

Execution Copy**SUPREME COURT OF THE STATE OF NEW YORK
BRONX COUNTY**

FREDERICK MCKINLEY and
LISA VIZCARRA, *individually on behalf of
themselves and all others similarly situated,*

Plaintiffs,

– against –

CONOPCO INC. and
UNILEVER UNITED STATES, INC.

Defendants.

Index No. 805260/2024E

STIPULATION AND AGREEMENT OF SETTLEMENT

This stipulation and agreement of settlement (the “Settlement”) is submitted pursuant to New York Civil Practice Law and Rule (“CPLR”) 908 in furtherance of the settlement of the above-captioned action (the “Action”). Subject to the approval of the Court, the Settlement is entered into by plaintiffs Frederick McKinley (“McKinley”) and Lisa Vizcarra (“Vizcarra”) (collectively, “Plaintiffs”) on behalf of themselves and the proposed Class, by and through their counsel, and Defendants Conopco, Inc. (“Conopco”) and Unilever United States, Inc. (“Unilever”) (collectively, “Defendants”) by and through their respective counsel. The Settlement is intended by Plaintiffs and Defendants to fully and finally compromise, resolve, discharge, and settle the Action subject to the terms and conditions set forth below and the final approval of the Court.

I. RECITALS

1.1 WHEREAS, on March 29, 2024, Plaintiff McKinley filed the Action against Defendant Conopco regarding certain representations on the label of Breyers Natural Vanilla ice cream.

1.2 WHEREAS, on June 26, 2024, the complaint in the Action was amended to: (1) add Plaintiff Vizcarra as a proposed class representative; (2) add Unilever as a co-defendant; and (3) allege a nationwide class.

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1.3 WHEREAS, on April 21, 2020, Plaintiff Vizcarra filed a putative class action complaint in the United States District Court for the Northern District of California, *Vizcarra v. Unilever United States, Inc.*, Case No. 4:20-CV-02777 (the “*Vizcarra Action*”), against Defendant Unilever on behalf of herself and all others similarly situated in the state of California.

1.4 WHEREAS, Defendant Conopco is the wholly-owned subsidiary of Defendant Unilever and is incorporated in the state of New York.

1.5 WHEREAS, the Parties have engaged in significant discovery, including, but not limited to, extensive document production, interrogatories, and the taking of oral testimony.

1.6 WHEREAS, the Parties engaged in significant motion practice, including a motion to dismiss and two motions for class certification, in the *Vizcarra Action*.

1.7 WHEREAS, the Parties strongly disagree on the merits and viability of the claims at issue.

1.8 WHEREAS, Defendants deny all of the allegations made by Plaintiffs, and all charges of wrongdoing or liability against them arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged against them by Plaintiffs either on an individual basis, or on behalf of a putative class.

1.9 WHEREAS, Plaintiffs believe all claims are viable and subject to class certification.

1.10 WHEREAS, the Parties have engaged in extensive arm’s length, good-faith negotiations in an effort to reach a resolution of the Labeling Claims (as defined below). Such negotiations culminated after two full-day mediation sessions with Peter Woodin of JAMS in New York, along with numerous follow-up discussions.

1.11 WHEREAS, the Parties, and their respective counsel, taking into account the risks, uncertainties, delay, and expense involved in pursuing the Labeling Claims, as well as other relevant considerations, have concluded that it is in the best interests of Plaintiffs and Defendants

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to compromise fully and finally settle the Labeling Claims in the manner and upon the terms and conditions set forth in this Agreement.

1.12 WHEREAS, the attorneys representing Plaintiffs (hereinafter referred to as “Class Counsel”) are experienced in litigating class action claims like the Labeling Claims asserted by Plaintiffs.

1.13 WHEREAS, Class Counsel have analyzed and evaluated the merits of all Parties’ contentions and this settlement as they affect all Parties and the Settlement Class Members (as defined below). Among the risks and uncertainties of the Action is the possibility that Plaintiffs will be unable to prove liability or damages (individually or on a class wide basis) at trial on a class-wide or individual basis. Plaintiffs and Class Counsel, after taking into account the foregoing, along with the risks, uncertainties and costs of further prosecution of the Action, are satisfied that the terms and conditions of this Agreement are fair, reasonable, adequate, and equitable, and that a settlement and the prompt provision of meaningful benefits to the Settlement Class are in the best interests of the Settlement Class Members.

1.14 WHEREAS, Defendants, while continuing to deny all allegations of, and disclaiming any liability with respect to any and all Labeling Claims, have concluded that it is in their best interests to resolve the Labeling Claims on the terms stated in this Agreement, in order to avoid further expense, inconvenience, and interference with ongoing business operations, and to dispose of burdensome litigation.

1.15 WHEREAS, the undersigned Parties agree, subject to approval by the Court, that the Labeling Claims asserted by Plaintiffs shall be fully and finally compromised on a nationwide basis, settled, and released on the terms and conditions set forth in this Agreement. The Parties intend that the Court conditionally certify a nationwide class for settlement and that this Agreement will encompass and end all pending, threatened, or possible litigation or claims of Plaintiffs against Defendants based on the subject matter of the Labeling Claims (as defined below).

