

## **CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**

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

### **I. DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25. “Defendant” means Similasan Corporation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## II. RECITALS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **III. PRELIMINARY CERTIFICATION OF SETTLEMENT CLASS**

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

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

Specifically excluded from the Settlement Class are the following persons:

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



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

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

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

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

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

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

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

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

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

#### **IV. SETTLEMENT FUND**

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

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

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

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

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

b. Cash Award Amounts.

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

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

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

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

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

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

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

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

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

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

## **V. PLAN OF ALLOCATION OF CASH AWARDS**

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

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

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

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

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

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

f. The amount of the Net Settlement Fund.

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

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

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

## **VI. CHARITABLE *CY PRES* CONTRIBUTION**

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

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

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

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

## **VII. NOTICE AND ADMINISTRATIVE COSTS**

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

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

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



**VIII. TAX TREATMENT OF SETTLEMENT ACCOUNT; CONSEQUENCES OF TERMINATION**

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

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

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

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

**IX. CLAIMS ADMINISTRATOR**

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

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

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

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

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

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

6. Claims Administrator Duties. The Claims Administrator shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**X. SETTLEMENT NOTICE, OBJECTIONS AND OPT-OUT RIGHTS**

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

2. The Class Notice shall:

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **XII. NOTICES**

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

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

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

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

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

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

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

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

c/o:

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

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

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

Telephone: 303-534-5160

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

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

### **XIII. SETTLEMENT APPROVAL PROCESS**

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

#### **XIV. FINAL ORDER AND JUDGMENT AND RELEASES**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



## **XV. WITHDRAWAL FROM OR TERMINATION OF SETTLEMENT**

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

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

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

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

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

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

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

**XVI. EFFECTIVE DATE**

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

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

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

**XVII. ADDITIONAL PROVISIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

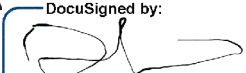
21. Stay of Proceedings. The Parties stipulate to stay all proceedings in the Action until the approval of this Agreement has been finally determined, except the stay of proceedings shall not prevent the filing of any motions, affidavits and other matters necessary to obtain and preserve final judicial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

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

**PLAINTIFFS.**  
DocuSigned by:

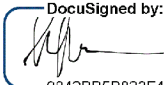
By:  \_\_\_\_\_  
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XX David Plowden



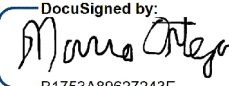
IN WITNESS WHEREOF, the Parties have executed and caused this Agreement to be executed by their duly authorized attorneys below.

**PLAINTIFFS:**

By: \_\_\_\_\_  
Kamille Faye Vinluan-Jularbal

DocuSigned by:  
  
9842BB5B823F465...

By: \_\_\_\_\_  
Mario Oretga

DocuSigned by:  
  
B1753A89627243E...

*Approved as to Form:*

By: Melissa Weiner  
Melissa Weiner (Nov 6, 2024 08:06 CST)  
Melissa S. Weiner  
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328 Barry Avenue S., Suite 200  
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By: William Anderson  
William Anderson (Nov 6, 2024 07:49 MST)  
William H. Anderson  
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Rachel Soffin  
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*Approved as to Form:*

By: \_\_\_\_\_  
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*Approved as to Form:*

By: Jonas Jacobson  
DocuSigned by:  
E2D6B2E3C2F74B8...  
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*Approved as to Form:*

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*Approved as to Form:*

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**DEFENDANT SIMILASAN CORP.**

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

Date: November 6, 2024

*Approved as to form:*

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

*Attorneys for Defendant Similasan Corp.*

## APPENDIX I (Covered Products)

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

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

# EXHIBIT A

Your Claim Form  
must be submitted  
online or  
postmarked by:  
**DEADLINE**

*Plowden, et al. v. Similasan Corp.*  
Case No. 1:23-cv-02511-DDD-STV (D. Colo.)

**SIM-CLAIM**

## SETTLEMENT CLAIM FORM

### GENERAL INSTRUCTIONS

You are eligible to submit a Claim Form if you are a Settlement Class Member.

The **Settlement Class** includes all Persons in the United States, its territories and/or the District of Columbia, who purchased, for personal use and not for resale, any Covered Product from September 11, 2017 until **Date**.

**Specifically excluded from the Settlement Class are the following:** (i) Defendant and its respective subsidiaries and affiliates, members, employees, officers, directors, agents and representatives and their family members; (ii) Class Counsel; (iii) The judges who have presided over the Action; (iv) Local, municipal, state and federal governmental agencies; and (v) All persons who have timely elected to become Opt-Outs from the Settlement Class, in accordance with the Court's orders.

**The Covered Products included in this Settlement are:** "Similasan Dry Eye Relief," "Similasan Complete Eye Relief," "Similasan Allergy Eye Relief," "Similasan Kids Allergy Eye Relief," "Similasan Red Eye Relief," "Similasan Pink Eye Relief," "Similasan Kids Pink Eye Relief," "Similasan Aging Eye Relief," "Similasan Computer Eye Relief," "Similasan Sty Eye Relief," "Similasan Pink Eye Nighttime Gel," "Similasan Dry Eye Nighttime Gel," "CVS Pink Eye Drops," "Walgreens Sty Eye Drops," "Walgreens Pink Eye Drops," and "Walgreens Allergy Eye Drops" products.

### SETTLEMENT CLASS MEMBER BENEFITS

Cash Award payments will be distributed to Settlement Class Members who submit a Valid Claim in accordance with the following terms:

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

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

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

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

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

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

### SUBMITTING YOUR CLAIM FORM

Claim Forms may be submitted online at **WEBSITE** by **DEADLINE** or completed and mailed with a postmark date no later than **DEADLINE** to the Claims Administrator: **SETTLEMENT** Settlement, Attn: Claim Form Submissions, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103.

Please keep a copy of your Claim Form and any supporting materials you submit. Do not submit your only copy of the supporting documents. Materials submitted will not be returned. Copies of documentation submitted in support of your Claim should be clear and legible. If you have any questions or if you would like to request a paper check, please contact the Claims Administrator by email at **EMAIL ADDRESS** or by mail at the address listed above.



**Your Claim Form  
must be submitted  
online or  
postmarked by:  
[DEADLINE]**

*Plowden, et al. v. Similasan Corp.*  
Case No. 1:23-cv-02511-DDD-STV (D. Colo.)

**SIM-CLAIM**

**SETTLEMENT CLAIM FORM**

**I. CLAIMANT CONTACT INFORMATION**

Provide your contact information below. It is your responsibility to notify the Claims Administrator of any changes to your contact information after the submission of your Claim Form.

**First Name**

**Last Name**

**Street Address**

**City**

**State**

**Zip Code**

**Email Address**

**Phone Number**

**II. COVERED PRODUCT PURCHASE INFORMATION**

**Check this box if you are enclosing Proof of Purchase of a Covered Product(s).**

Enter the number of Covered Products you are claiming: \_\_\_\_\_

**Check this box if you do not have Proof of Purchase of a Covered Product(s).**

Select the number of Covered Products you are claiming:

1 Covered Product    2 Covered Products    3 Covered Products    4 Covered Products

**III. PAYMENT SELECTION**

Please select **one** of the following payment options.

