. AGREEMENT TERMS.**

**2.1 Cash Settlement Fund.** Elixir will establish a non-reversionary Cash Settlement Fund of TWO MILLION THREE HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$2,300,000.00).

- (a) The Cash Settlement Fund shall be used to pay all Cash Benefits, all Cash Repeat Purchase Benefits, the Class Representative Service Payment, and Plaintiff’s Counsel’s Fees and Expenses.
- (b) On or before thirty (30) calendar days after entry of the Preliminary Approval Order, Elixir shall deposit 25% of the Cash Settlement Fund Amount (\$575,000.00) with the Settlement Administrator to be held in escrow by the Settlement Administrator as a qualified settlement fund as defined in Treasury Regulation § 1.468B-1, et seq.
- (c) On or before thirty (30) calendar days prior to the Final Approval Hearing, Elixir shall deposit another 25% of the Cash Settlement Fund Amount (\$575,000.00) with the Settlement Administrator.
- (d) On or before seven (7) calendar days after the Final Approval Hearing, Elixir shall deposit the remaining 50% of the Cash Settlement Fund Amount

(\$1,150,000.00) with the Settlement Administrator.

- (e) In the event that that Settlement does not become final as described in Section 4.5, the Settlement Administrator shall return all amounts deposited in the Cash Settlement Fund to Elixir within seven (7) calendar days.

**2.2 Net Settlement Fund.** The Net Settlement Fund will consist of the remainder of the Cash Settlement Fund after payment of the Class Representative Service Payment and Plaintiff's Counsel's Fees and Expenses.

- (a) The Net Settlement Fund will first be allocated *pro rata* in an amount up to \$25.00 per unit to all Authorized Claimants. Authorized Claimants without Proof of Purchase are limited to a maximum Cash Benefit of \$25.00 per household.
- (b) Any remaining funds in the Net Settlement Fund after the first distribution in 2.2(a) will be allocated *pro rata* in a second distribution to Authorized Claimants who appear in Elixir's purchase records or who submitted Proof of Purchase, in an additional amount up to \$25.00 per unit purchased as established by valid Proof of Purchase or Elixir's purchase records.
- (c) Should the total amount of valid claims for the Cash Benefit, Class Representative Service Award, and Plaintiff's Counsel's Fees and Expenses exceed \$2,300,000, payments of the Cash Benefit will be adjusted downward on a *pro rata* basis. However, if the total amount of valid claims for the Cash Benefit, Class Representative Service Award, and Plaintiff's Counsel's Fees and Expenses are less than \$2,300,000, payments will be adjusted upward on a *pro rata* basis.
- (d) Payments for Cash Benefits may be issued in the form of a paper check or digital payment (e.g., ACH, InstantPay, PayPal, Venmo, Zelle, etc.) to the Claimant as indicated on the Claim Form. Checks will be sent via U.S. Mail to the address identified on the Claim Form or a forwarding address provided by the Claimant or United States Postal Service. Checks will expire six months after the date on the check. Electronic payments will be sent in accordance with the instructions provided by the Claimant.

**2.3 Injunctive Relief.** No later than sixty (60) days after the Settlement Date, the label changes reflected in **Exhibit F** will be added to Elixir's Products currently in production, and changes to Elixir's website and training contemplated by **Exhibit F** will be implemented. Products that are already packaged at the time the new labels are added to the production line will not be changed. The Parties agree that Elixir may sell through any inventory of Product with the existing labels, provided that the other changes are timely implemented. These changes shall remain in effect for a period of at least twelve (12) months from the Settlement Date. However, Elixir shall have the right make label changes and changes to its website and training during that twelve (12)

month period if required by law or regulation or to otherwise enhance product application or safe use.

**2.4 Class Representative Service Payment.** The Parties acknowledge that Plaintiff will apply to the Court for approval of the Class Representative Service Payment in the amount of \$2,500 in recognition of her efforts and activities in furtherance of both the litigation and this Agreement. The Class Representative Service Payment shall be paid from the Cash Settlement Fund and will not be distributed to Plaintiff until after the Settlement Date. The Parties further agree that Elixir will not be obligated to pay any Class Representative Service Payment in excess of \$2,500. If the Court approves the Agreement and the Class Representative Service Payment to Plaintiff, the Class Representative Service Payment approved by the Court will be paid by the Settlement Administrator within ten (10) calendar days after entry of the Final Order and Judgment. The Parties represent that their negotiation of, and agreement to, the compensation paid to Plaintiff did not occur until after the substantive terms of the Agreement had been negotiated and agreed. No interest shall be paid on the Class Representative Service Payment.

