



Competition Law (“UCL”), Cal. Bus. & Prof. Code § § 17200 *et seq.*, and for Breach of Express and Implied Warranty.

1.2 WHEREAS, on February 6, 2012, pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure, Plaintiffs filed a First Amended Complaint to add additional plaintiff parties, a claim under California’s False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.*, and to state legal challenges to additional products manufactured and sold by Defendants.

1.3 WHEREAS, based upon the discovery taken to date, investigation, and evaluation of the facts and law relating to the matters alleged in the pleadings, plus the risks and uncertainties of continued litigation and all factors bearing on the merits of settlement, Plaintiffs and Class Counsel have agreed to settle the claims asserted in the Action pursuant to the provisions of this Settlement.

**NOW THEREFORE**, subject to the Final Approval of the Court as required herein and by applicable law and rules, the Settling Parties hereby agree, in consideration of the mutual promises and covenants contained herein, that any Released Claims against any Released Parties shall be settled, compromised and forever released upon the following terms and conditions.

**TERMS AND CONDITIONS OF THE SETTLEMENT**

**1. DEFINITIONS**

As used herein, the following terms have the meanings set forth below.

1.1. “CAFA Notice” means the notice of this settlement to the appropriate federal and state officials in the United States, as provided by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and as further described in Paragraph 5.1.4.

1.2. “Claim Form” means the document to be submitted by Claimants seeking payment pursuant to this settlement agreement, attached as Exhibit A.

1.3. “Claim-In Period” means a period of forty-five days after the date the Court enters Judgment.

1.4. “Claimant” means a settlement class member who submits a claim for payment.

1.5. “Class” means all persons in the United States who purchased the Products as defined in Paragraph 1.27 within the Class Period as defined in Paragraph 1.7.

1.6. “Class Action Administrator” means the company or companies jointly selected by the Parties and approved by the Court to provide notice to the Class, CAFA Notice, and to administer the claims process.

1.7. “Class Period” means January 1, 2000 through Final Judgment.

1.8. “Class Counsel” means the Representative Plaintiffs’ counsel of record in the Litigation, the Law Office of Ronald A. Marron, APLC and the Weston Firm.

1.9. “Class Member” means a Person who falls within the definition of the Class set forth in Paragraph 7.1.1.

1.10. “Court” means the United States District Court for the Southern District of California.

1.11. “Defendants” means Boiron, Inc. and Boiron USA, Inc., collectively, as well as their past, present, and future officers, directors, shareholders, employees, predecessors, affiliates, parents, subsidiaries, partners, distributors, principals, insurers, administrators, agents, servants, successors, trustees, vendors, subcontractors, co-conspirators, buyers, independent contractors, attorneys, representatives, heirs, executors, experts, consultants, and assigns of all of the foregoing persons and entities.

1.12. “Defense Counsel” means Defendants’ counsel of record in the Litigation, Patton Boggs LLP and Wilson, Turner and Kosmo LLP.

1.13. “Dilution Disclaimer” means the injunctive relief provided for in paragraph 4.1.3.

1.14. “Effective Date” means the first date by which any Judgment entered pursuant to the Agreement becomes Final.

1.15. “FDA” means the United States Food and Drug Administration.

1.16. “FDA Disclaimer” means the injunctive relief provided for in paragraph 4.1.2.

1.17. “Final” means (a) if no appeal from the Judgment is filed, the date of expiration of the time for the filing or noticing of any appeal from the Judgment; or (b) if an appeal from the Judgment is filed, and the Judgment is affirmed or the appeal dismissed, the date of such affirmance or dismissal; or (c) if a petition for certiorari seeking review of the Appellate Judgment is filed and denied, the date the petition is denied; or (d) if a petition for a writ of certiorari is filed and denied, the date the petition is denied; or (e) if a petition for a writ of certiorari is filed and granted, the date of final affirmance or final dismissal of the review proceeding initiated by the petition for a writ of certiorari. Any proceeding or order, or any appeal or petition for a writ of certiorari pertaining solely to any application for attorneys’ fees or expenses will not in any way delay or preclude the Judgment from becoming Final.

1.18. “Judgment” means the judgment to be entered by the Court pursuant to the Settlement.