**Prepaid Mastercard**

Enter the email address you want the Prepaid Mastercard sent to: \_\_\_\_\_

**Venmo**

Enter the mobile number associated with your account: \_\_\_\_\_

**Zelle**

Enter the email address or mobile number associated with your account: \_\_\_\_\_

**Check**

**IV. CERTIFICATION & SIGNATURE**

**By signing below and submitting this Claim Form, I certify under penalty of perjury under the laws of the United States that:**

- I am a Settlement Class Member;
- The information provided in this Claim Form, including any Proof of Purchase documentation submitted in support of this Claim, is true and correct to the best of my knowledge;
- Nobody has submitted another Claim Form in connection with this Settlement on my behalf;
- Only one Claim Form has been submitted for my household, which includes all persons residing at the same physical address; and
- I understand the Claims Administrator may contact me requesting additional information about my Claim and that failure to provide the requested information may result in the denial of my Claim.

**Signature:** \_\_\_\_\_ **Printed Name:** \_\_\_\_\_ **Date:** \_\_\_\_ / \_\_\_\_ / \_\_\_\_

# EXHIBIT B

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

**If you purchased one of the Similasan, CVS or Walgreens Covered Products in the U.S. and/or the District of Columbia for personal use and not for resale, from September 11, 2017 until [the Preliminary Approval Date], you could be eligible to receive a payment from a class action settlement.**

*This is a Court-authorized Notice. This is not a solicitation from a lawyer.*

- A settlement has been reached in a class action lawsuit against the Similasan Corporation (“Similasan” or “Defendant”), alleging that the Covered Products included in the Settlement were deceptively labeled and advertised. The action is captioned *Plowden v. Similasan Corp.*, No. 1:23-cv-02511-DDD-STV (D. Colo.) (the “Action”).
- Similasan denies all the Named Plaintiffs’ allegations and all charges of wrongdoing or liability against it arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged against it, in the Action. The Named Plaintiffs and the Defendant agree that the Settlement is fair, reasonable and adequate, and is in the best interest of the Settlement Class considering all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation.
- Under the Settlement, Defendant agrees to pay, or cause to be paid, the Settlement Amount of \$3,575,000.00 into an Escrow Account, which shall be used to pay Cash Awards, Notice and Administration Costs (including the Deposit Amount), Attorneys’ Fees and Costs and Service Awards.
- Your legal rights will be affected whether you act or do not act. You should read this entire Notice carefully.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>SUBMIT A CLAIM FORM</b> <b>DEADLINE: DATE</b>	Submitting a Claim Form is the only way that you can receive payment from this Settlement.
<b>EXCLUDE YOURSELF FROM THE SETTLEMENT</b> <b>DEADLINE: DATE</b>	This is the only option that allows you to sue, continue to sue, or be part of another lawsuit against Similasan or the other Released Persons, involving the claims this Settlement resolves. If you exclude yourself, you will give up the right to receive any Settlement benefits from this Settlement.
<b>OBJECT TO OR COMMENT ON THE SETTLEMENT</b> <b>DEADLINE: DATE</b>	You may object to the Settlement by writing to the Court and informing it why you do not think the Settlement should be approved. If you object, you may also file a Claim Form to receive a Settlement payment. If you exclude yourself from the Settlement, you cannot object to the Settlement.
<b>GO TO THE FAIRNESS HEARING</b> <b>DATE</b>	You may attend the Fairness Hearing where the Court may hear arguments concerning approval of the Settlement. If you wish to speak at the Fairness Hearing, you must make a request to do so in writing. You are <u>not</u> required to attend the Fairness Hearing.
<b>DO NOTHING</b>	If you do nothing, you will not receive a payment from the Settlement and you will give up your right to sue Similasan or the Released Persons about the legal claims this Settlement resolves.

- These rights and options—and the deadlines to exercise them—are explained in this Notice.
- The Court in charge of this Action still has to decide whether to approve the Settlement. No Settlement payments will be provided unless the Court approves the Settlement, and it becomes final.

Questions? Visit **WEBSITE** or call toll-free **1-888-888-8888**

## BASIC INFORMATION ABOUT THE SETTLEMENT

### 1. Why was this notice issued?

The Court authorized this Notice because you have the right to know about the proposed Settlement of this class action lawsuit and about all of your rights and options before the Court decides whether to grant final approval of the Settlement. This Notice explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for the benefits, and how to receive those benefits. The case is known as *Plowden v. Similasan Corporation, No. 1:23-cv-02511-DDD-STV (D. Colo.)*.

The individuals who filed this lawsuit, **David Plowden, Mario Ortega and Kamille Faye Vinluan-Jularbal** are called the “Named Plaintiffs” or “Class Representatives” and the company that was sued, **Similasan Corporation (“Similasan”)** is called the “Defendant.”

### 2. What is this lawsuit about?

The Named Plaintiffs allege that the Covered Products included in the Settlement were deceptively labeled and advertised as homeopathic when the Covered Products had not secured the appropriate approvals from the Federal Food and Drug Administration (“FDA”).

Similasan denies all of the Named Plaintiffs’ allegations and all charges of wrongdoing or liability against it arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged against it, in the Action.

### 3. Why is this a class action?

In a class action, one or more people sue on behalf of all people who have similar claims. Together, these people are called a “Class” or “Class Members.” One court resolves the issues for all Settlement Class Members, except for those Settlement Class Members who exclude themselves from the Class.

### 4. Why is there a Settlement?

The Named Plaintiffs and the Defendant disagree over the legal claims alleged in this Action. The Action has not gone to trial, and the Court has not decided in favor of the Named Plaintiffs or Defendant (collectively referred to as the “Parties”). Instead, the Parties agree that the Settlement is fair, reasonable and adequate, and is in the best interest of the Settlement Class in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation.

## WHO IS INCLUDED IN THE SETTLEMENT?

### 5. How do I know if I am part of the Settlement?

The **Settlement Class** includes all Persons in the United States, its territories and/or the District of Columbia, who purchased, for personal use and not for resale, any Covered Product from September 11, 2017 until **Date**.

Specifically **excluded** from the Settlement Class are the following: (i) Defendant and its respective subsidiaries and affiliates, members, employees, officers, directors, agents and representatives and their family members; (ii) Class Counsel; (iii) The judges who have presided over the Action; (iv) Local, municipal, state and federal governmental agencies; and (v) All persons who have timely elected to become Opt-Outs from the Settlement Class, in accordance with the Court’s orders.

### 6. What if I am still not sure whether I am part of the Settlement?

If you have any questions as to whether you are a Settlement Class Member, you may contact the Claims Administrator by mail: \_\_\_\_\_ Claims Administrator, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103; or by email: **EMAIL ADDRESS**.

**7. What are the Covered Products?**

The “Covered Products” or “Covered Product” mean the Similasan Products and the Private Label Products and consist of the homeopathic eye products manufactured, distributed or sold by Defendant.

The Covered Products included in this Settlement are the homeopathic eye products under the following brand names:

- Similasan Dry Eye Relief
- Similasan Complete Eye Relief
- Similasan Allergy Eye Relief
- Similasan Kids Allergy Eye Relief
- Similasan Red Eye Relief
- Similasan Pink Eye Relief
- Similasan Kids Pink Eye Relief
- Similasan Aging Eye Relief
- Similasan Computer Eye Relief
- Similasan Styte Eye Relief
- Similasan Pink Eye Nighttime Gel
- Similasan Dry Eye Nighttime Gel
  
- CVS Pink Eye Drops
- Walgreens Styte Eye Drops
- Walgreens Pink Eye Drops
- Walgreens Allergy Eye Drops

**THE SETTLEMENT BENEFITS****8. What are the Settlement benefits?**

If approved by the Court, Defendant agrees to pay, or cause to be paid, the Settlement Amount of **\$3,575,000.00** into the Escrow Account, which shall be used to pay Cash Awards, Notice and Administration Costs (including the Deposit Amount), Attorneys’ Fees and Costs and Service Awards.