**2.5 Plaintiff's Counsel's Fees and Expenses.** The Parties acknowledge that Plaintiff shall move the Court, at least thirty (30) days before the Objection Deadline and the Exclusion Deadline, for approval of an award of Plaintiff's Counsel's Fees. The Parties have not discussed, nor agreed to, any particular amount of Plaintiff's Counsel's Fees. If the Court approves the Agreement and an award of attorneys' fees and expenses to Plaintiff's Counsel, Plaintiff's Counsel's Fees and Expenses shall be paid from the Cash Settlement Fund within ten (10) calendar days after entry of the Final Order and Judgment. Except as otherwise provided herein, Plaintiff's Counsel and Elixir's Counsel shall bear their own respective fees, costs, and expenses. No interest shall be paid on any portion of Plaintiff's Counsel's Fees and Expenses.

**2.6 Reduction in Plaintiff's Awards or Class Counsel's Attorneys' Fees.** A reduction by the Court or by an appellate court of the Class Representative Service Payment or Plaintiff's Counsel's Fees and Expenses sought by Plaintiff and Plaintiff's Counsel shall not affect any of the Parties' other rights and obligations under the Agreement.

**2.7 No Tax Liability.** No provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor will be construed or relied upon as, tax advice. Each Party has relied exclusively upon his, her or its own independent legal and tax advisers for advice (including tax advice) in connection with this Agreement. Settlement Class Members and/or Plaintiff's Counsel shall be solely responsible for any taxes on any recovery, Settlement Benefit or award under this Agreement.

### **3. RELEASE AND WAIVER.**

**3.1 Release by Plaintiff and Settlement Class.** Effective immediately upon the Settlement Date, Plaintiff and each Settlement Class Member who does not timely opt-out of the Settlement shall fully, completely and forever release and discharge the Released Parties from any and all past, present, or future claims, liabilities, actions, allegations, complaints, demands, obligations, causes of action, suits, rights, damages, debts, guarantees, orders, controversies,

penalties, promises, covenants, losses, costs, expenses, or attorneys' fees of every kind, nature and source whether legal, equitable or otherwise, whether based on contract (express, implied, or otherwise), tort, common law, any state or federal law, statute or regulation or any other theory of recovery, whether brought under the laws of any state, federal or other government, whether known or unknown, asserted or unasserted, accrued or unaccrued, fixed or contingent, suspected or unsuspected, and whether seeking compensatory, exemplary, punitive, restitution, disgorgement, statutory, or injunctive relief or damages of any kind or multiplier thereof, that Plaintiff and each Settlement Class Member now have or may hereafter accrue or otherwise be acquired, arising out of or related to the subject matter of the Action involving the Products, including, but not limited to, the sale, purchase, marketing, advertising, distribution, design, formulation, manufacture, and the labeling of the Products during the Settlement Class Period ("Released Plaintiff's Claims"). Specifically excluded from the release are individual personal injury or disease claims, including existing claims, as well as latent or unknown individual personal injury or disease claims, held by Settlement Class Members.

**3.2 Release by Defendant.** "Elixir's Released Claims" means all claims, including "Unknown Claims" as defined in Section 3.3, that Elixir and its predecessors, successors, parents, subsidiaries, members, as well as their respective present and former officers, directors, members, shareholders, managers, employees, attorneys, agents and other representatives ("Elixir Parties") may have against Plaintiff, Settlement Class Members that did not timely request exclusion from the Settlement Class, or Class Counsel relating to the institution, prosecution or settlement of the Action or the Released Plaintiff's Claims, except for claims to enforce any of the terms of this Agreement. Effective immediately upon the Settlement Date, each of the Elixir Parties: (i) shall be deemed to have, and by operation of the Final Order and Judgment shall have, fully, finally, and forever released and discharged Plaintiff, Class Counsel, and Settlement Class Members that did not timely request exclusion from the Settlement Class, from each and every one of Elixir's Released Claims; (ii) shall forever be enjoined from prosecuting any one of Elixir's Released Claims; and (iii) agree and covenant not to sue on the basis of any of Elixir's Released Claims or to assist any third-party in commencing or maintaining any such suit related to any of Elixir's Released Claims.