1.19. “Litigation” means *Gallucci et al. v. Boiron et al.*, No. 11-cv-2039-JAH-NLS, currently pending in the U.S. District Court for the Southern District of California.

1.20. “Net Settlement Fund” shall mean the Settlement Fund, as defined herein, less claims administration expenses, notice expenses, any fee award, reimbursement of expenses, any incentive award, and tax expenses.

1.21. “Notice” means a document, substantially in the form of Exhibit B hereto, and “Summary Notice” means a document substantially in the form of Exhibit C hereto, to be disseminated in accordance with the Preliminary Approval Order, informing Persons who fall within the Class definition of, among other things, the pendency of the Litigation, the material terms of the proposed Settlement and their options with respect thereto.

1.22. “Notice Plan” means the method of providing the Class with notice of the settlement, as approved by the Court.

1.23. “Opt-Out Date” means the date that is the end of the period to request exclusion from the Class established by the Court and set forth in the notice.

1.24. “Parties” means the Representative Plaintiffs and Defendants.

1.25. “Person” means an individual, corporation, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, any business or legal entity, and such individual’s or entity’s spouse, heirs, predecessors, successors, representatives, and assignees.

1.26. “Preliminary Approval Order” means an order, providing for, among other things, preliminary approval of the Settlement and dissemination of the Notice to the Class according to the Notice Plan.

1.27. “Products” means the homeopathic products manufactured by Defendants and sold in the United States specifically identified in Exhibit D and also includes all generic or other-named products manufactured by Defendants, including any variations, formats, dosages, dilution or packages.

1.28. “Released Claims” means, with the exception of claims for personal injury, 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 and/or state law, that any Representative Plaintiff and/or Class Member has or may have against the Released Persons arising out of or related in any way to statements made in or in connection with Defendants' advertising, marketing, packaging, labeling, promotion, manufacturing, sale and distribution of the Products, that have been brought, could have been brought, or are currently pending, by any Class Member against Released Persons, in any forum in the United States (including territories and Puerto Rico).

1.29. "Released Persons" means Defendants, their parent companies, subsidiary companies, affiliated companies, past, present, and future officers (as of the Effective Date), directors, shareholders, employees, predecessors, affiliates, parents, subsidiaries, joint partners, distributors, principals, insurers, administrators, agents, servants, successors, trustees, vendors, subcontractors, co-conspirators, buyers, independent contractors, attorneys, representatives, heirs, executors, experts, consultants, and assigns of all of the foregoing persons and entities.

1.30. "Representative Plaintiffs" means Salvatore Gallucci, Amy Aronica, Kim Jones, Doris Petty, and Jeanne Prinzivalli.

1.31. "Settlement" means the settlement set forth in this Agreement.

1.32. "Settlement Fund" means the \$5,000,000 deposited by Defendants into the Settlement Fund described in Paragraph 4.2 of this Agreement, and any interest earned thereon.

1.33. "Settling Parties" means, collectively, Defendants, the Representative Plaintiffs, and all Class Members.

1.34. "The Boiron Promise" means the consumer money-back guarantee in effect as of the date of this Settlement under which Boiron commits to refunding the purchase price, less any state or local taxes, coupons, rebates, and other discounts if, within 14 days of purchase, a

consumer sends to Boiron the original UPC from the Boiron product purchased, the original dated cashier register receipt with the purchase price circled, and complies with other terms and conditions as described at [http: www.boironusa.com/promise/](http://www.boironusa.com/promise/).

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

## **2. DENIAL OF WRONGDOING AND LIABILITY**

2.1. Defendants deny the material factual allegations and legal claims asserted by the Representative Plaintiffs in the Litigation, including any and all charges of wrongdoing or liability arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Litigation.

## **3. THE BENEFITS OF SETTLEMENT**

3.1. Class Counsel and the Representative Plaintiffs recognize and acknowledge the expense and length of continued proceedings that would be necessary to prosecute the Litigation against Defendants through trial and appeals. Class Counsel also has taken into account the uncertain outcome and the risk of any litigation, especially in complex actions such as this Litigation, as well as the difficulties and delays inherent in such litigation. Class Counsel is mindful of the inherent problems of proof under and possible defenses to the claims asserted in the Litigation. Class Counsel believes that the proposed Settlement confers substantial benefits upon the Class. Based on their evaluation of all of these factors, the Representative Plaintiffs and Class Counsel have determined that the Settlement is in the best interests of the Representative Plaintiffs and the Class.