Cash Award payments will be distributed to Settlement Class Members who submit a Valid Claim in accordance with the following terms:

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

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

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

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

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

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

**Charitable *Cy Pres* Contribution.** If any amount remains in the Net Settlement Fund following payment of all amounts due to be distributed under the Agreement, such amount shall be donated to Public Justice as a *Cy Pres* Recipient ninety (90) days after the date by which the Claims Administrator completes the process for stopping payment on any Cash Award checks that remain uncashed.

#### **9. What rights and I giving up by remaining in the Settlement Class?**

Unless you exclude yourself, you are choosing to remain in the Settlement Class. If the Settlement is approved and becomes final, all of the Court's orders will apply to you and legally bind you. You will not be able to sue, continue to sue, or be part of any other lawsuit against Similasan or the Released Persons about the legal issues resolved by this Settlement, and released by the Settlement Agreement. The specific rights you are giving up are called Released Claims (*see* next question).

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

#### **10. What are the Released Claims?**

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

More information is provided in the Settlement Agreement available at: **WEBSITE**.

### **HOW TO GET SETTLEMENT BENEFITS—SUBMITTING A CLAIM FORM**

#### **11. How do I make a claim for Settlement benefits?**

You must complete and submit a Claim Form by **DATE**. Claim Forms may be submitted online at **WEBSITE** or downloaded from the Settlement Website and mailed to the Claims Administrator at the address on the form. Claims may not be submitted via email.

Claim Forms are also available by calling **1-888-888-8888** or by writing to the Claims Administrator via mail: \_\_\_\_\_  
Claims Administrator, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103; or email: **EMAIL ADDRESS**.

#### **12. What happens if my contact information changes after I submit a claim?**

If your contact or payment information changes after you submit a Claim Form, it is your responsibility to provide your updated information to the Claims Administrator in writing via mail or email.

#### **13. When will the Settlement benefits be issued?**

Payments for valid and timely Claim Forms that are approved will be issued by the Claims Administrator within the later of sixty (60) days after the Effective Date or sixty (60) days after all potential invalid claims have been resolved, whichever is later. Payments will be issued via the payment method selected on the Claim Form.

Questions? Visit **WEBSITE** or call toll-free **1-888-888-8888**

We do not know how long it may take the Court to approve the Settlement as final, and whether any appeals will be filed. Please be patient and check **WEBSITE** for updates.

### THE LAWYERS REPRESENTING YOU

#### 14. Do I have a lawyer in this case?

Yes, the Court has appointed the following lawyers and law firms to represent you and the Settlement Class:

Melissa S. Weiner <b>Pearson Warshaw, LLP</b> 328 Barry Ave. S, Suite 200 Wayzata, MN 55391	Rachel Soffin <b>Milberg Coleman Bryson Phillips Grossman, PLLC</b> 3833 Central Avenue St. Petersburg, FL 37713	Nick Suci <b>Milberg Coleman Bryson Phillips Grossman, PLLC</b> 6905 Telegraph Rd., Suite 115 Bloomfield Hills, MI 48301
Jonas Jacobson <b>Dovel &amp; Luner, LLP</b> 201 Santa Monica Blvd., Suite 600 Santa Monica, CA 90401	William H. Anderson <b>Handley Farah &amp; Anderson PLLC</b> 5353 Manhattan Circle, Suite 204 Boulder, CO 80305	

These attorneys are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer in this case, you may hire one at your expense.

#### 15. How will Class Counsel be paid?

Class Counsel may apply to the Court for an award of an Attorneys' Fees and Costs in a total amount not to exceed one-third of the Settlement Amount and, in addition to fees, seek reimbursement of verifiable litigation.

Class Counsel will also request Service Awards of two thousand and five hundred dollars (\$2,500.00) to each of the three (3) Named Plaintiffs in the Action, as may be approved by the Court.

Any award of Attorneys' Fees and Costs, or Service Awards approved by the Court will be paid out of the Settlement Fund.

### EXCLUDING YOURSELF FROM THE SETTLEMENT

If you are a Settlement Class Member and want to keep any right you may have to sue or continue to sue the Defendant and/or the other Released Persons on your own based on the claims raised in this Action or released by the Released Claims, then you must take steps to get out of the Settlement. This is called excluding yourself from—or “opting out” of—the Settlement.

#### 16. How do I get out of the Settlement?

In order to validly be excluded from the Settlement, Settlement Class Members must submit a request to be excluded (Opt-Out”) to the Claims Administrator, so it is mailed with a **postmark** date no later than **DATE** to:

\_\_\_\_\_  
**Claims Administrator**  
**Attn: Exclusion Requests**  
**P.O. Box 58220**  
**Philadelphia, PA 19102**

The request for exclusion must be personally signed by the Settlement Class Member requesting exclusion and must contain: (1) the Settlement Class Member's name, (2) address, (3) telephone number, (4) a brief statement explaining the Covered Products the Settlement Class Member purchased to confirm membership in the Settlement Class; and (4) a statement that

indicates a desire to be excluded from the Settlement Class in *Plowden v. Similasan Corporation*, No. 1:23-cv-02511-DDD-STV (D. Colo.).

A Settlement Class Member may Opt-Out on an individual and personal basis only; so-called “mass” or “class” Opt-Outs shall not be allowed.

**17. If I exclude myself, can I still receive Settlement benefits?**

No. All persons who Opt Out shall not receive any benefits or be bound by the terms of this Agreement. All persons falling within the definition of the Settlement Class who do not Opt Out shall be bound by the terms of this Agreement and the Final Approval Order and Judgment.

**18. If I do not exclude myself, can I sue the Defendant for the same thing later?**

No. Unless you exclude yourself, you give up any right to sue the Defendant and the other Released Persons for the claims that this Settlement resolves. You must exclude yourself from this Action to start or continue with your own lawsuit or be part of any other lawsuit against the Defendant or any of the other Released Persons for the claims that this Settlement resolves. If you have a pending lawsuit, speak to your lawyer in that case immediately.

**OBJECT TO OR COMMENT ON THE SETTLEMENT**

**19. How do I tell the Court that I do not like the Settlement?**

If you do not like the terms of the Settlement, you can write to the Court in the form of an objection. You cannot ask the Court to order a different Settlement; the Court can only approve or reject the Settlement.

In order to object, you must file the objection with the Court no later than **DATE**. You may mail your objection to the Clerk of the Court at Clerk’s Office, Alfred A. Arraj United States Courthouse, Room A-105, 901 19<sup>th</sup> Street, Denver, Colorado 80294-3589, so it is postmarked no later than **DATE**.

Your objection must provide the following:

- a) the Settlement Class Member’s printed name, address and telephone number;
- b) whether the Settlement Class Member is represented by counsel and, if so, contact information for their counsel;
- c) evidence showing that the objector is a Settlement Class Member;
- d) whether the objection applies to that Settlement Class Member or to a specific subset of the Settlement Class, or to the entire Settlement Class, and state with specificity the grounds for the objection;
- e) any other supporting papers, materials or briefs that the Settlement Class Member wishes the Court to consider when reviewing the objection;
- f) the actual written or electronic signature of the Settlement Class Member making the objection; and
- g) a statement on whether the objecting Settlement Class Member and/or their counsel intend to appear at the Fairness Hearing.