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NOW, THEREFORE, without (a) any admission or concession on the part of Plaintiffs about the likelihood of success at trial, on appeal, or in other motions practice, or (b) any admission or concession of the merit of the Labeling Claims or of liability or wrongdoing or the lack of merit of any defense whatsoever by Defendants, it is hereby stipulated and agreed by the undersigned, on behalf of Plaintiffs, the Settlement Class, and Defendants, that this Action and all Claims of the Settlement Class be settled, compromised, and finally adjudged, subject to Court approval as required by CPLR 908 on the terms and conditions set forth herein.

The recitals stated above are true and accurate and are hereby made a part of this Settlement Agreement.

II. DEFINITIONS

Capitalized terms in this Agreement shall be defined as follows:

2.1 “Action” means the above-captioned lawsuit pending in the Supreme Court of New York, Bronx County, *McKinley et al. v. Conopco, Inc. et al.*, Index No. 805260/2024E.

2.2 “Actions” means the lawsuits of *McKinley et al. v. Conopco, Inc. et al.*, Index No. 805260/2024E, and the *Vizcarra* Action.

2.3 “Agreement” or “Settlement Agreement” means this Settlement Agreement, including all exhibits hereto.

2.4 “Allegations” means the allegations as asserted in the First Amended Complaint filed in the Action.

2.5 “Attorneys’ Fees and Costs” means such funds as may be awarded by the Court to Plaintiffs’ Counsel for their work, efforts, and expenditures in connection with the Actions and settlement, including fees, costs, and expenses of experts, consultants, or other individuals retained by, or who assisted Plaintiffs’ Counsel in connection with the Actions and settlement, as described more particularly in Section V of this Agreement.

2.6 “Claim” means a claim for Settlement Benefits submitted under Section III of this Agreement.

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2.7 “Claim Administrator” means, subject to Court approval, Epiq Class Action & Claims Solutions, Inc..

2.8 “Claimant” or “Claimants” means a consumer who as submitted a Claim Form

2.9 “Claim Filing Deadline” means ninety (90) days after the hearing date on Final Approval.

2.10 “Claim Form” means a form in substantially the same form as Exhibit B hereto to be used by Class Member to make a Claim under the Settlement.

2.11 “Class Counsel” or “Plaintiffs’ Counsel” means Reese LLP and Sheehan & Associates, P.C.

2.12 “Class Notice” means the notice to the Class to be disseminated by the Claim Administrator as set forth in the Notice Plan described in the Affirmation of Cameron R. Azari from Epiq Class Action & Claims Solutions, Inc. re: Qualifications and Implementation of the Notice Plan filed simultaneously with the filing of this Settlement Agreement and as approved in accordance with the Court’s Preliminary Approval.

2.13 “Class Period” means the period of time from April 21, 2016, through the date of preliminary approval.

2.14 “Class Representatives,” “Plaintiffs,” or “Representative Plaintiffs” means plaintiffs Frederick McKinley and Lisa Vizcarra collectively.

2.15 “Conopco” means defendant Conopco, Inc.

2.16 “Court” means the Supreme Court of the State of New York, Bronx County.

2.17 “Defendant” or “Defendants” means Conopco, Inc. and/or Unilever United States, Inc.

2.18 “Defendants’ Counsel” means August T. Horvath of Foley Hoag LLP.

2.19 “Deposit Amount” means the sum of four hundred and ninety-five thousand dollars \$495,000, which amount Defendants shall pay or cause to be paid into the Escrow Account within ten (10) days after the Preliminary Approval Date to pre-pay certain of the Claims Administrator’s

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fees and costs. Payment of the Deposit Amount shall constitute a credit in like amount against the Settlement Amount.

2.20 “Effective Date” means the date on which the Final Approval is final and no longer subject to any further appeal as of right, or by discretionary review.

2.21 “Exhibits” mean the exhibits attached to this Settlement Agreement.

2.22 “Final Approval” means the order and judgment entered by the Court approving this Settlement Agreement and certifying a class for settlement purposes.

2.23 “First Amended Complaint” means the amended class action complaint filed in the above-captioned action on June 26, 2024.

2.24 “Household” means any number of natural persons who currently or during the class period occupied the same dwelling unit.

2.25 “Labeling Claims” means all outstanding and putative claims, asserted in the First Amended Complaint by Plaintiffs in the Action.

2.26 “Litigation” means the motion practice, discovery, and settlement negotiations in the Actions.

2.27 “Long Form Notice” means notice to Settlement Class Members in substantially the same form as Exhibit C.

2.28 “McKinley” means plaintiff Frederick McKinley.

2.29 “Notice Date” means the day on which the Claim Administrator initiates the Online Notice.

2.30 “Notice Plan” means the Parties and Claim Administrator’s plan to provide the Settlement Class with notice of Settlement.

2.31 “Online Notice” means notice to Settlement Class Members in substantially the same form as Exhibit D.

2.32 “Opt-Out and Objection Deadline” means twenty-one (21) days prior to the initially scheduled hearing date on Final Approval.

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2.33 “Parties” means Plaintiffs Frederick McKinley and Lisa Vizcarra and Defendants Conopco, Inc. and Unilever United States, Inc., collectively.

2.34 “Party” means any one of Plaintiffs or Defendants.

2.35 “Person(s)” means any natural person.

2.36 “Preliminary Approval” means issuance of an order, granting preliminary approval to this Agreement as within the range of possible Final Approval; approving Class Notice to the Settlement Class Members as described in Part V below; and setting a hearing to consider Final Approval of the settlement and any objections thereto.