## **4. SETTLEMENT CONSIDERATION**

### **4.1. Injunctive Relief**

4.1.1. Defendants will provide the Class injunctive relief by way of modification of the label and packaging for Products.

4.1.2. FDA Disclaimer: Defendants shall include the following language on the same outer label or package panel that bears the Drug Facts box, “These ‘Uses’ have not been evaluated by the Food and Drug Administration,” according to the below provisions:

4.1.2.1. This statement shall appear on the outer label or package of each Product in a font size no smaller than the smallest font used elsewhere on the Product label or package, in a readable font color.

4.1.2.2. If the principal display panel contains Indications for Use, the Indications for Use shall be followed by an asterisk, and the language identified in Section 4.1.2 shall be preceded by a corresponding asterisk.

4.1.2.3. Products in small packages (e.g. tube products) shall also include the FDA Disclaimer as specified in 4.1.2.1 and 4.1.2.2.

4.1.2.4. The FDA Disclaimer shall also apply to all of Defendants’ advertising that depicts a readable version of a Product’s label.

4.1.3. Dilution Disclaimer: The back panel of each Product’s outer label or package shall be modified to include the following language in close proximity to the Drug Facts: “C, K, CK, and X are homeopathic dilutions: see [www. \[link created pursuant to Paragraph 4.1.4\]](#) for details.”

4.1.3.1. This statement shall appear in a font size no smaller than the smallest font used elsewhere on the Product label or package, in a readable font color.

4.1.3.2. Paragraph 4.1.3 shall not apply to Products in small packages (e.g. tube products) unless leaflets, pamphlets, or other documents are provided to



consumers in conjunction with the tubes, in which case the Dilution Disclaimer shall appear on those materials in close proximity to the Drug Facts and in a font size no smaller than the smallest font used elsewhere, in a readable font color.

4.1.4. Defendants shall also modify the [www.boironusa.com](http://www.boironusa.com) web page, and all web pages that Defendants own as to each of the Products (i.e., [www.chestal.com](http://www.chestal.com), [www.childrenschestal.com](http://www.childrenschestal.com), [www.oscillo.com](http://www.oscillo.com), [www.childrenscoscillo.com](http://www.childrenscoscillo.com), [www.arnicare.com](http://www.arnicare.com), and [www.camiliateething.com](http://www.camiliateething.com), the “Individual Product Web Sites”), as follows:

4.1.4.1. The Homeopathic Dilution Page currently on [www.boironusa.com](http://www.boironusa.com) at <http://www.boironusa.com/homeopathy/homeopathic-dilution.php> shall be moved so that it is accessible from the Home page, instead of its current placement underneath the Homeopathy tab (“Homeopathic Dilution Page”);

4.1.4.2. The Homeopathic Dilution Page shall also appear as a direct link on the Home page of each of the Individual Product Web Sites and on every other one of Defendants’ individual product web site now existing or in development;

4.1.4.3. The Homeopathic Dilution Page shall provide an explanation of the K, CK and X dilutions that substantially conform to the explanations provided by the HPUS and homeopathic literature, and shall include a question and answer format, explaining the level of dilution or method, as provided in Exhibit E.

4.1.4.4. The link to the FDA web site for the CPG § 400.400 document, located at <http://www.boironusa.com/homeopathy/what-is-homeopathy.php>, shall be

fixed so that it is a working link. Defendants shall take reasonable steps to ensure that the link remains working in future.

4.1.4.5. These provisions shall not otherwise prevent Defendants from making any other changes or including or excluding any other information on the Homeopathic Dilution Page or any other websites owned by Defendants as Defendants see fit.

4.1.5. Defendants shall modify the packaging for Products on a rolling basis to be completed within twenty-four (24) months of the Effective Date.

4.1.6. For twenty-four (24) months after the Claim-In Period has expired or until the package for a Product has been modified as provided above, whichever comes first, Defendants shall continue the Boiron Promise for that particular Product.