**3.3 Release of Unknown Claims.** It is the clear and unequivocal intention of the Parties, that this Settlement shall be effective as a full and final accord and satisfaction, release, and discharge of each and every released claim specifically or generally referred to in this Settlement, with the sole exception being any personal injury or disease claims held by Settlement Class Members which are specifically excluded from the release in Section 3.1 above. In furtherance of this intention, each Plaintiff and each Settlement Class Member that did not timely request exclusion from the Settlement Class, and each of the Elixir Parties acknowledges and agrees that s/he or it understands Section 1542 of the Civil Code of the State of California, which provides as follows:

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



Plaintiff and each Settlement Class Member who did not timely request exclusion from the Settlement Class waives and relinquishes any and all rights and benefits which s/he has or may have under Section 1542 of the Civil Code of the State of California, and under any similar or comparable provision, whether statutory or common law, of any other state or territory of the United States to the full extent that s/he may lawfully so waive all such rights and benefits pertaining to the subject matter of the releases set forth in this Agreement.

**3.4 No Admission of Liability or Wrongdoing.** The Parties have resolved the Action on a mutually agreeable basis after extensive arms-length negotiations, with no concession, acknowledgment or admission whatsoever of liability or wrongdoing of any kind by Elixir. Nothing in the recitals or principal terms of settlement, the settlement proceedings, the settlement negotiations, this Agreement or any stipulation to or certification of the Settlement Class shall constitute or be used as an admission of any act or omission, liability or wrongdoing of any kind by Elixir, or be used or offered in any action or proceeding or received in evidence against Elixir as an admission, concession, presumption, or inference in any way, in any matter or otherwise, including as an admission of the propriety or feasibility of certifying a class. Elixir expressly denies any and all claims of wrongdoing and denies any and all liability to Plaintiff and the Settlement Class. Any and all discussions, statements, and/or communications of any type between the Parties and their counsel in the course of settlement negotiations shall remain confidential.

#### **4. COURT APPROVAL PROVISIONS.**

**4.1 Preliminary Approval and Provisional Class Certification.** Plaintiff shall file her motion for preliminary approval within twenty-five (25) days of filing the Action and, for the purposes of settlement only, Elixir will not oppose class certification. The motion for preliminary approval shall request that the court:

- (a) conditionally certify the Settlement Class in the Action for settlement purposes only;
- (b) preliminarily approve the form, manner, and content of the Long Form Notice, Email Notice, Mailed Notice, Internet Notice, Publication Notice, and Claim Form described in Section 5.2 of this Agreement, and attached as **Exhibits B–E**;
- (c) direct notice be made to Settlement Class Members as described in this Agreement;
- (d) set a deadline for the filing of objections, exclusions, Claim Form submission, the filing of the fee, cost, and award motion, the final approval motion; and schedule the date of the Final Approval Hearing;
- (e) stay all proceedings in the Action until the Court renders a final decision on approval of the Agreement;
- (f) conditionally appoint Plaintiff as the Class Representative for settlement

purposes only;

- (g) conditionally appoint the law firm Farnese P.C. as Class Counsel for settlement purposes only;
- (h) approve the objection and exclusion procedures for Settlement Class Members; and
- (i) appoint the Settlement Administrator.

The proposed Preliminary Approval Order shall be substantially similar to the form attached as **Exhibit A**. Elixir shall be permitted, but not required, to file its own brief or statement as may be necessary to state its positions and defend its interests in response to Plaintiff's motion for preliminary approval of the Settlement. Plaintiff will provide Elixir's counsel with the motion for preliminary approval that Plaintiff intends to file at least three (3) days before filing the motion with the Court. Elixir will not oppose certification of the Settlement Class.