2.37 “Product” and/or “Products” means Breyers® Natural Vanilla ice cream, in any sizes. A complete list of the Products is included in Exhibit A attached hereto.

2.38 “Product Labeling” means the display on the labeling of the Product of the words “Natural Vanilla” and the images of the vanilla plant flowers, vanilla bean pods, and a scoop of ice cream with noticeable dark specks.

2.39 “Proof of Purchase” means a point of purchase receipt from a third-party retail source that reasonably establishes the fact and date of the purchase of the Product during the Class Period in the United States as determined by the Claim Administrator, subject to review of the Court.

2.40 “Released Claims” means any and all claims, demands, rights, suits, liabilities, and causes of action of every nature and description whatsoever, known or unknown, matured or unmatured, at law or in equity, existing under federal or state law, that any member of the Settlement Class has or may have against the Released Parties arising out of or related in any way to the transactions, occurrences, events, behaviors, conduct, practices, and policies alleged in, or that could have been alleged in the Action. For sake of clarity, Released Claims do not cover claims, if any, for bodily injury arising out of a Settlement Class Member’s use of the Products.

2.41 “Released Parties” means Conopco, Inc. and Unilever United States, Inc. and each and all of their respective present or former parent companies, subsidiaries, affiliates, predecessors,

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successors and assigns, and each and all of their respective present or former members, officers, directors, managers, employees, employers, attorneys, accountants, financial advisors, insurers, investment bankers, representatives, general and limited partners and partnerships, co-manufacturers, distributors, any trust of which either means Conopco, Inc. and Unilever United States, Inc. is a settlor, trustee, or beneficiary, heirs, executors, administrators, successors, affiliates, and assigns of each of them.

2.42 “Releasing Parties” means Plaintiffs Frederick McKinley and Lisa Vizcarra, and all Settlement Class Members who have not validly and timely opted out of the Settlement Class, and all their respective spouses, children, executors, representatives, guardians, wards, heirs, estates, successors, bankruptcy estates, bankruptcy trustees, predecessors, agents, and assigns, and all those who claim through them or who assert or could assert claims on their behalf.

2.43 “Service Award” or “Service Awards” mean any award sought by application to and approval by the Court that is payable to the Class Representatives to compensate them for their efforts in bringing this Action and achieving the benefits of this settlement on behalf of the Settlement Class.

2.44 “Settlement” means the settlement embodied in this Agreement.

2.45 “Settlement Amount” means the sum of eight million, eight hundred and fifty thousand U.S. dollars (\$8,850,000.00), which shall be used to pay Valid Claims, Notice and Administration Costs (including the Deposit Amount), Attorneys’ Fees and Costs, and Service Awards.

2.46 “Settlement Benefit(s)” means the benefits provided to Settlement Class Members as set forth in Section III of this Agreement.

2.47 “Settlement Class,” “Settlement Class Members,” “Class” or “Class Members” means all consumers who purchased the Products in the United States during the Class Period. Excluded from this definition are the Released Parties; any government entities; persons who made

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such purchase for the purpose of resale, persons who made a valid, timely request for exclusion; the presiding judges in the Actions; and mediator Peter Woodin of JAMS.

2.48 “Settlement Website” means an internet website created and maintained by the Claim Administrator, the URL of which shall be specified in the Notice Plan.

2.49 “Termination Date” means the date that the Agreement is terminated as set forth in Section 8.3.

2.50 “Unilever” means defendant Unilever United States, Inc.

2.51 “Valid Claim” means a Claim Form submitted by a Settlement Class Member that is: (a) submitted in accordance with the directions accompanying the Claim Form and the provisions of the Settlement; (b) on the initial submission, accurately, fully and truthfully completed and executed, with all of the information requested in the Claim Form, by a Class Member; (c) returned either electronically or via mail and postmarked by the Claim Filing Deadline or, if submitted online, is received by the Claim Filing Deadline; and (d) determined to be valid by the Claim Administrator.

2.52 “Vizcarra” means plaintiff Lisa Vizcarra.

2.53 “Vizcarra Action” means the lawsuit filed in the United States District Court for the Northern District of California, captioned *Vizcarra v. Unilever United States, Inc.*, Case No. 4:20-CV-02777 (N.D. Cal.)

Execution Copy**III. SETTLEMENT BENEFITS AND CLAIMS ADMINISTRATION****Monetary Relief**

3.1 Subject to the rights and limitations set forth in this Agreement, every Settlement Class Member shall have the right to submit a Claim for Settlement Benefits. A Claim shall be a Valid Claim only if submitted on the Claim Form pursuant to, and in compliance with, the procedures set forth in this Section III. Submission of a Claim, regardless of whether it is determined to be a Valid Claim, shall confer no rights or obligations on any Party, any Settlement Class Member, or any other Person, except as expressly provided herein.

3.2 At the election of the Settlement Class Member, Claim Forms may be submitted in paper via regular U.S. mail or online at the Settlement Website. Claim Forms must be postmarked or submitted online no later than the Claim Filing Deadline. Claim Forms postmarked or submitted online after that date will not be Valid Claims. For Claim Forms that are submitted online, the Class Member shall have the opportunity to upload Proof of Purchase image files (e.g., jpg, tif, pdf); to preview and confirm information entered in the Claim Form prior to submitting the claim; and to have a confirmation email sent that includes the information submitted, the names of the files uploaded, and the date and time the Claim Form was received.