4.1.7. The injunction shall apply only to current products manufactured by Defendants. To the extent that any state and/or federal statute, regulation, policies, and/or code may at any time impose other, further, different and/or conflicting obligations or duties on Defendants at any time with respect to the Products, this Agreement and any Judgment which may be entered pursuant thereto, as well as the Court's continuing jurisdiction with respect to implementation and enforcement of the terms of this Agreement, shall cease as to the Class Members' and Defendants' conduct covered by that statute, regulation and/or code as of the effective date of such statute regulation and/or code. In the event the parties dispute whether there is such a conflict or inconsistency, this Court shall retain jurisdiction to hear disputes, provided, however, that if either party requests mediation, such dispute shall be resolved first by way of non-binding mediation conducted by the independent mediator, Judge Leo Papas (Ret.) or a substitute mediator agreed upon by the Parties or appointed by the Court if the parties cannot agree upon a

substitute mediator or neutral. To the extent a dispute is raised by the parties to this Agreement, Defendants shall pay for the costs of the mediator, although not attorneys' fees and expenses related to the mediation itself, provided that the dispute is made in good faith.

4.1.8. Nothing in this Agreement will prohibit Defendants from making any representation in the labeling, advertising, or marketing of the Products that is permitted by applicable law, regulations, or policies promulgated by the FDA or other state or federal agencies.

4.1.9. Defendants shall be bound by any labeling laws or regulations that restrict or expand the scope of claims for which the Products are eligible, and any laws or regulations that have a bearing on the labeling or advertising of the Products shall supersede any terms of this Agreement to the extent they are inconsistent with the terms of this Agreement.

#### **4.2. Settlement Fund**

4.2.1. Within (10) days after the Preliminary Approval Order, Defendants will contribute a sum total of \$5,000,000 to the Settlement Fund, which will be non-recapture, *i.e.*, the Defendants shall have no ability to recover from the fund amounts they have paid into the fund.

4.2.2. The Settlement Fund shall be established and managed by the Class Action Administrator.

4.2.3. Refunds provided under Section 4.3 will be paid from the Net Settlement Fund.

4.2.4. Any taxes and tax expenses related to the fund shall be taken from the Net Settlement Fund.

#### **4.3. Refunds to Class Members**

4.3.1. The Settlement Fund shall provide for a full refund for any of the Products purchased by any member of the settling Class from any retailer who makes a claim within the Claim-In Period. Adequate and customary procedures and standards will be used by the Class Action Administrator to prevent the payment of fraudulent claims and to pay only legitimate claims.

4.3.2. The amount of the refund for any claim shall be determined as follows:

4.3.2.1. For any Claimant who provides proof of purchase (e.g., receipt or packaging) (“Proof of Purchase”), the Claimant shall be entitled to a refund of the amount(s) shown on the receipt, or the suggested retail price of the Product as determined by information on the packaging, such as bar or SKU code, subject to a cap of \$100.00 per household for all Proof of Purchase claims;

4.3.2.2. For any Claimant who does not provide Proof of Purchase, but who swears or affirms under penalty of perjury that he or she purchased a Product during the Class Period, the actual amount paid to each Class Member will be \$10.00 per Product, with a cap of \$50.00 per household.

4.3.3. Payment will be made directly to the Class Member by first class mail after entitlement to payment has been verified, and in no event more than six months after the close of the Claim-In Period, unless Class Counsel permits an extension of time.

4.3.4. Payments to Class Members may be subject to *pro rata* reduction if the aggregate number of claims exceeds the Net Settlement Fund.

4.3.5. If all eligible Claims have been paid and funds remain in the Net Settlement Fund 270 days following the close of the Effective Date, Class Counsel shall direct the Settlement Administrator to distribute fifty (50) percent of any remaining funds to a Court-approved non-

profit organization or organizations solely dedicated to informing consumers of food and drug labeling concerns; and fifty (50) percent to Claimants as a supplemental distribution. The remaining funds, if any, shall not revert to Defendants.

## **5. ADMINISTRATION AND NOTICE**

5.1.1. All costs and expenses of administering the Settlement and providing Notice in accordance with the Preliminary Approval Order (“Administrative Costs”) shall be distributed from the Settlement Fund.

### **5.1.2. Appointment and Retention of Notice Administrator**

5.1.2.1. The Parties shall jointly retain one or more class action administrator(s) (including subcontractors) to help implement the terms of the Settlement Agreement.