**4.2 Final Court Approval of the Settlement.** At least fourteen (14) calendar days before the Final Approval Hearing set by the Court, Plaintiff will file a motion for final approval of the Settlement and proposed Final Order and Judgment:

- (a) Approving the Agreement as fair, reasonable and adequate and directing completion of the terms and provisions of this Agreement;
- (b) Adjudicating that the releases contained in Sections 3.1, 3.2 and 3.3 of this Agreement bind each Settlement Class Member who does not timely opt out of the Settlement;
- (c) Certifying the Settlement Class for settlement purposes only;
- (d) Approving a Class Representative Service Payment for Plaintiff as compensation for her services as the class representative;
- (e) Approving an award of Plaintiff's Counsel's Fees and Expenses as reasonable attorneys' fees and costs;
- (f) Entering judgment in the Action; and
- (g) Retaining the Court's jurisdiction over the enforcement of this Settlement.

The proposed Final Order and Judgment shall be substantially similar to the form attached as **Exhibit G**. Elixir shall be permitted, but not required, to file its own brief or statement as may be necessary to state its positions and defend its interests in response to Plaintiff's motion for final approval of the Settlement. Plaintiff will provide Elixir's counsel with the motion for final approval that Plaintiff intends to file at least three (3) days before filing the motion with the Court. Elixir will not oppose certification of the Settlement Class.

**4.3 Proof of Notice.** No later than seven (7) calendar days before the deadline for Plaintiff to file her brief in support of the Final Order and Judgment, the Settlement Administrator will serve upon Class Counsel and Elixir a declaration confirming that notice to the Settlement Class has been provided in accordance with Section 5 of this Agreement. Such Proof of Notice will include, *inter alia*, the number of Mailed Notices sent, as well as the number of Mailed Notices that were undeliverable, the number of Emailed Notices sent, as well as the Emailed Notices that were undeliverable, the number of Settlement Class Members who submitted valid claims as of the date of the declaration, the number and names of the Settlement Class Members who opted out, and the number of Settlement Class Members who objected to or commented on the settlement.

**4.4 Court Approval Contingency.** This entire Settlement is contingent upon court approval. Absent court approval there is no settlement, and the procedural status of the Action shall return to the *status quo ante*. If this Settlement is not approved by the court, the Parties expressly reserve all of their rights, remedies and defenses, including but not limited to Elixir's right to challenge class certification on any and all grounds. In the event that the court does not approve the Settlement, Elixir shall not be obligated to make any payments or provide any other monetary or non-monetary relief to Plaintiff or the Settlement Class Members, any attorneys' fees or expenses to Class Counsel, or any Class Representative Service Award to Plaintiff.

**4.5 If the Settlement Does Not Become Final.** If the court, or a reviewing court, fails to approve the Settlement or modifies or rejects the Settlement's terms in any material way, the Settlement will be deemed null and void, as if it had never been entered into by the Parties. In the event the Settlement is deemed null and void, the Parties will resume the Action as if the Settlement had not been entered, and the terms set forth in this Agreement will have no force and effect and may not be used in this Action or any other action or proceeding of any kind for any purpose.

**4.6 The Settlement Date.** The Settlement does not become final or effective, subject to court approval, until the Settlement Date.

## **5. CLASS NOTICE AND CLAIMS PROCEDURES.**

**5.1 Settlement Administration.** Notice and claims administration costs will be paid by Elixir (separate from the Cash Settlement Fund) up to \$300,000 (excluding any postage fees exceeding that amount). On or before fourteen (14) calendar days after entry of the Preliminary Approval Order, Elixir shall pay the estimated Settlement Administration Costs to the Settlement Administrator. Elixir's counsel and Plaintiff's Counsel will work cooperatively with the Settlement Administrator in connection with administering the Settlement. The Settlement Administrator shall retain a record of the provision of all Class Notice as described below and will provide periodic updates to the Parties during the Notice Period.

**5.2 Class Notice.** Subject to the court entering the Preliminary Approval Order, the Parties agree that the Settlement Administrator will provide notice in accordance with the form agreed to in this Agreement and approved by the court. The proposed notice forms are attached to this Agreement as **Exhibits B, C, D and E**. The proposed notice forms are subject to further consultation with the Settlement Administrator. Any revisions to the substance of the forms will

be agreed to by Plaintiff's Counsel and Elixir's Counsel. Notice shall include all of the following:

- (a) The web address for the Settlement Website will be [www.blsettlement.com](http://www.blsettlement.com) or a name substantially similar and approved in advance by Elixir. The Long Form Notice shall be posted on the Settlement Website and shall be substantially similar to the form attached as **Exhibit B**. The Settlement Website will also contain the Claim Form, Complaint, Agreement, the Preliminary Approval Order and Final Order and Judgment, following entry by the court, and such other information agreed to by Plaintiff's Counsel and Elixir's Counsel. Within seven (7) business days of when Plaintiff's Counsel files a motion for attorneys' fees and costs, that motion will be included on the Settlement Website. The Settlement Website shall be operative starting on or before thirty (30) calendar days after entry of the Preliminary Approval Order and shall be deleted and made inaccessible thirty (30) days after distribution of the Settlement Benefit to the majority of Authorized Claimants.
- (b) Long Form Notice shall consist of the full legal notice summarizing the proposed terms of this Agreement, as approved by Plaintiff's Counsel, Elixir's Counsel, and the Court. The Long Form Notice shall be substantially similar to the form attached as **Exhibit B**. The Long Form Notice will be posted on the Settlement Website and sent to Settlement Class members who so request the Long Form Notice.
- (c) Internet Notice shall consist of a social media campaign and/or banner advertisements that, when combined with the Email and Mailed Notices, will reach at least a 70% reach that will direct people to the Settlement Website to complete an online Claim Form. The Internet Notice shall be substantially similar to the Email Notice, unless otherwise agreed to by the Parties. The Settlement Administrator will provide the Internet Notice on or before thirty (30) calendar days after entry of the Preliminary Approval Order.
- (d) Email Notice shall be sent via Email to the extent such addresses are kept by Elixir. The Settlement Administrator will provide the Email Notice on or before thirty (30) calendar days after entry of the Preliminary Approval Order. The Email Notice shall be substantially similar to the form attached as **Exhibit C**. Settlement Class Members for whom Elixir maintains both a physical address and email address, shall be sent an Email Notice. If the Email Notice is undeliverable, those Class Members shall receive a Mailed Notice.
- (e) Mailed Notice shall be sent via postcard, pre-paid postage, sent by direct mail to the last known address of the Class Member to the extent such addresses are kept by Elixir. Before mailing the Mailed Notice, the Settlement Administrator shall update the addresses provided by Elixir with

the National Change of Address database and other available resources deemed suitable by the Settlement Administrator. If the Mailed Notice is returned as undeliverable, the Settlement Administrator shall perform skip trace research and shall make one (1) attempt to re-mail the Mailed Notice as soon as possible before the Claim Filing Deadline. The Settlement Administrator will mail the Mailed Notice on or before thirty (30) calendar days after entry of the Preliminary Approval Order. It will be conclusively presumed that the intended recipients received the Mailed Notice if the Mailed Notice has not been returned to the Settlement Administrator as undeliverable within fifteen (15) calendar days of mailing. The Mailed Notice shall be substantially similar to the form attached as **Exhibit D**.

- (f) Reminder Notice shall be sent at least fourteen (14) days prior to the Claim Filing Deadline. The Settlement Administrator will provide two (2) Reminder Notices to the Settlement Class Members to whom it has sent Email Notice. The Reminder Notice may also include reminders on social media. The Reminder Notice shall be substantially similar to the Email Notice, unless otherwise agreed to by the Parties.
- (g) Publication Notice shall be provided by the Settlement Administrator to the Settlement Class Members through a banner advertisement placed in a newspaper that is circulated state-wide in California, which shall be selected by counsel for the Parties. The Publication Notice shall be substantially similar to the Email Notice, unless otherwise agreed to by the Parties. The Settlement Administrator will provide the Publication Notice on or before 30 (30) calendar days after entry of the Preliminary Approval Order.
- (h) A live 24/7 call center will be set up with a person who will answer Settlement Class Members' questions using an agreed upon script and can further take the name, address and relevant information to send out Long Form Notices.
- (i) The Settlement Administrator shall retain a record of all such notice procedures and provide periodic updates to the Parties during the Notice Period.

### **5.3 Claims Procedure.**

- (a) Each Settlement Class Member who wishes to obtain a Cash Benefit must submit a complete and valid Claim Form on or before the Claim Filing Deadline.
- (b) The Claim Form may be submitted electronically or by U.S. Mail. The delivery date is deemed to be the date (i) the Claim Form is deposited in the U.S. Mail as evidenced by the postmark, in the case of submission by U.S. Mail, or (ii) in the case of submission electronically through the Settlement

Website, the date the Settlement Administrator receives the Claim Form, as evidenced by the transmission receipt.