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

**20. What is the difference between objecting and requesting exclusion?**

Objecting is telling the Court you do not like something about the Settlement. You can object only if you stay in the Settlement Class (that is, do not exclude yourself). Requesting exclusion is telling the Court you do not want to be part of the Settlement Class or the Settlement. If you exclude yourself, you cannot object to the Settlement because it no longer affects you.

**THE FAIRNESS HEARING**





# EXHIBIT C

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 1:23-cv-02511-DDD-STV

DAVID PLOWDEN, MARIO ORTEGA,  
and KAMILLE FAYE VINLUAN-  
JULARBAL, each individually and on  
behalf of all others similarly situated,

Plaintiffs,

v.

SIMILASAN CORP.,

Defendant.

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**DECLARATION OF STEVEN WEISBROT OF ANGEION GROUP  
RE: THE PROPOSED NOTICE PLAN**

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I, Steven Weisbrot, declare and state as follows:

1. I am the President and Chief Executive Officer at the class action notice and claims administration firm Angeion Group, LLC (“Angeion”). Angeion specializes in designing, developing, analyzing, and implementing large-scale, un-biased, legal notification plans.

2. I have personal knowledge of the matters stated herein. In forming my opinions regarding notice in this action, I have drawn from my extensive class action experience, as described below.

3. I have been responsible in whole or in part for the design and implementation of hundreds of court-approved notice and administration programs, including some of the largest and most complex notice plans in recent history. I have taught numerous accredited Continuing Legal Education courses on the Ethics of Legal Notification in Class Action Settlements, using Digital Media in Due Process Notice Programs, as well as Claims Administration, generally. I am the author of multiple articles on Class Action Notice, Claims Administration, and Notice Design in

publications such as Bloomberg, BNA Class Action Litigation Report, Law360, the ABA Class Action and Derivative Section Newsletter, and I am a frequent speaker on notice issues at conferences throughout the United States and internationally.

4. I was certified as a professional in digital media sales by the Interactive Advertising Bureau (“IAB”) and I am co-author of the Digital Media section of Duke Law’s *Guidelines and Best Practices—Implementing 2018 Amendments to Rule 23* and the soon to be published George Washington Law School *Best Practices Guide to Class Action Litigation*.

5. I have given public comment and written guidance to the Judicial Conference Committee on Rules of Practice and Procedure on the role of direct mail, email, broadcast media, digital media, and print publication, in effecting Due Process notice, and I have met with representatives of the Federal Judicial Center to discuss the 2018 amendments to Rule 23 and offered an educational curriculum for the judiciary concerning notice procedures.

6. Prior to joining Angeion’s executive team, I was employed as Director of Class Action Services at Kurtzman Carson Consultants, an experienced notice and settlement administrator. Prior to my notice and claims administration experience, I was employed in private law practice.

7. My notice work comprises a wide range of class actions that include data breach and privacy matters, product defects, false advertising, mass disasters, employment discrimination, antitrust, tobacco, banking, firearm, insurance, and bankruptcy cases.

8. I have been at the forefront of infusing digital media, as well as big data and advanced targeting, into class action notice programs. Courts have repeatedly recognized my work in the design of class action notice programs. A comprehensive summary of judicial recognition Angeion has received is attached hereto as **Exhibit A**.

9. By way of background, Angeion is an experienced class action notice and claims administration company formed by a team of executives that have had extensive tenures at five other nationally recognized claims administration companies. Collectively, the management team at Angeion has overseen more than 2,000 class action settlements and distributed over \$15 billion to

class members. The executive profiles as well as the company overview are available at [www.angeiongroup.com](http://www.angeiongroup.com).

10. As a class action administrator, Angeion has regularly been approved by both federal and state courts throughout the United States and abroad to provide notice of class actions and claims processing services.

11. Angeion has extensive experience administering landmark settlements involving some of the world's most prominent companies, including:

**In re: Facebook, Inc Consumer Privacy User Profile Litigation**

Case No. 3:18-md-02843-VC (N.D. Cal.)

Meta agreed to pay \$725 million to settle allegations that the social media company allowed third parties, including Cambridge Analytica, to access personal information. Angeion undertook an integrated in-app notification and media campaign to a class in the hundreds of millions of individuals and processed 28.6 million claims, the most claims filed in the history of class action. In fact, during the September 7, 2023 Final Approval Hearing, U.S. District Judge Chhabria acknowledged the record number of claims filed, stating, "I was kind of blown away by how many people made claims."

**In re Apple Inc. Device Performance Litigation**

Case No. 5:18-cv-02827-EJD (N.D. Cal.)

Apple agreed to pay \$310 million to settle allegations of diminished performance in iPhone 6's and 7's. Angeion's direct notification efforts were recognized as reaching 99%+ of the current and former owners of 129 million class devices. Millions of claims were processed.

**City of Long Beach, et al. v. Monsanto, et al.**

Case No. 2:16-cv-03493-FMO-AS (C.D. Cal.)

Bayer agreed to pay \$650 million to settle allegations of waterbodies impaired by PCBs. Angeion's notice administration was extraordinarily successful with direct notice delivered to 99.7% of the class. The claims administration includes multiple complex claims filing workflows for different funding allocations, including separate fund for "special needs" claimants.

**Beckett v. Aetna Inc.**

Case No. 2:17-cv-03864-JS (E.D. Pa.)

A consolidated data breach class action that arose from the alleged improper disclosure of Protected Health Information by a health insurer and previous claims administrator, including confidential HIV-related information. Angeion provided specialized training to our support team concerning the sensitive nature of the case and underlying health information. Angeion implemented robust privacy protocols to communicate with and verify the claims of the affected class members, including anonymized notice packets and allowing claimants to lodge objections under pseudonyms.

## **DATA SECURITY & INSURANCE**

12. Angeion recognizes the critical need to secure our physical and network environments and protect data in our custody. It is our commitment to these matters that has made us the go-to administrator for many of the most prominent data security matters of this decade. We are ever improving upon our robust policies, procedures, and infrastructure by periodically updating data security policies as well as our approach to managing data security in response to changes to physical environment, new threats and risks, business circumstances, legal and policy implications, and evolving technical environments.

13. Angeion's privacy practices are compliant with the California Consumer Privacy Act, as currently drafted. Consumer data obtained for the delivery of each project is used only for the purposes intended and agreed in advance by all contracted parties, including compliance with orders issued by State or Federal courts as appropriate. Angeion imposes additional data security measures for the protection of Personally Identifiable Information (PII) and Personal Health Information (PHI), including redaction, restricted network and physical access on a need-to-know basis, and network access tracking. Angeion requires background checks of all employees, requires background checks and ongoing compliance audits of its contractors, and enforces standard protocols for the rapid removal of physical and network access in the event of an employee or contractor termination.

14. Data is transmitted using Transport Layer Security (TLS) 1.3 protocols. Network data is encrypted at rest with the government and financial institution standard of AES 256-bit encryption. We maintain an offline, air-gapped backup copy of all data, ensuring that projects can be administered without interruption.

15. Further, our team conscientiously monitors the latest compliance requirements, such as GDPR, HIPAA, PCI DSS, and others, to ensure that our organization is meeting all necessary regulatory obligations as well as aligning to industry best practices and standards set forth by frameworks like CIS and NIST. Angeion is cognizant of the ever-evolving digital landscape and continually improves its security infrastructure and processes, including partnering with best-in-class security service providers. Angeion's robust policies and processes cover all aspects of information

security to form part of an industry leading security and compliance program, which is regularly assessed by independent third parties. Angeion is also committed to a culture of security mindfulness. All employees routinely undergo cybersecurity training to ensure that safeguarding information and cybersecurity vigilance is a core practice in all aspects of the work our teams complete.