5.1.2.2. The Class Action Administrator will facilitate the notice process by assisting the Parties in the implementation of the Notice Plan, as well as CAFA Notice, although Defendants shall retain ultimate responsibility for effecting CAFA notice within the required time.

5.1.2.3. The costs of the Class Action Administrator will be paid from the Settlement Fund.

### **5.1.3. Class Settlement Website**

5.1.3.1. The Class Action Administrator will create and maintain the Class Settlement Website, to be activated within 15 days of Preliminary Approval. The Class Action Administrator’s responsibilities will also include securing an appropriate URL, such as [www.BoironClassActionSettlement.com](http://www.BoironClassActionSettlement.com). The Class Settlement Website will post the settlement documents and case-related documents such as the Settlement Agreement, the Long-Form Notice, the Claim Form (in English and Spanish versions), and the Preliminary Approval Order.

In addition, the Class Settlement Website will include procedural information regarding the status of the Court-approval process, such as an announcement of the Final Approval Hearing Date, when the Final Approval Order and Judgment has been entered, and when the Effective Date has been reached.

5.1.3.2. The Class Settlement Website will terminate (be removed from the internet) and no longer be maintained by the Class Action Administrator thirty (30) days after either (a) the Effective Date or (b) the date on which the Settlement Agreement is terminated or otherwise not approved by a court, whichever is later. The Class Action Administrator will then transfer ownership of the URL to Defendants.

5.1.3.3. All costs and expenses related to the Class Settlement Website shall be distributed from the Settlement Fund.

**5.1.4. CAFA Notice**

5.1.4.1. The Parties agree that the Class Action Administrator shall serve notice of the settlement that meets the requirements of CAFA, 28 U.S.C. § 1715, on the appropriate federal and state officials no later than 10 days after the filing of this Settlement Agreement with the Court.

5.1.4.2. Notwithstanding, Defendants shall have ultimate responsibility to ensure that CAFA notice is in fact effected consistent with the statutory requirements.

5.1.4.3. All costs and expenses related to the CAFA Notice shall be distributed from the Settlement Fund.

5.1.4.4. Defendants will file a certification with the Court stating the date(s) on which the CAFA notices were sent. Defendants will provide Class Counsel with any substantive responses received in response to any CAFA notice.

**5.1.5. Notice Plan**

5.1.5.1. The Class Notice shall conform to all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clauses), and any other applicable law, and shall otherwise be in the manner and form agreed upon by the Parties and approved by the Court.

5.1.5.2. Within thirty (30) days after preliminary approval by the Court of this Settlement, the Settlement Administrator shall provide notice to the Settlement Class according to the Notice Plan as attached in Exhibit F.

5.1.5.3. The Parties agree to the content of these notices substantially in the forms attached to this Agreement as Exhibits B and C.

**5.1.6. Taxes**

5.1.7. Settlement Class Members, Representative Plaintiffs and Class Counsel shall be responsible for paying any and all federal, state, and local taxes due on any payments made to them pursuant to the Settlement Agreement.

5.1.8. Taxes due in connection with the Settlement Fund and Net Settlement Fund prior to distribution to the Class shall be paid by the Settlement Administrator from the Net Settlement Fund.

**6. RELEASES**

6.1. Upon the Effective Date, the Representative Plaintiffs and each of the Class Members will be deemed to have, and by operation of the Judgment will have, fully, finally, and forever released, relinquished, and discharged the Released Persons from all Released Claims, meaning, with the exception of claims for personal injury, 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 and/or state law, that any Representative Plaintiff and/or Class Member has or may have against the Released Persons arising out of or related in any way to statements made in or in connection with Defendants' advertising, marketing, packaging, labeling, promotion, manufacture, sale and distribution of the Products, that have been brought, could have been brought, or are currently pending, up to the date of the Effective Date, by any Class Member against Released Persons, in any forum in the United States (including their territories and Puerto Rico).

6.2. After entering into this Settlement Agreement, Plaintiffs or the Settlement Class may discover facts other than, different from, or in addition to, those that they know or believe to be true with respect to the Released Claims. Plaintiffs and the Settlement Class Members expressly waive and fully, finally, and forever settle and release any known or unknown, suspected or unsuspected, contingent or noncontingent equitable Claim, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such other, different, or additional facts.