- (c) The Settlement Administrator will review Claim Forms in real-time for validity and indications of fraud using ClaimScore. All Settlement Class Members who timely submit Claim Forms that meet the requirements of the Settlement Agreement and receive a ClaimScore of 700 or more will be deemed Authorized Claimants.

**5.4 Right to Verify.** The Settlement Administrator shall review all submitted Claim Forms and supporting documentation for completeness, validity, accuracy, and timeliness and may contact any claimant to request additional information and/or documentation to determine the validity of any Claim. In addition, the Settlement Administrator may verify that: (i) the information set forth in or attached to a submitted Claim Form is accurate; and (ii) based on the information set forth in or attached to a submitted Claims Form that the Claimant is a Settlement Class Member.

**5.5 Objections.** Any Settlement Class Member who has not submitted a timely written exclusion request pursuant to Section 5.6 of this Agreement and who wishes to object to the fairness, reasonableness, or adequacy of the Agreement, may elect to object to the Agreement by sending a written objection to the Settlement Administrator that (a) states the case name and number: *Danielle Skarpnes v. Elixir Cosmetics OPCO, LLC*, Case No. CU23-04638 (Superior Court of California, County of Solano) (b) states the full name, address, and telephone number of the Settlement Class Member making the objection; (c) contains a statement that he/she objects to the Agreement and the reasons for the objections; and (d) is signed by the Settlement Class Member making the objection or an authorized representative. The written objection must be submitted to the Settlement Administrator by U.S. Mail. The written objection must be postmarked no later than the Objection Deadline. The Settlement Administrator must serve on Class Counsel and Elixir's Counsel a list of Settlement Class Members who have objected along with the substance of those objections no later than seven (7) calendar days prior to the filing date of Plaintiff's motion for final approval. If a Settlement Class Member submits both an exclusion request and an objection, the exclusion request shall take precedence and will be considered valid and binding, and the objection shall be deemed to have been sent by mistake and rejected.

- (a) Settlement Class Members have the option to appear at the Final Approval Hearing, either in person or through counsel hired at the Settlement Class Member's expense, to object to the fairness, reasonableness, or adequacy of the Agreement, or to the award of attorneys' fees regardless of whether they have timely submitted a written objection to the Settlement Administrator.
- (b) Settlement Class Members who have retained their own counsel at their own expense to prepare a written objection must have their counsel file the objection that counsel prepares on their behalf on the docket with the Superior Court of California, County of Solano in addition to mailing it to the Settlement Administrator as described above. Settlement Class Members may also have their own attorney retained at their own expense appear at the Final Approval Hearing if their counsel notices his or her

intention to appear on the docket seven (7) days before the Final Approval Hearing.

- (c) Class Counsel will ensure that all objections sent to the Settlement Class Members who have not retained their own counsel are filed with the Superior Court of California, County of Solano in advance of the Final Approval Hearing.

**5.6 Exclusion from the Settlement Class.** Settlement Class Members may elect not to be part of the Settlement Class and not to be bound by this Agreement. To make this election, Settlement Class Members may send a signed letter or postcard to the Settlement Administrator stating: (a) the name and case number of the Action; (b) the full name, address, and telephone number of the person requesting exclusion; and (c) a statement that he/she does not wish to participate in the Agreement, postmarked no later than the Exclusion Deadline. The Settlement Administrator must serve on Class Counsel and Elixir's Counsel a list of Settlement Class Members who have timely and validly excluded themselves from the Settlement Class no later than seven (7) calendar days prior to the filing date of Plaintiff's motion for final approval. If a Settlement Class Member submits both a Claim Form and an exclusion request, the Claim Form shall take precedence and will be considered valid and binding, and the exclusion request shall be deemed to have been sent by mistake and rejected.

## **6. ADDITIONAL PROVISIONS.**

**6.1 Change of Time Periods.** All time periods and dates described in this Agreement are subject to the court's approval. These time periods and dates may be changed by the court or by the Parties' written agreement without notice to the Settlement Class.