16. Angeion currently maintains a comprehensive insurance program, including sufficient Errors & Omissions coverage.

### **SUMMARY OF THE PROPOSED NOTICE PLAN**

17. This declaration will describe the notice plan that we will implement in this matter, including the considerations that informed the development of the plan and why it will provide due process to the Settlement Class. In my professional opinion, the proposed Notice Plan (“Notice Plan”) described herein is the best practicable notice under the circumstances and fulfills all due process requirements, fully complying with Fed. R. Civ. P. 23.

18. The Notice Plan provides for a robust media campaign consisting of state-of-the-art targeted internet banner notice, social media notice, and a paid search campaign, combined with a dedicated settlement website and toll-free telephone line where Settlement Class Members can learn about their rights and options pursuant to the terms of the Settlement.

19. As discussed in greater detail below, the media campaign is designed to deliver an approximate 70.17% reach with an average frequency of 3.05 times. This number is calculated using objective syndicated advertising data relied upon by most advertising agencies and brand advertisers. It is further verified by sophisticated media software and calculation engines that cross reference which media is being purchased with the media habits of our specific Target Audience (defined below). What this means in practice is that 70.17% of our Target Audience will see a digital advertisement concerning the settlement on an average of 3.05 times each.

20. The Federal Judicial Center states that a publication notice plan that reaches 70% of class members is one that reaches a “high percentage” and is within the “norm.” Barbara J. Rothstein & Thomas E. Willging, Federal Judicial Center, “Managing Class Action Litigation: A Pocket Guide or Judges,” at 27 (3d Ed. 2010).

## MEDIA NOTICE

### **Programmatic Display Advertising**

21. Angeion will utilize a form of internet advertising known as Programmatic Display Advertising, which is the leading method of buying digital advertisements in the United States.<sup>1</sup> In laymen’s terms, programmatic advertising is a method of advertising where an algorithm identifies and examines demographic profiles and uses advanced technology to place advertisements on the websites where members of the audience are most likely to visit (these websites are accessible on computers, mobile phones and tablets). The media notice outlined below is strategically designed to provide notice of the Settlement to these individuals by driving them to the Settlement Website where they can learn more about the Settlement, including their rights and options.

22. To develop the media notice campaign and to verify its effectiveness, our media team analyzed data from 2024 comScore Multi-Platform/MRI Simmons USA Fusion<sup>2</sup> to profile the Settlement Class and arrive at an appropriate Target Audience. Specifically, the following syndicated research definition was used to profile potential Settlement Class Members:

- **Eye Wash and Drops: Total Users: Used in last 6 months: Drops; and**
- **Health Attitudes: I trust homeopathic medicine: Agree Completely**

23. Based on the target definition used, the size of the Target Audience for the media notice campaign is approximately 4,624,000 individuals. Digital media platforms provide numerous data segments dedicated to consumer brands. We will rely heavily on that data to help us ensure we are reaching Similasan product users.

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<sup>1</sup> Programmatic Display Advertising is a trusted method specifically utilized to reach defined target audiences. Programmatic digital display ad spending in the United States exceeded \$135 billion in 2023 and is forecasted to approach \$180 billion by 2025. See <https://www.insiderintelligence.com/content/programmatic-advertising-set-reach-nearly-180-billion-by-2025> (Last visited October 11, 2024)

<sup>2</sup> GfK MediaMark Research and Intelligence LLC (“GfK MRI”) provides demographic, brand preference and media-use habits, and captures in-depth information on consumer media choices, attitudes, and consumption of products and services in nearly 600 categories. comSCORE, Inc. (“comSCORE”) is a leading cross-platform measurement and analytics company that precisely measures audiences, brands, and consumer behavior, capturing 1.9 trillion global interactions monthly. comSCORE’s proprietary digital audience measurement methodology allows marketers to calculate audience reach in a manner not affected by variables such as cookie deletion and cookie blocking/rejection, allowing these audiences to be reach more effectively. comSCORE operates in more than 75 countries, including the United States, serving over 3,200 clients worldwide.



24. It is important to note that the Target Audience serves as a proxy for, and is distinct from, the Settlement Class definition, as is commonplace in class action notice plans. Utilizing an overinclusive proxy audience maximizes the efficacy of the notice plan and is considered a best practice among media planners and class action notice experts alike. Using proxy audiences is also commonplace in both class action litigation and advertising generally.<sup>3</sup>

25. Additionally, the Target Audience is based on objective syndicated data, which is routinely used by advertising agencies and experts to understand the demographics, shopping habits and attitudes of the consumers that they are seeking to reach.<sup>4</sup> Using this form of objective data will allow the parties to report the reach and frequency to the Court, with the confidence that the reach percentage and the number of exposure opportunities complies with due process, and exceeds the Federal Judicial Center's threshold as to reasonableness in notification programs. Virtually all professional advertising agencies and commercial media departments use objective syndicated data tools to quantify net reach. Objective syndicated data sources guarantee that advertising placements can be measured on an objective basis, ensuring that reporting statistics are not overstated. Objective syndicated data tools are ubiquitous tools in a media planner's arsenal and are regularly accepted by courts in evaluating the efficacy of a media plan, or its component parts.

26. Understanding the socio-economic characteristics, interests, and practices of a target group aids in the proper selection of media to reach that audience. Based on data from 2024 comScore Multi-Platform/MRI Simmons USA Fusion, the Target Audience has been reported to have the characteristics below:

- 50.38% are ages 35-64, with a median age of 48.5 years old;
- 67.46% are female;

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<sup>3</sup> If the total population base (or class size) is unknown, it is accepted advertising and communication practice to use a proxy-media definition, which is based on accepted media research tools and methods that will allow the notice expert to establish that number. The percentage of the population reached by supporting media can then be established. Duke Law School, GUIDELINES AND BEST PRACTICES IMPLEMENTING 2018 AMENDMENTS TO RULE 23 CLASS ACTION SETTLEMENT PROVISIONS, at 56.

<sup>4</sup> The notice plan should include an analysis of the makeup of the class. The target audience should be defined and quantified. This can be established through using a known group of customers, or it can be based on a proxy-media definition. Both methods have been accepted by the courts and, more generally, by the advertising industry, to determine a population base. *Id* at 56.

- 44.25% are married;
- 35.89% have children;
- 29.92% have received a bachelor's or post-graduate degree;
- 47.13% are currently employed full time;
- The median household income is \$70,640; and
- 87.18% have used social media in the last 30 days.

27. To identify the best vehicles to deliver messaging to the Target Audience, we reviewed media quintiles, which measure the degree to which an audience uses media relative to the general population. Here, the objective syndicated data shows that members of this Target Audience are heavy internet users, spending an average of 29.2 hours per week on the internet.

28. Given the strength of digital advertising, as well as our Target Audience's consistent internet use, we recommend utilizing a robust internet advertising campaign to reach Class Members.