6.3. All Parties to this Settlement Agreement, including the Settlement Class, specifically acknowledge that they have been informed by their legal counsel, via the Notice, of Section 1542 of the California Civil Code and they expressly waive and relinquish any rights or benefits available to them under this statute. California Civil Code § 1542 provides:

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



6.4. Notwithstanding Section 1542 of the California Civil Code, or any other federal or state statute or rule of law of similar effect, this Settlement Agreement shall be given full force and effect according to each and all of its expressed terms and provisions, including those related to any unknown or unsuspected claims, liabilities, demands, or causes of action which are based on, arise from or are in any way connected with the Litigation.

## **7. CLASS CERTIFICATION**

7.1.1. The Parties agree that, for settlement purposes only, this Litigation shall be certified as a class action pursuant to Federal Rule of Civil Procedure 23(b)(2) with Representative Plaintiffs as Class Representatives and Class Counsel as counsel for the Class, defined as follows:

All persons in the United States who purchased the Products as defined in Paragraph 1.27 and Exhibit D, within the Class Period as defined in Paragraph 1.7. The Class expressly excludes Defendants and their officers, directors, employees and immediate families; and the Court, its officers and their immediate families.

The Class also excludes claims for Children's ColdCalm made by members of the Class certified in the matter of *Delarosa v. Boiron, Inc. et al.*, No. 10-cv-1569-JST (C.D. Cal.) ("all persons who are domiciled or reside in California, who purchased Children's Coldcalm for personal use at any time during the four years preceding the filing" of the Complaint in that action. *See Delarosa v. Boiron, Inc.*, 275 F.R.D. 582 (C.D. Cal. Aug. 24, 2011)) ("*Delarosa* Class Members"), but does not exclude claims made by *Delarosa* Class Members as to all other Products.

7.1.2. In the event the Settlement is terminated or for any reason the Settlement is not effectuated, the certification of the Class shall be vacated and the Litigation shall proceed as if the Class had not been certified.

## **8. SETTLEMENT HEARING**

8.1. Promptly after execution of this Agreement, the parties will submit the Agreement together with its Exhibits to the Court and will request that the Court grant preliminary approval

of the Settlement as of the date of which the settlement shall be deemed “filed” within the meaning of 28 U.S.C. § 1715, issue the Preliminary Approval Order, and schedule a hearing on whether the Settlement should be granted final approval and whether the Fee Application should be granted (“Settlement Hearing”).

## **8.2. Procedures for Objecting to the Settlement**

8.2.1. Class Members shall have the right to appear and show cause, if they have any reason why the terms of this Agreement should not be given Final Approval, subject to each of the subprovisions contained in Paragraph 8.2. Any objection to this Settlement Agreement, including any of its terms or provisions, must be in writing, filed with the Court, with a copy served on Class Counsel, Counsel for Defendants, and the Notice Administrator at the addresses set forth in the Class Notice, and postmarked no later than thirty (30) days prior to the Final Approval Hearing Date. Class Members may object either on their own or through an attorney hired at their own expense.

8.2.2. If a Class Member hires an attorney to represent him or her at the Final Approval Hearing, he or she must do so at his or her own expense. No Class Member represented by an attorney shall be deemed to have objected to the Agreement unless an objection signed by the Class Member is also filed with the Court and served upon Class Counsel, Counsel for Defendants, and the Notice Administrator at the addresses set forth in the Class Notice thirty (30) days before the Final Approval Hearing.

8.2.3. Any objection regarding or related to the Agreement shall contain a caption or title that identifies it as “Objection to Class Settlement in *Gallucci et al. v. Boiron et al.*, No. 11-cv-2039-JAH-NLS” and also shall contain the following information: (i) the objector’s name, address, and telephone number; (ii) the name, address, and telephone number of any attorney for