3.3 On the Claim Form, the Settlement Class Member, or a Person with authority to sign and bind the Settlement Class Member, must provide and certify the truth and accuracy of the following information under the penalty of perjury by signing the Claim Form physically, or by e-signature, to be considered a Valid Claim:

- a. The Settlement Class Member's name and mailing address;
- b. The Settlement Class Member's email address (unless the Settlement Class Member submits a claim form by mail, in which case an email address is optional, or the Settlement Class Member attests that he or she does not have an email address);

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- c. That the Settlement Class Member made the purchase or purchases directly at a retail establishment or online;
- d. That the claimed purchases were not made for purposes of resale, commercial use or for any other purpose; and
- e. For each claimed purchase that is not supported by Proof of Purchase: (i) the approximate date of the purchase; (ii) if the purchase was made at a retail establishment, the city and state in which the retail establishment at which the purchase was made was located; (iii) the name(s) of the Product(s) purchased; and (iv) the approximate amount(s) paid for the Product(s) purchased.

3.4 Subject to the total dollar value cap in Settlement Benefits as provided in Section 3.6, each Settlement Class Member who submits one (1) Valid Claim per household, as determined by the Claim Administrator, shall receive a Settlement Benefit as follows:

- a. A Settlement Class Member who submits a Valid Claim with Proof of Purchase shall receive a cash payment of \$1.00 per Product for which Proof of Purchase is provided, with no limit.
- b. A Settlement Class Member who submits a Valid Claim without Proof of Purchase shall receive a cash payment of \$1.00 per Product claimed, up to a maximum of eight (8) Products.
- c. Claims with Proof of Purchase and without Proof of Purchase shall be cumulative. For example, if a Claimant makes a claim for six products without Proof of Purchase and for five Products with Proof of Purchase, that Claimant shall receive compensation for 11 Products for \$11.00.
- d. The total cash payment due to the Settlement Class Member shall be provided electronically or in a single check payable to the Settlement Class Member, as elected by the Settlement Class Member.

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3.5 Each Household is limited to and may only submit a single Claim Form and is subject to the limits for a single Settlement Class Member.

3.6 If the total dollar value of Valid Claims submitted exceeds the portion of the Settlement Amount of eight million, eight hundred and fifty thousand U.S. dollars (\$8,850,000) that remains after the Settlement Amount is reduced due to payment of Notice and Administration Costs (including the Deposit Amount), Attorneys' Fees and Costs, and Service Awards, the Settlement Benefit payable for each Valid Claim shall be reduced on a pro rata basis. If the total dollar value of Valid Claims submitted is less than the portion of the Settlement Amount of eight million, eight hundred and fifty thousand U.S. dollars (\$8,850,000) that remains after the Settlement Amount is reduced due to payment of Notice and Administration Costs (including the Deposit Amount), Attorneys' Fees and Costs, and Service Awards, the unused balance of the Settlement Amount shall be returned to Defendants.

3.7 The Claim Administrator shall be solely responsible for, among other things, providing notice as set forth in the Notice Plan, processing Claim Forms, administering the Settlement Website, administering the exclusion process, administering the Settlement Benefit claims process described herein (including receiving and maintaining on behalf of the Court and the Parties any Settlement Class Member correspondence regarding requests for exclusion from the Settlement Class), and such other duties as may be reasonably necessary to administer the terms of this Agreement. The Claim Administrator shall not approve duplicate or multiple claims for the same purchase but shall deem valid only one claimant for each purchase. The Claim Administrator will use adequate and customary procedures and standards to prevent the payment of fraudulent claims and to pay only Valid Claims. The Claim Administrator and Parties shall have the right to audit claims, and the Claim Administrator may request additional information from Claimants. If any fraud is detected or reasonably suspected, the Claim Administrator can require further information from the Settlement Class Member or deny claims, subject to the supervision of the Parties and ultimate oversight by the Court.

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3.8 The determination of validity of Claims shall occur within a reasonable time. The Claim Administrator shall have discretion to reasonably approve or deny all Claims. Plaintiffs' Counsel and Defendants shall have the right to audit claims and to challenge the Claim Administrator's decision by motion to the Court. Plaintiffs' Counsel's or Defendants' choice not to audit the validity of any one or more Claim Forms shall not constitute or be construed as a waiver or relinquishment of any audit or other rights as to any other Claim Forms, individually or as a group, and similarly, shall not be construed as a waiver or relinquishment by such Party as to any of its audit and other rights under this Agreement. No Person shall have any claim against Plaintiffs, Defendants, Plaintiffs' Counsel, Defendants' Counsel, or the Claim Administrator based on any determination of a Valid Claim, distributions or awards made in accordance with this Agreement and the Exhibits hereto. Neither Plaintiffs nor Defendants, nor their respective counsel, shall have any liability whatsoever for any act or omission of the Claim Administrator.

3.9 Within thirty (30) days after the Claim Filing Deadline, the Claim Administrator shall notify by email (or U.S. mail if no email address is provided) all Settlement Class Members whose Claims are denied of the reason(s) for the denial, using the email address or physical address (if any) provided by the Settlement Class Member on the Claim Form. If no email address or physical address is provided by the Settlement Class Member on the Claim Form, the Administrator shall not have an obligation to provide the Settlement Class Member any notification of the denial of the claim or the reasons for denial.