**6.2 Inadmissibility.** This Agreement (whether approved or not approved, revoked, or made ineffective for any reason) and any proceedings or discussions related to this Agreement are inadmissible as evidence of any liability or wrongdoing whatsoever in any court or tribunal in any state, territory, or jurisdiction. Further, this Agreement shall not be construed or offered or received into evidence as an admission, concession, or presumption that class certification is appropriate, except to the extent necessary to consummate this Agreement and the binding effect of the Final Order and Judgment.

**6.3 Mutual Cooperation and Best Efforts.** The Parties acknowledge and agree to fully cooperate with each other and use their best efforts to accomplish the terms of this Agreement, including but not limited to the execution of documents and any other action reasonably necessary to implement the Settlement and the terms and conditions of this Agreement.

**6.4 No Prior Assignments.** In executing this Agreement, Plaintiff and each Settlement Class Member warrants and represents that s/he has not assigned, sold, transferred or otherwise disposed to any third party any actual or potential claim, any portion of any actual or potential claim, or any other matters that are being released in the Agreement. Plaintiff and each Settlement Class Member agrees to defend, indemnify, and hold harmless Elixir from and against any claim (including payment of attorneys' fees and costs) based on or in connection with or arising out of

any such assignment, sale, transfer, or other disposition made, purported or claimed.

**6.5 Non-Reversionary Settlement.** There will be no reversion of any amount in the Net Settlement Fund to Elixir.

**6.6 Intervening Change of Law.** Except as expressly provided herein in relation to the Injunctive Relief, the Settlement will not be affected by any future change, modification, reversal or clarification of law. Any change, modification, reversal or clarification of law will not affect the validity or enforceability of the Settlement unless such change, modification, reversal or clarification of law renders this Agreement unlawful.

**6.7 Voluntary Agreement.** This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of the Parties, or of any other person, firm, or entity.

**6.8 Binding on Successors.** This Agreement shall bind and inure to the benefit of the respective successors, assigns, legatees, heirs, and personal representatives of each of the Parties.

**6.9 Parties Represented by Counsel.** The undersigned Parties hereby acknowledge that they have been represented in negotiations for and in the preparation of this Agreement by independent counsel of their own choosing, that they have read this Agreement and have had it fully explained to them by such counsel, and that they are fully aware of the contents of this Agreement and of its legal effect.

**6.10 Entire Agreement.** This Agreement and all exhibits hereto contain the entire agreement between the Parties and constitute the complete, final, and exclusive embodiment of their agreement with respect to the Action. This Agreement is executed without reliance on any promise, representation, or warranty by any Party or any Party's representative other than those expressly set forth in this Agreement.

**6.11 Construction and Interpretation.** Neither the Parties nor any of the Parties' respective attorneys shall be deemed the drafter of this Agreement for purposes of interpreting any provision hereof in any judicial or other proceeding that may arise between or among them. This Agreement has been, and must be construed to have been, drafted by all the Parties to it, so that any rule that construes ambiguities against the drafter will have no force or effect.

**6.12 Headings and Formatting of Definitions.** The various headings used in this Agreement are solely for the convenience of the Parties and shall not be used to interpret this Agreement. Similarly, bolding and italicizing of definitional words and phrases is solely for the Parties' convenience and may not be used to interpret this Agreement. The headings and the formatting of the text in the definitions do not define, limit, extend, or describe the Parties' intent or the scope of this Agreement.

**6.13 Modifications and Amendments.** No amendment, change, or modification of this Agreement or any part thereof shall be valid unless in writing signed by the Parties or their counsel and approved by the court.



**6.14 Governing Law.** This Agreement is entered into in accordance with the laws of the State of California and shall be governed by and interpreted in accordance with the laws of the State of California, exclusive of its conflicts of law principles. The Parties agree that for purposes of the Settlement the Superior Court of California, County of Solano may assert general personal jurisdiction over the Parties.

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

**6.16 Execution Date.** This Agreement shall be deemed executed upon the last date of execution by all of the undersigned parties.

**6.17 Dismissal with Prejudice.** Plaintiff and Settlement Class Members shall provide a Release as described herein. Thereafter the court will dismiss the Action with prejudice, except that, prior to such dismissal with prejudice, the Parties agree that the court shall retain jurisdiction for three (3) years from the Settlement Date over the interpretation, effectuation, and implementation of this Agreement to ensure compliance with payment of the Settlement as provided herein.