the objector with respect to the objection; (iii) the factual basis and legal grounds for the objection, including any documents sufficient to establish the basis for their standing as a Class Member, i.e., verification under oath as to the approximate date(s) and location(s) of their purchase(s) of the Products; (iv) identification of the case name, case number, and court for any prior class action lawsuit in which the objector has objected to a proposed class action settlement, the general nature of such prior objection(s), and the outcome of said prior objection(s); (v) identification of the case name, case number, and court for any prior class action lawsuit in which the objector and the objector's attorney (if applicable) has objected to a proposed class action settlement, the general nature of such prior objection(s), and the outcome of said prior objection(s); (vi) the payment terms of any fee agreement between the objector and the objector's attorney with respect to the objection; and (vii) any attorneys' fee sharing agreement or referral fee agreement between or among the objector, the objector's attorney, and/or any third party, including any other attorney or law firm, with respect to the objection. If an objecting party chooses to appear at the hearing, no later than thirty (30) days before the Final Approval Hearing, a notice of intention to appear, either in person or through an attorney, must be filed with the Court and list the name, address and telephone number of the attorney, if any, who will appear.

8.2.4. A Class Member who appears at the Final Approval Hearing, either personally or through counsel, will be permitted to argue only those matters that were set forth in the timely and validly submitted written objection filed by such Class Member. No Class Member shall be permitted to raise matters at the Final Approval Hearing that the Class Member could have raised in his/her written objection, but failed to do so, and all objections to the Settlement Agreement that are not set forth in a timely and validly submitted written objection are deemed waived.

8.2.5. If a Class Member wishes to present witnesses or evidence at the Final Approval Hearing in support of a timely and validly submitted objection, all witnesses must be identified

in the objection, and true and correct copies of all supporting evidence must be appended to, or filed and served with, the objection. Failure to identify witnesses or provide copies of supporting evidence in this manner waives any right to introduce such testimony or evidence at the Final Approval Hearing. While the declaration described above is prima facie evidence that the objector is a member of the settlement Class, Plaintiffs or Defendants or both may take discovery regarding the matter, subject to Court approval.

8.2.6. Any Class Member who fails to comply with the applicable provisions of the preceding paragraphs concerning their objection shall waive and forfeit any and all rights he or she may have to object, appear, present witness testimony, and/or submit evidence, shall be barred from appearing, speaking, and introducing any testimony or evidence at the Final Approval Hearing, and shall be bound by all the terms of this Agreement and by all proceedings, orders and judgments in the Litigation.

8.2.7. Any Class Member who does not object to the Agreement is deemed to be a Class Member and bound by the Settlement Agreement or any further orders of the Court in this Litigation.

### **8.3. Right to Respond to Objections**

8.3.1. Class Counsel and Defendants shall have the right, but not the obligation, to respond to any objection no later than seven (7) days prior to the Final Approval Hearing. The Settling Party so responding shall file a copy of the response with the Court, and shall serve a copy, by regular mail, hand or overnight delivery, to the objector (or counsel for the objector) and to counsel for Plaintiffs and Defendants.

### **8.4. Opt Outs**

8.4.1. Any Class Member who does not wish to participate in this Settlement must write to the Claims Administrator stating an intention to be “excluded” from this Settlement. This

written Request for Exclusion must be sent via first class United States mail to the Claims Administrator at the address set forth in the Class Notice and postmarked no later than thirty (30) days before the date set for the Final Approval Hearing. The Request for Exclusion must be personally signed by the Class Member. So-called “mass” or “class” opt-outs shall not be allowed.

8.4.2. Any Class Member who does not request exclusion from the Settlement has the right to object to the Settlement as set forth in paragraphs 8.2.1 to 8.2.7 above. If a Class Member submits a written Request for Exclusion, he or she shall be deemed to have complied with the terms of the opt out procedure and shall not be bound by the Agreement if approved by the Court. However, any objector who has not timely requested exclusion from the Settlement will be bound by the terms of the Agreement and by all proceedings, orders and judgments in the Litigation.

## **9. ATTORNEYS’ FEES AND EXPENSES AND INCENTIVE AWARDS**

9.1. Plaintiffs will apply to the Court for attorneys’ fees, expenses, and incentive awards and Defendants shall have the option of responding to any such application, including by contesting any fees, expenses, or incentive award requested. Defendants will bear their own attorney’s fees, costs and expenses.