3.10 Valid Claims shall be paid electronically or by check to the Settlement Class Member and mailed to the address provided on the Claim Form, as updated in the National Change of Address Database, one hundred and fifty (150) days after Final Approval. In the event of an appeal from Final Approval that challenges only the award of Attorneys' Fees and Costs and/or the Service Awards and does not challenge any other aspect of the settlement and does not raise an issue that could result in the reversal of Final Approval or modification of other terms of the settlement, then all Valid Claims shall still be paid within one hundred and fifty (150) days after

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Final Approval, unless otherwise ordered by the Court. If the appeal challenges any other aspect of the Settlement, Valid Claims shall be paid sixty (60) days after the Effective Date.

3.11 All settlement payments shall be subject to a ninety (90) days void period, after which the payments shall no longer be negotiable. If a settlement payment is not negotiated, the Settlement Class Member shall not be entitled to any further payment under this Agreement. If the check is returned as undeliverable, the Claim Administrator shall send an email to the claimant, if one was provided with the claim, to attempt to obtain a better address, and if obtained, shall mail the check to the new address, but shall have no other obligation to skip-trace or obtain an updated address. The return or failure to cash checks shall have no effect on a Settlement Class Member's release of claims, obligations, representations, or warranties as provided herein, which shall remain in full effect.

3.12 No deductions for taxes will be taken from any Settlement Benefit at the time of distribution. Settlement Class Members are responsible for paying all taxes due on such Settlement Benefits. All Settlement Benefit payments shall be deemed to be paid solely in the year in which such payments are actually issued. Counsel and the Parties do not purport to provide legal advice on tax matters to each other or Settlement Class Members. To the extent this Agreement, or any of its exhibits or related materials, is interpreted to contain or constitute advice regarding any U.S. Federal or any state tax issue, such advice is not intended or written to be used, and cannot be used, by any Person for the purpose of avoiding penalties under the Internal Revenue Code or any state's tax laws.

Injunctive Relief

3.13 Within twelve (12) months of the Effective Date, Defendants shall develop a new Product formula that does not include vanillin derived from non-vanilla plant sources.

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4.1 Prior to the Notice Date, the Claim Administrator shall establish the Settlement Website, which shall contain the Long Form Notice in a downloadable PDF format; answers to frequently asked questions; a Contact Information page that includes the address for the Claim Administrator and addresses and telephone numbers for Plaintiffs' Counsel and Defendants' Counsel; the Agreement; the signed order of Preliminary Approval; a downloadable and online version of the Claim Form; a downloadable and online version of the form by which Settlement Class Members may exclude themselves from the Settlement Class; and (when they become available) the motion for final approval and Plaintiffs' application(s) for Attorneys' Fees, Costs and Service Awards, and any Order on Final Approval.

4.2 The Claim Administrator will terminate the Settlement Website two-hundred and forty (240) days after either (1) the Effective Date, or (2) the date on which the settlement is terminated or otherwise not approved by a court.

4.3 Notice to the Class shall be provided on websites and/or social media platforms chosen by the Claim Administrator and accessible to desktop and mobile users, so that overall notice of the Settlement is reasonably calculated to apprise the Settlement Class Members of the Settlement. Such notice shall begin no later than thirty (30) days after Preliminary Approval. No later than thirty (30) days prior to the hearing on Final Approval, the Claim Administrator shall submit a declaration to the Court under penalty of perjury explaining how the media were chosen and attesting to the number of impressions delivered.

4.4 The Claim Administrator shall establish and maintain a toll-free telephone helpline, available 24 hours per day, where callers may obtain information about the Settlement and Action.

4.5 Class Counsel and Defendants shall supervise the Claim Administrator in the performance of the notice functions set forth in this Section IV.

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4.6 At least fourteen (14) days prior to the final approval hearing referenced in Section VI of this Agreement, the Claim Administrator shall certify to the Court that it has complied with the notice requirements set forth herein.

4.7 Defendants shall be responsible for paying all costs of notice as set forth in this Section IV and all costs of the Claim Administrator in processing objections and exclusion requests as set forth herein.

V. ATTORNEYS' FEES, EXPENSES AND CLASS REPRESENTATIVE PAYMENT

5.1 Attorneys' Fees, Costs, and Expenses. No later than thirty (30) days prior to the initially scheduled hearing on Final Approval, Class Counsel may apply to the Court for an award from Defendants of their Attorneys' Fees in a total amount of \$2,950,000. Class Counsel shall also be allowed to apply for reimbursement of costs not to exceed \$225,000, which shall be separately paid from Attorneys' Fees. Defendants agree not to oppose Class Counsel's application for Fees and Costs, as long as they are no more than the amounts identified immediately above. The total amount of \$3,175,000 for Fees and Costs shall cover all fees and costs in the Actions. Class Counsel submits to the jurisdiction of this Court for the enforcement of this provision of the Agreement and for enforcement of all other provisions of this Agreement.

5.2 Class Representative Payment. No later than thirty (30) days prior to the initially scheduled hearing on Final Approval, Plaintiffs may apply to the Court for a Service Award in an amount not to exceed \$5,000 each (for a total of \$10,000), subject to approval by the Court, as compensation for (a) the work they performed to represent the class and (b) the general release set forth in Section VII. Defendants agree not to oppose the application for Service Awards, as long as they are no more than the amounts identified immediately above.