29. Multiple targeting layers will be implemented into the programmatic campaign to help ensure delivery to the most appropriate users, inclusive of the following tactics:

- Look-a-like Modeling: This technique uses data methods to build a look-a-like audience against known Settlement Class Members.
- Predictive Targeting: This technique allows technology to "predict" which users will be served advertisements about the Settlement.
- Context Targeting: This technique leverages contextual on-site data to surround our messaging (*i.e.*, advertisements about the Settlement) on sites with relevant topics and/or articles.
- Site Retargeting: This technique is a targeting method used to reach potential Settlement Class Members who have already visited the dedicated Settlement Website while they browse other pages. This allows for sufficient exposure to advertisements about the Settlement.
- Geotargeting: The campaign will be targeted nationwide with a weighted delivery based on how the Target Audience is geographically spread throughout the country.

### **Social Media Advertising**

30. The social media campaign component of the proposed Notice Plan will utilize Facebook, Instagram, and X, three of the leading social media platforms in the United States,<sup>5</sup> to reach potential Settlement Class Members. The social media campaign capitalizes on the Target Audience's

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<sup>5</sup> Facebook is estimated to have over 250 million U.S. users, Instagram over 169 million U.S. users, and X over 106 million U.S. users. See <https://www.statista.com/statistics/408971/number-of-us-facebook-users> (Last visited October 11, 2024); <https://www.statista.com/statistics/578364/countries-with-most-instagram-users/> (Last visited October 11, 2024); <https://www.statista.com/statistics/242606/number-of-active-twitter-users-in-selected-countries/> (Last visited October 11, 2024).

propensity to engage in social media (87.18% of the Target Audience have used social media in the last 30 days).

31. The social media campaigns will coincide with the programmatic display advertising and will engage Target Audience members utilizing strategic tactics to further qualify and deliver impressions to the Target Audience. For example, look-a-like modeling allows the use of consumer characteristics to serve advertisements. Based on these characteristics, we can also build different consumer profile segments to ensure the notice plan messaging is delivered to the proper audience. The social media ads will be targeted nationwide. If sufficient data is available, the campaign will leverage a weighted delivery based on the geographic spread of the Target Audience throughout the country.

32. The social media campaigns will also use the Facebook Marketing platform and the X platform and their respective technologies to serve advertisements to the Target Audience via a mix of news feed and/or story units to optimize performance via the social media platforms' desktop sites, mobile sites, and mobile apps.

### **Search Engine Marketing**

33. The Notice Plan also includes a paid search campaign on Google to help drive Class Members who are actively searching for information about the lawsuit to the Settlement Website. Paid search ads will complement the programmatic and social media campaigns, as search engines are frequently used to locate a specific website, rather than a person typing in the URL. Search terms would relate to not only the Settlement itself but also the subject-matter of the litigation. In other words, the paid search ads are driven by the individual user's search activity, such that if that individual searches for (or has recently searched for) the lawsuit, litigation or other terms related to the Settlement, that individual could be served with an advertisement directing them to the Settlement Website.

### **SETTLEMENT WEBSITE & TELEPHONE SUPPORT**

34. The Notice Plan will implement the creation of a case-specific Settlement Website, where Settlement Class Members can easily view general information about this Settlement and

review copies of the Settlement Agreement, the Class Notice, the Claim Form, Court Orders regarding this Settlement and other relevant Court documents, including Class Counsel’s Motion for Approval of Attorneys’ Fees, Cost and Service Awards. The Settlement Website will be designed to be user-friendly to make it easy for Settlement Class Members to find answers to frequently asked questions, view dates and deadlines, and will have a “Contact Us” page allowing Settlement Class Members to submit additional questions regarding the Settlement. Settlement Class Members can also securely submit a Claim Form and upload supporting documentation online via the Settlement Website.

35. The Settlement Website will be designed to be ADA-compliant and optimized for mobile visitors so that information loads quickly on mobile devices. Additionally, the Settlement Website will be designed to maximize search engine optimization through Google and other search engines. Keywords and natural language search terms will be included in the Settlement Website’s metadata to maximize search engine rankings.

36. A toll-free hotline devoted to this case will be created and provided on the Settlement Website to further apprise Settlement Class Members of the rights and options in the Settlement. The toll-free hotline will utilize an interactive voice response (“IVR”) system to provide Settlement Class Members with responses to frequently asked questions and other essential information regarding the Settlement. The hotline will be accessible 24 hours a day, 7 days a week. Settlement Class Members will have the ability to request a copy of the Notice and/or Claim Form via the toll-free hotline.

**NOTICE PURSUANT TO THE CLASS ACTION FAIRNESS ACT OF 2005**

37. Within ten (10) days of the filing of the Settlement Agreement with this Court, Angeion will cause notice to be disseminated to the appropriate state and federal officials pursuant to the requirements of the Class Action Fairness Act, 28 U.S.C. §1715.

**FRAUD DETECTION**

38. Angeion has developed and deployed its real-time fraud detection system, AngeionAffirm, which is the first and only comprehensive solution to identify fraud in real time based

on both state-of-the-art technology and analysis of over a decade of historical claims data.<sup>6</sup> AngeionAffirm was developed to combat the rising tide of fraudulent claims in class action settlements and the increasingly sophisticated technologies and techniques used by fraudulent actors in their attempt to perpetuate fraud. AngeionAffirm will be implemented to detect any fraudulent payment selection submissions in this Settlement.

39. The success of AngeionAffirm has been recognized by Courts. In the Court’s July 26, 2024, Report and Recommendation, United States Magistrate Judge Stewart D. Aaron stated, “The Court finds that the claims process administered by Angeion has integrity and has been carried out in a diligent and thorough manner...Based upon the Court’s review of the record, the Court finds that Angeion has taken prudent and necessary steps to address the fraudulent claims submitted in this case... Angeion’s fraud detection system is robust and appropriately designed to weed out fraudulent claims.” (*See In re: Novartis and Par Antitrust Litigation*, No. 1:18-cv-04361-AKH-SDA, S.D.N.Y., Report and Recommendation, ECF No. 667).

### **REACH AND FREQUENCY**

40. This declaration describes the reach and frequency evidence which courts systemically rely upon in reviewing class action publication notice programs for adequacy. The Notice Plan’s designed reach percentage exceeds the guidelines as set forth in the Federal Judicial Center’s Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide to effectuate a notice program which reaches a high degree of class members.

41. Specifically, the comprehensive media plan is designed to deliver an approximate 70.17% reach with an average frequency of 3.05 times each by serving approximately 9.9 million impressions. The 70.17% reach is separate and apart from, and in addition to the awareness of the Settlement that is generated by the dedicated Settlement Website and toll-free telephone support.

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<sup>6</sup> See <https://www.angeiongroup.com/angeion-group-announces-angeionaffirm-2-0/> for information about the launch of AngeionAffirm 2.0 (Last visited October 11, 2024).

### ESTIMATED NOTICE AND ADMINISTRATION COSTS

42. Angeion estimates the cost to provide notice and administration services as described herein will be approximately \$280,000 based on costs associated with 75,000 valid Claim Form submissions. The actual costs will be dependent on the number of valid Claim Forms ultimately received. By way of example, if 400,000 valid Claim Form submissions are received, the estimated cost to provide notice and administration services will be approximately \$685,000.<sup>7</sup> The pricing details comprising the administration cost estimate are competitively sensitive. A truncated itemized estimate is attached hereto as **Exhibit B**.

### CONCLUSION

43. The Notice Plan outlined above includes a robust media campaign consisting of state-of-the-art internet advertising, a comprehensive social media campaign, and a paid search campaign, combined with the implementation of a dedicated Settlement Website and toll-free telephone support to further inform Class Members of their rights and options pursuant to terms of the Settlement.