**6.18 Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument. The several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies of executed copies of this Agreement may be treated as originals.

**6.19 Recitals.** The Recitals are incorporated by this reference and are part of the Agreement.

**6.20 No Conflict Intended.** Any inconsistency between this Agreement and the attached exhibits will be resolved in favor of this Agreement.

**6.21 Class Counsel Signatories.** Because the members of the Settlement Class could potentially be numerous, it is impossible or impractical to have each member of the Settlement Class execute this Agreement. The Long Form Notice to the Settlement Class described above will advise all members of the Settlement Class of the binding nature of the releases in this Agreement. Such Long Form Notice, when approved by the court and completed by the Parties, will have the same force and effect as if this Agreement were executed by each Settlement Class Member who does not timely opt out of the Settlement.

**6.22 Notices.** Any notice, instruction, objection or application to the Court sought in connection with this Agreement or other document to be given by any Party to any other Party shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid, if to Elixir to the attention of Elixir's Counsel, and if to Settlement Class Members to the attention of Plaintiff's Class Counsel on their behalf.

PLAINTIFF'S COUNSEL	ELIXIR'S COUNSEL
<p style="text-align: center;">Peter Farnese  <b>Farnese P.C.</b>            700 S. Flower St.,            Suite 1000            Los Angeles, CA 90017</p>	<p style="text-align: center;">Thomas J. Cunningham            Daniel A. Solitro  <b>Locke Lord LLP</b>            300 South Grand Avenue,            Suite 2600            Los Angeles, CA 90071</p>

**6.23 List of Exhibits:** The following exhibits are attached to this Agreement:

- Exhibit A: [Proposed] Preliminary Approval and Provisional Class Certification Order
- Exhibit B: Long Form Notice
- Exhibit C: Email Notice
- Exhibit D: Mailed Notice
- Exhibit E: Claim Form
- Exhibit F: Injunctive Relief
- Exhibit G: [Proposed] Final Approval Order and Judgment

**AGREED TO AND ACCEPTED:**

Dated: November 5, 2023

**Plaintiff Danielle Skarpnes**

By:   
 \_\_\_\_\_  
 Danielle Skarpnes

Dated: November \_\_, 2023

**Elixir Cosmetics OPCO, LLC**

By: \_\_\_\_\_  
 Michael Dewey

PLAINTIFF’S COUNSEL	ELIXIR’S COUNSEL
<p>Peter Farnese  <b>Farnese P.C.</b>  700 S. Flower St.,  Suite 1000  Los Angeles, CA 90017</p>	<p>Thomas J. Cunningham  Daniel A. Solitro  <b>Locke Lord LLP</b>  300 South Grand Avenue,  Suite 2600  Los Angeles, CA 90071</p>

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**AGREED TO AND ACCEPTED:**

Dated: November \_\_, 2023

**Plaintiff Danielle Skarpnes**

By: \_\_\_\_\_  
Danielle Skarpnes

Dated: November \_\_, 2023

**Elixir Cosmetics OPCO, LLC**

By: DocuSigned by:  
*Michael Dewey*  
91B5E3E334794B2 \_\_\_\_\_  
Michael Dewey

**APPROVED AS TO FORM:**

**Attorneys for Plaintiff and the Settlement Class:**

Dated: November 6, 2023

**FARNESE P.C.**

  
By: Peter Farnese

**Attorneys for Defendant Elixir Cosmetics OPCO, LLC**

Dated: November \_\_, 2023

**LOCKE LORD LLP**

\_\_\_\_\_  
By: Thomas J. Cunningham

**APPROVED AS TO FORM:**

**Attorneys for Plaintiff and the Settlement Class:**

**FARNESE P.C.**

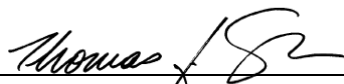
Dated: November \_\_, 2023

\_\_\_\_\_  
By: Peter Farnese

**Attorneys for Defendant Elixir Cosmetics OPCO, LLC**

Dated: November \_\_, 2023

**LOCKE LORD LLP**

  
\_\_\_\_\_  
By: Thomas J. Cunningham