5.3 Defendants shall be responsible for paying their own attorneys' fees and expenses.

5.4 The Attorneys' Fees and Costs awarded to Plaintiffs' Counsel shall be paid to Plaintiffs' Counsel within sixty (60) days after the Effective Date.

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5.5 Within sixty (60) days after the Effective Date, any Court-approved Service Award shall be wired by Defendants to Plaintiffs' Counsel to be paid to Plaintiffs.

VI. CLASS SETTLEMENT PROCEDURES

6.1 Class Certification. The Parties agree that, for settlement purposes only, this Action shall be certified as a class action pursuant with Plaintiffs as the Class Representatives and Plaintiffs' counsel as Class Counsel.

6.2 In the event the Settlement Agreement is terminated for any reason, the certification of the Class in this Action shall be vacated, and the Action shall proceed as if the Class had not been certified. Defendants' conditional consent herein to certification of the Class shall not be used against Defendants by any Party or non-party for any purpose in this Action or any other litigation, lawsuit, or proceeding of any kind whatsoever.

6.3 Settlement Approval. Plaintiffs shall move for an order granting Preliminary Approval to this Agreement as within the range of possible Final Approval; approving Class Notice to the Settlement Class Members as described in Part IV above; and setting a hearing to consider Final Approval of the settlement and any objections thereto. Defendants shall have no obligation to make separate filings in support of the motion but may do so at their election after the motion has been filed. Defendants shall appear at the hearing to confirm their agreement with the terms of the settlement as provided herein. The Parties agree to the form and substance of the Proposed Order of Preliminary Approval, attached hereto as Exhibit E.

6.4 Final Approval Order and Judgment. No later than thirty (30) days prior to the hearing on Final Approval, or otherwise in accordance with the court's schedule for the Final Approval Hearing, Plaintiffs shall move for entry of an order of Final Approval, granting Final Approval of this Settlement and holding this Agreement to be final, fair, reasonable, adequate, and binding on all Settlement Class Members who have not excluded themselves as provided below, and ordering that the settlement relief be provided as set forth in this Agreement, ordering the releases as set forth in Section VII below, and entering judgment in this case. Defendants shall

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have no obligation to make separate filings in support of the motion. Defendants shall appear at the hearing to confirm their agreement with the terms of the Settlement as provided herein.

6.5 Exclusions and Objections. The Notice shall advise prospective Settlement Class Members of their rights to forgo the benefits of this Settlement and pursue an individual claim; to object to this Settlement individually or through counsel; and, if they object, to appear at the final approval hearing.

6.6 If any Settlement Class Member wishes to object to the settlement, the Settlement Class Member must submit a written objection to the Claim Administrator. The written objection may be submitted by U.S. mail or express mail, but to be timely, it must be postmarked by the Objection Deadline. Each objection must include: (i) the case name and number: *McKinley et al. v. Conopco, Inc. et al.*, Index No. 805260/2024E; (ii) the name, address and telephone number of the objector; (iii) the name, address, and telephone number of all counsel (if any) who represent the objector, including any former or current counsel who may be entitled to compensation for any reason if the objection is successful, and legal and factual support for the right to such compensation; (iv) documents or testimony sufficient to establish membership in the Settlement Class; (v) a detailed statement of any objection asserted, including the grounds therefor; (vi) whether the objector is, and any reasons for, requesting the opportunity to appear and be heard at the final approval hearing; (vii) the identity of all counsel (if any) representing the objector who will appear at the final approval hearing and, if applicable, a list of all persons who will be called to testify in support of the objection; (viii) copies of any papers, briefs, or other documents upon which the objection is based; (ix) a detailed list of any other objections submitted by the Settlement Class Member, or his/her counsel, to any class litigations submitted in any state or federal court in the United States in the previous five (5) years (or affirmatively stating that no such prior objection has been made); and (x) the objector's signature, in addition to the signature of the objector's attorney (if any). Failure to include documents or testimony sufficient to establish membership in the Settlement Class shall be grounds for overruling and/or striking the objection on grounds that

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the objector lacks standing to make the objection. Failure to include any of the information or documentation set forth in this paragraph also shall be grounds for overruling an objection. The Parties may respond to any objection to the Settlement with appropriate arguments and evidence.

6.7 If any Settlement Class Member wishes to be excluded from (in other words, opt out of) this Settlement, the Settlement Class Member may do so by completing the exclusion form at the Settlement Website; downloading and submitting to the Claim Administrator a completed exclusion form; or submitting a valid request to exclude themselves, as described in the Notice, to the Claim Administrator. Requests to exclude must be received by the Claim Administrator (if submitted electronically) or postmarked (if sent via mail or express mail) by the Opt-Out Deadline or they shall not be valid. A Settlement Class Member who elects to exclude themselves from this Settlement shall not be permitted to object to this Settlement or to intervene. Mass or class opt-outs are not allowed. Any Settlement Class Member who does not submit a timely request for exclusion shall be bound by all subsequent proceedings, orders, and the Final Approval in this Action relating to this Settlement Agreement, even if he or she has pending, or subsequently initiates, litigation, arbitration, or any other proceeding against Defendants relating to the Released Claims.