44. In my professional opinion, the Notice Plan described herein will provide full and proper notice to Class Members before the applicable exclusion, objection and claim form deadlines. Moreover, it is my opinion that Notice Plan is the best notice that is practicable under the circumstances, fully comports with due process, and Fed. R. Civ. P. 23. After the Notice Plan has concluded, Angeion will provide a final report verifying its effective implementation to this Court.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Dated: November 5, 2024

  
STEVEN WEISBROT

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<sup>7</sup> The estimated costs were generated based on certain specifications provided to Angeion, such as the size of the Class List for disseminating notice of the Settlement, the methods for disseminating notice, issuing Settlement payments in a single distribution, and other corresponding assumptions made. Deviations from these assumptions may result in additional costs in excess of the estimated amounts. Services required that are outside of the scope of the estimate will result in additional costs in excess of the estimated amounts.

# Exhibit A



# INNOVATION

## IT'S PART OF OUR DNA

Class Action Administration | Mass Arbitration Administration  
Mass Tort Services | Regulatory Remediation



Judicial Recognition



## **IN RE: NOVARTIS AND PAR ANTITRUST LITIGATION**

### **Case No. 1:18-cv-04361-AKH-SDA (S.D.N.Y.)**

The Honorable Stewart D. Aaron, United States Magistrate Judge, Southern District of New York (July 26, 2024): The Court finds that the claims process administered by Angeion has integrity and has been carried out in a diligent and thorough manner...Based upon the Court's review of the record, the Court finds that **Angeion has taken prudent and necessary steps to address the fraudulent claims submitted in this case... Angeion's fraud detection system is robust and appropriately designed to weed out fraudulent claims.**

## **IN RE: FACEBOOK, INC. CONSUMER PRIVACY USER PROFILE LITIGATION**

### **Case No. 3:18-md-02843 (N.D. Cal.)**

Meta agreed to pay \$725 million to settle allegations that the social media company allowed third parties, including Cambridge Analytica, to access personal information. Angeion undertook an integrated in-app notification and media campaign to a class in the hundreds of millions of individuals and processed 28.6 million claims, the most claims filed in the history of class action. In fact, during the September 7, 2023 Final Approval Hearing, U.S. District Judge Chhabria acknowledged the record number of claims filed, stating, **"I was kind of blown away by how many people made claims."**

## **BRAUN v. THE PHILADELPHIA INQUIRER, LLC**

### **Case No. 2:22-cv-04185 (E.D. Pa.)**

The Honorable John M. Younge (August 8, 2024): 16. The proposed form and manner of notice to members of the Settlement Class set forth in the Weisbrot Declaration...along with the proposed methods of dissemination of notice described therein, satisfy the requirements of Rule 23(e) and due process, are otherwise fair and reasonable, and therefore are approved.

## **GUIDA v. GAIA, INC.**

### **Case No. 1:22-cv-02350 (D. Colo.)**

The Honorable Gordon P. Gallagher (July 19, 2024): The Court has carefully considered the forms and methods of notice to the Settlement Class set forth in the Settlement ("Notice Plan"). The Court finds that the Notice Plan constitutes the best notice practicable under the circumstances and fully satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure, the requirements of due process, and the requirements of any other applicable law...The Court further finds that the Notice constitutes valid, due, and sufficient notice to all persons entitled thereto, and meets the requirements of Due Process. Accordingly, the Court finds that no notice other than that specifically identified in the Settlement is necessary in this Action.

## **FERNANDEZ v. CORELOGIC CREDCO, LLC**

### **Case No. 3:20-cv-01262 (S.D. Cal.)**

The Honorable Jeffrey T. Miller (June 20, 2024): The court approved notice of this class action and proposed settlement in the June 16, 2024, Preliminary Approval Order. The Agreement called for sending the Notice directly to class members through email ("email notice") and/or via U.S. Mail. ("notice packet"). In support of his Motions, Plaintiff has filed the Declaration of Lacey Rose, who is employed as a "Senior Project Manager with Angeion," and the Declaration of Steven Weisbrot, the President and Chief Executive Officer of Angeion, the Settlement Administrator retained in this matter. See generally, Doc. No. 316-5, Doc. No. 329. Both declarations detail the actions taken by the Administrator...Accordingly, **the court determines that the Notice in the case was copious, impressive, more than adequate**, and satisfied both the requirements of Rule 23 and due process, giving the settlement class members adequate notice of the Settlement.

## **JONES v. VARSITY BRANDS, LLC**

### **Case No. 2:20-cv-02892 (W.D. Tenn.)**

The Honorable Sheryl H. Lipman (June 18, 2024): Indirect Purchasers have retained Angeion to serve as Settlement Administrator...**Angeion has designed a multi-layered sophisticated plan** using a combination of Internet, email, publication, social media...The Notice Plan adequately apprises all potential class members of the terms of the Settlement Agreement, provides the opportunity to make informed decisions, and comports with due process.

## **SALINAS v. BLOCK, INC.**

### **Case No. 3:22-cv-04823 (N.D. Cal.)**

The Honorable Sallie Kim (June 3, 2024): The Court...(b) finds and determines that emailing the Summary Notice, reminder emails to Class Members (if available), and publication of the Settlement Agreement, Long Form Notice, Summary Notice, and Claim Form on the Settlement Website, supplemented by any social media and print media advertisements deemed appropriate by the Parties (i) constitutes the best notice practicable under the circumstances; (ii) constitutes notice that is reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action...(iii) constitutes due, adequate, and sufficient notice to all Persons entitled to receive notice of the proposed Settlement; and (iv) satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Constitution of the United States (including the Due Process Clause), and all other applicable laws and rules.

## **ESPOSITO v. CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS**

### **Case No. MID-L-006360-23 (N.J. Super. Ct.)**

The Honorable Ana C. Viscomi (April 26, 2024): The Court finds that such Notice program, including the approved forms of notice: (a) constituted the best notice that is practicable under the circumstances; (b) included direct individual notice to all Settlement Class Members who could be identified through reasonable effort, as well as appropriate reminder notices; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members...(d) constituted due, adequate and sufficient notice to all persons entitled to notice; and (e) met all applicable requirements of N.J. Ct. R. R. 4:32-1 and 4:32-2, Due Process under the U.S. Constitution, and any other applicable law.

## **KUKORINIS v. WALMART, INC.**

### **Case No. 8:22-cv-02402 (M.D. Fla.)**

The Honorable Virginia M. Hernandez Covington (January 19, 2024): The Notice Plan, including the form of the notices and methods for notifying the Settlement Class of the Settlement and its terms and conditions...a. meet the requirements of the Federal Rules of Civil Procedure (including Rule 23 (c)-(e)), the United States Constitution (including the Due Process Clause), and the Rules of this Court; b. constitute the best notice to Settlement Class Members practicable under the circumstances...

## **LE v. ZUFFA, LLC**

### **Case No. 2:15-cv-01045 (D. Nev.)**

The Honorable Richard F. Boulware, II (November 17, 2023): The proposed Notice Plan, including the proposed forms and manner of notice, constitutes the best notice practicable under the circumstances and satisfies the requirements of due process and Rules 23(c)(2) and 23(e)(1) of the Federal Rules of Civil Procedure.

## **IN RE: KIA HYUNDAI VEHICLE THEFT MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION**

### **Case No. 8:22-ml-03052 (C.D. Cal.)**

The Honorable James V. Selna (October 31, 2023): The Court has considered the form and content of the Class notice program and finds that the Class notice program and methodology as described in the Settlement

Agreement (a) meet the requirements of due process and Federal Rules of Civil Procedure 23(c) and (e); (b) constitute the best notice practicable under the circumstances to all persons entitled to notice; and (c) satisfies the constitutional requirements regarding notice.