9.2. Upon appropriate Court order so providing, any attorneys’ fees and costs awarded to Class Counsel by the Court shall be paid from the Settlement Fund immediately upon award by the Court, notwithstanding the existence of any timely filed objections thereto, or appeal (actual or potential) there from, or collateral attack on the Settlement or any part thereof, subject to Class Counsel’s obligation to make appropriate refunds or repayments to the Settlement Fund plus interest at the same rate earned on the Settlement Fund, if and when, as a result of any

appeal and/or further proceedings on remand, or successful collateral attack, the fee or cost award is reduced.

9.3. Any incentive payments awarded by the Court will be taken from the Settlement Fund.

## **10. CONDITIONS FOR EFFECTIVE DATE; EFFECT OF TERMINATION**

10.1. The Effective Date of this Agreement shall be the date the Judgment has become Final, as defined in Paragraph 1.16.

10.2. If this Agreement is not approved by the Court or the Settlement is terminated or fails to become effective in accordance with the terms of this Agreement, the Settling Parties will be restored to their respective positions in the Litigation as of the date the Motion for Preliminary Approval is filed. In such event, the terms and provisions of this Agreement will have no further force and effect with respect to the Settling Parties and will not be used in this Litigation or in any other proceeding for any purpose, and any Judgment or order entered by the Court in accordance with the terms of this Agreement will be treated as vacated.

10.3. No order of the Court or modification or reversal on appeal of any order of the Court concerning any award of attorneys' fees, expenses, or costs to Class Counsel will constitute grounds for cancellation or termination of this Agreement.

## **11. MISCELLANEOUS PROVISIONS**

11.1. The Parties acknowledge that it is their intent to consummate this Agreement, and they agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of this Agreement.

11.2. The Parties intend the Settlement to be a final and complete resolution of all disputes between them with respect to the Litigation. The Settlement compromises claims that are contested and will not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Parties agree that the consideration provided to the Class and the other terms of the Settlement were negotiated in good faith by the Parties, and reflect a settlement that was reached voluntarily after consultation with competent legal counsel.

11.3. Neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claims, or of any wrongdoing or liability of Defendants; or is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of Defendants in any civil, criminal, or administrative proceeding in any court, administrative agency or other tribunal. Any party to this Litigation may file this Agreement and/or the Judgment in any action that may be brought against it in order to support any defense or counterclaim, including without limitation those based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

11.4. All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information will survive this Agreement.

11.5. Any and all Exhibits to this Agreement are material and integral parts hereof and are fully incorporated herein by this reference.

11.6. This Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

11.7. This Agreement and any Exhibits attached hereto constitute the entire agreement among the Parties, and no representations, warranties, or inducements have been made to any Party concerning this Agreement or its Exhibits other than the representations, warranties, and covenants covered and memorialized in such documents. Except as otherwise provided herein, the Parties will bear their own respective costs.

11.8. Class Counsel, on behalf of the Class, are expressly authorized by the Representative Plaintiffs to take all appropriate action required or permitted to be taken by the Class pursuant to this Agreement to effectuate its terms, and are expressly authorized to enter into any modifications or amendments to this Agreement on behalf of the Class that Class Counsel deem appropriate.

11.9. Each counsel or other Person executing this Agreement or any of its Exhibits on behalf of any Party hereby warrants that such Person has the full authority to do so.

11.10. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument. A complete set of original counterparts will be filed with the Court.

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

11.12. Except as provided in Paragraph 4.1.9, the Court will retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement, and all parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement.

11.13. None of the Settling Parties, or their respective counsel, will be deemed the drafter of this Agreement or its Exhibits for purposes of construing the provisions thereof. The



language in all parts of this Agreement and its Exhibits will be interpreted according to its fair meaning, and will not be interpreted for or against any of the Settling Parties as the drafter thereof.

11.14. This Agreement shall be deemed the “proposed agreement” filed with the Court within the meaning of 15 U.S.C. § 1715 as of the date on which Preliminary Approval is granted by the Court.

11.15. In addition to whatever termination rights are set forth in this Agreement, Defendants have the right to terminate this Settlement in accordance with the terms reflected in the Addendum to this Agreement which Plaintiffs will file under seal and will remain under seal until and through the Opt-Out Date. Effective the first business day after the Opt-Out Date, the Addendum will be unsealed. Any denial to file such Addendum under seal, however, shall not serve as grounds to terminate this Agreement.

11.16. This Agreement and any Exhibits hereto will be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of California without giving effect to that State’s choice-of-law principles.

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