6.8 The proposed Preliminary Approval order and Long Form Notice will provide that any Settlement Class Member wishing to object or exclude themselves who fails to properly or timely file or serve any of the requested information and/or documents will be precluded from doing so.

6.9 Immediately upon receipt of any objection, the Claim Administrator shall forward the objection and all supporting documentation to counsel for the Parties. At least fourteen (14) days prior to the hearing on Final Approval, Plaintiffs' Counsel shall file all such objections and supporting documentation with the Court along with any response to the objection made by the Parties.

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6.10 At least fourteen (14) days prior to the hearing on Final Approval, the Claim Administrator shall prepare a list of the names of the Persons who, pursuant to the Long Form Notice, have excluded themselves from the Settlement Class in a valid and timely manner, and Plaintiffs' Counsel shall file that list with the Court.

6.11 If a Settlement Class Member submits both a Claim Form and an exclusion request, the Claim Form shall take precedence and be considered valid and binding, and the exclusion request shall be deemed to have been sent by mistake and rejected.

6.12 A Settlement Class Member who objects to the settlement may also submit a Claim Form on or before the Claim Filing Deadline, which shall be processed in the same way as all other Claim Forms. A Settlement Class Member shall not be entitled to an extension to the Claim Filing Deadline merely because the Settlement Class Member has also submitted an objection.

6.13 If a Settlement Class Member submits both an objection and an exclusion request, the exclusion shall take precedence and be considered valid and binding, and the objection shall be deemed to have been sent by mistake and rejected.

6.14 Effect If Settlement Not Approved or Agreement Is Terminated. This Agreement was entered into only for purposes of settlement. In the event that Preliminary or Final Approval of this settlement and this Agreement does not occur for any reason, or if Final Approval is reversed on appeal, then no term or condition of this Agreement, or any draft thereof, or discussion, negotiation, documentation, or other part or aspect of the Parties' settlement discussions shall have any effect, nor shall any such matter be admissible in evidence for any purpose in the Action, or in any other proceeding, and the parties will be restored to their respective places in the Action prior to the date on which the motion for Preliminary Approval was filed. The Parties agree that all drafts, discussions, negotiations, documentation, or other information prepared in relation to this Agreement, and the Parties' settlement discussions, shall be treated as strictly confidential and may not, absent a court order, be disclosed to any Person other than the Parties' counsel, and only for purposes of the Action.

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7.1 Upon the Effective Date and by operation of the judgment, the Releasing Parties shall have fully, finally, and forever released, relinquished, and discharged against the Released Parties all Released Claims (including, without limitation, any unknown claims), as well as any claims arising out of, relating to, or in connection with, the defense, settlement or resolution of this Action or the Released Claims.

7.2 No Admission of Liability. This Agreement reflects, among other things, the compromise and settlement of disputed claims among the Parties hereto, and neither this Agreement nor the releases given herein, nor any consideration therefor, nor any actions taken to carry out this Agreement are intended to be, nor may they be deemed or construed to be, an admission or concession of liability, or the validity of any claim, or defense, or of any point of fact or law (including but not limited to matters respecting class certification) on the part of any Party. Defendants expressly deny the allegations of the Action including all Labeling Claims. Neither this Agreement, nor the fact of settlement, nor the settlement proceedings, nor settlement negotiations, nor any related document, shall be used as an admission of any fault or omission by the Released Parties, or be offered or received in evidence as an admission, concession, presumption, or inference of any wrongdoing by the Released Parties. The Released Parties may file the Agreement and/or the Final Approval order in any action or proceeding that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

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7.3 Protected Communication. This Agreement and all negotiations, correspondence and communications leading up to its execution will be deemed to be within the protection of CPLR 4547 and any analogous state or federal rules or principles.

VIII. ADDITIONAL PROVISIONS

8.1 Best Efforts. Subject to the limitations expressed herein, the Parties' counsel shall use their best efforts to cause the Court to give Preliminary Approval to this Agreement and settlement as promptly as practicable, to take all steps contemplated by this Agreement to effectuate the settlement on the stated terms and conditions, to cooperate in addressing any objections, and to obtain Final Approval of this Agreement. The Parties and Counsel shall not encourage anyone directly or indirectly to opt out or object. If the Court requires changes to the Agreement as a prerequisite to Preliminary Approval or Final Approval, the Parties shall negotiate in good faith regarding such changes.

8.2 Changes of Time Periods. The time periods and/or dates described in this Agreement with respect to the giving of notices and hearings are subject to approval and change by the Court or by the written agreement of Plaintiffs' Counsel and Defendants' Counsel, without notice to Settlement Class Members except that the Claim Administrator shall ensure that such dates are posted on the Settlement Website.

8.3 Termination Rights. Either Party may unilaterally terminate this Settlement Agreement, declare it null and void, and have no further obligations under this Settlement Agreement, if any of the following conditions subsequent occurs:

- a. The Parties fail to obtain and maintain Preliminary Approval of the proposed settlement;
- b. The Court refuses to certify the Settlement Class;
- c. The Court fails to enter Final Approval consistent with the provisions of the Settlement Agreement; or
- d. If any timely appeal is taken, the Settlement Agreement is not upheld on appeal.

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8.4 Time for Compliance. All time periods set forth herein shall be computed in calendar days unless otherwise specified. If the date for performance of any act required by or under this Agreement falls on a Saturday, Sunday or court holiday, that act may be performed on the next business day with the same effect as if it had been performed on the day or within the period of time specified by or under this Agreement.

8.5 Governing Law. This Agreement is intended to and shall be governed by the laws of New York, without regard to conflicts of law principles that would require the application of the laws of another jurisdiction.

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

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

8.8 Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the respective heirs, successors and assigns of the Parties hereto.

8.9 No Waiver. The waiver by any Party of any provision or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.

8.10 No Assignment. Plaintiffs and Plaintiffs' Counsel represent and warrant that none of Plaintiffs' Claims referred to in this Litigation or this Settlement Agreement have been assigned, encumbered, or in any manner transferred in whole or in part.

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8.11 Execution in Counterparts. This Agreement shall become effective upon its execution by all of the undersigned. The Parties may execute this Agreement in counterparts and/or by fax or electronic mail, and execution of counterparts shall have the same force and effect as if all Parties had signed the same instrument.

8.12 Captions. Captions and section numbers herein are inserted merely for the reader's convenience, and in no way define, limit, construe, or otherwise describe the scope or intent of the provisions of this Agreement.

8.13 Extensions of Time. The Parties reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extension of time that might be needed to carry out any of the provisions of this Agreement.

8.14 Enforcement of this Agreement. The Court shall retain jurisdiction to enforce, interpret, and implement this Agreement. All Parties hereto submit to the jurisdiction of the Court for these purposes.

8.15 Severability. In the event that any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable, or void, this Settlement Agreement shall continue in full force and effect without said provision.

8.16 No Primary Drafter of Settlement Agreement. The determination of the terms of, and the drafting of, this Settlement Agreement has been by mutual understanding after negotiation, with consideration by and participation of, the Parties hereto and their counsel.

8.17 Variance in Terms. In the event of any variance between the terms of this Settlement Agreement and any of the Exhibits hereto, the terms of this Settlement Agreement shall control and supersede the Exhibit(s).

8.18 Authorization to Enter Settlement Agreement. The individuals signing this Settlement Agreement on behalf of Defendants represents that they are fully authorized by Defendants to enter into, and to execute, this Settlement Agreement on behalf of Defendants. Plaintiffs' Counsel represent that they are fully authorized to conduct settlement negotiations with

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Defendants' counsel on behalf of Plaintiffs and to enter into, and to execute, this Settlement Agreement on behalf of the Settlement Class. Plaintiffs enter into and execute this Settlement Agreement on behalf of themselves, and as representatives of and on behalf of the Settlement Class, subject to Court approval.

8.19 Plaintiffs to Be Included in Settlement Class. Plaintiffs hereby agree not to request to exclude themselves from the Settlement Class, and any such request shall be of no force or effect.

8.20 Notices. All notices to the Parties or counsel required by this Agreement, shall be made in writing and communicated by mail or email to the following addresses:

If to Plaintiffs or Plaintiffs' Counsel:

Michael R. Reese, Esq.
REESE LLP
100 West 93rd Street, 16th Floor
New York, New York 10025
Telephone: (212) 643-0500
Email: mreese@reesellp.com

If to Defendants or Defendants' Counsel:

August T Horvath
FOLEY HOAG LLP
1301 Avenue of the Americas, 25th floor
New York, New York 10019
Telephone: (212) 812.0344
Email: ahorvath@foleyhoag.com

8.21 Confidentiality and Non-Disparagement. The Parties and their counsel agree that they shall not cause any aspect of the Litigation or the terms of this Settlement not available in the public record to be reported to the public, the media, news reporting services. Any statement to the public, the media, or news reporting services shall be limited to what is available in the public record. Neither Plaintiffs nor Defendants shall disparage the other.

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IN WITNESS HEREOF the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below and agree that it shall take effect on the last date it is executed by all of the undersigned.

[SIGNATURES ON FOLLOWING PAGE]

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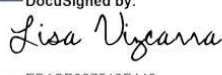
APPROVED AND AGREED:

DATED: July 2, 2024

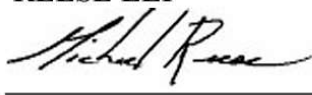
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 Frederick McKinley
Plaintiff and Class Representative

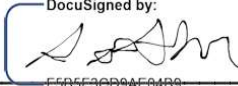
DATED: July 2, 2024

DocuSigned by:

 EB1CE827512F442...
 Lisa Vizcarra
Plaintiff and Class Representative

DATED: July 2, 2024

REESE LLP

 Michael R. Reese
Co-Lead Class Counsel and Plaintiffs' Counsel

SHEEHAN & ASSOCIATES, P.C.

DocuSigned by:

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 Spencer Sheehan
Co-Lead Class Counsel and Plaintiffs' Counsel

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APPROVED AND AGREED (CONTINUED):

DATED: July 2, 2024

DEFENDANT CONOPCO, INC.

By: 

Name: Natalie Lockwood

Its: Associate General Counsel, Global Litigation - Unilever

DATED: July 2, 2024

DEFENDANT UNILEVER UNITED STATES, INC.

By: 

Name: Natalie Lockwood

Its: Associate General Counsel, Global Litigation - Unilever

DATED: July 2, 2024

FOLEY HOAG LLP


August T. Horvath
Defendants' Counsel