### **AMANS v. TESLA, INC.**

#### **Case No. 3:21-cv-03577 (N.D. Cal.)**

The Honorable Vince Chhabria (October 20, 2023): The Court further finds that the Notice is the best notice practicable under the circumstances, and that the Notice complies fully with the requirements of the Federal Rules of Civil Procedure. The Court also finds that the Notice constitutes valid, due, and sufficient notice to all persons entitled thereto, and meets the requirements of Due Process. The Court further finds that the Notice is reasonably calculated, under all circumstances, to apprise members of the Settlement Class of the pendency of this case, the terms of the Settlement Agreement, the right to object to the Settlement, and the right to exclude themselves from the Settlement Class.

### **IN RE: PHILLIPS RECALLED CPAP, BI-LEVEL PAP, AND MECHANICAL VENTILATOR PRODUCTS LITIGATION**

#### **Case No. 2:21-mc-01230 (MDL No. 3014) (W.D. Pa.)**

The Honorable Joy Flowers Conti (October 10, 2023): The Court finds that the method of giving notice to the Settlement Class ("Notice Plan")...(a) constitute the best notice practicable under the circumstances, (b) are reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action, the terms and benefits of the proposed Settlement...(c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members and any other persons entitled to receive notice, (d) meet all applicable requirements of law, including, but not limited to, 28 U.S.C. § 1715, Rule 23(c), the Due Process Clause(s) of the United States Constitution, and any other applicable laws...

### **IN RE: AQUEOUS FILM-FORMING FOAMS PRODUCTS LIABILITY LITIGATION**

#### **Case No. 2:18-mn-02873 (D.S.C.)**

The Honorable Richard Mark Gergel (August 29, 2023): The Court also approves the proposed Notice Plan set forth in Exhibit C to the Settlement Agreement...The proposed Notice Plan is the best practicable notice under the circumstances of this case; is reasonably calculated under the circumstances to apprise potential Class Members of the Settlement Agreement and of their right to object to or exclude themselves from the proposed Settlement Class; is reasonable and constitutes due, adequate, and sufficient notice to all Persons entitled to receive it; and meets all applicable requirements of Federal Rule of Civil Procedure 23, the United States Constitution, and other applicable laws and rules.

### **LUNDY v. META PLATFORMS, INC.**

#### **Case No. 3:18-cv-06793 (N.D. Cal.)**

The Honorable James Donato (April 26, 2023): For purposes of Rule 23(e), the Notice Plan submitted with the Motion for Preliminary Approval and the forms of notice attached thereto are approved...The form, content, and method of giving notice to the Settlement Class as described in the Notice Plan submitted with the Motion for Preliminary Approval are accepted at this time as practicable and reasonable in light of the rather unique circumstances of this case.

### **IN RE: FACEBOOK INTERNET TRACKING LITIGATION**

#### **Case No. 5:12-md-02314 (N.D. Cal.)**

The Honorable Edward J. Davila (November 10, 2022): The Court finds that Plaintiffs' notice meets all applicable requirements of due process and is particularly impressed with Plaintiffs' methodology and use of technology to reach as many Class Members as possible. Based upon the foregoing, the Court finds that the Settlement Class has been provided adequate notice.

## **MEHTA v. ROBINHOOD FINANCIAL LLC**

### **Case No. 5:21-cv-01013 (N.D. Cal.)**

The Honorable Susan van Keulen (August 29, 2022): The proposed notice plan, which includes direct notice via email, will provide the best notice practicable under the circumstances. This plan and the Notice are reasonably calculated, under the circumstances, to apprise Class Members...The plan and the Notice constitute due, adequate, and sufficient notice to Class Members and satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure, due process, and all other applicable laws and rules.

## **IN RE: TIKTOK, INC., CONSUMER PRIVACY LITIGATION**

### **Case No. 1:20-cv-04699 (N.D. Ill.)**

The Honorable John Z. Lee (August 22, 2022): The Class Notice was disseminated in accordance with the procedures required by the Court's Order Granting Preliminary Approval...in accordance with applicable law, satisfied the requirements of Rule 23(e) and due process, and constituted the best notice practicable...

## **ADTRADER, INC. v. GOOGLE LLC**

### **Case No. 5:17-cv-07082 (N.D. Cal.)**

The Honorable Beth L. Freeman (May 13, 2022): The Court approves, as to form, content, and distribution, the Notice Plan set forth in the Settlement Agreement, including the Notice Forms attached to the Weisbrot Declaration, subject to the Court's one requested change as further described in Paragraph 8 of this Order, and finds that such Notice is the best notice practicable under the circumstances, and that the Notice complies fully with the requirements of the Federal Rules of Civil Procedure. The Court further finds that the Notice is reasonably calculated to, under all circumstances, reasonably apprise members...The Court also finds that the Notice constitutes valid, due and sufficient notice to all persons entitled thereto, and meets the requirements of Due Process. The Court further finds that the Notice Plan fully complies with the Northern District of California's Procedural Guidance for Class Action Settlements.

## **CITY OF LONG BEACH v. MONSANTO COMPANY**

### **Case No. 2:16-cv-03493 (C.D. Cal.)**

The Honorable Fernando M. Olguin (March 14, 2022): The court approves the form, substance, and requirements of the class Notice, (Dkt.278-2, Settlement Agreement, Exh. I). The proposed manner of notice of the settlement set forth in the Settlement Agreement constitutes the best notice practicable under the circumstances and complies with the requirements of due process.

## **STEWART v. LEXISNEXIS RISK DATA RETRIEVAL SERVICES, LLC**

### **Case No. 3:20-cv-00903 (E.D. Va.)**

The Honorable John A. Gibney Jr. (February 25, 2022): The proposed forms and methods for notifying the proposed Settlement Class Members of the Settlement and its terms and conditions meet the requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons and entities entitled to notice...Based on the foregoing, the Court hereby approves the notice plans developed by the Parties and the Settlement Administrator and directs that they be implemented according to the Agreement and the notice plans attached as exhibits.

## **WILLIAMS v. APPLE INC.**

### **Case No. 3:19-cv-04700 (N.D. Cal.)**

The Honorable Laurel Beeler (February 24, 2022): The Court finds the Email Notice and Website Notice (attached to the Agreement as Exhibits 1 and 4, respectively), and their manner of transmission, implemented pursuant to the Agreement (a) are the best practicable notice, (b) are reasonably calculated, under the circumstances, to apprise the Subscriber Class of the pendency of the Action and of their right to object to or to exclude themselves

from the proposed settlement, (c) are reasonable and constitute due, adequate and sufficient notice to all persons entitled to receive notice, and (d) meet all requirements of applicable law.

### **CLEVELAND v. WHIRLPOOL CORPORATION**

#### **Case No. 0:20-cv-01906 (D. Minn.)**

The Honorable Wilhelmina M. Wright (December 16, 2021): It appears to the Court that the proposed Notice Plan described herein, and detailed in the Settlement Agreement, comports with due process, Rule 23, and all other applicable law. Class Notice consists of email notice and postcard notice when email addresses are unavailable, which is the best practicable notice under the circumstances...The proposed Notice Plan complies with the requirements of Rule 23, Fed. R. Civ. P., and due process, and Class Notice is to be sent to the Settlement Class Members as set forth in the Settlement Agreement and pursuant to the deadlines above.

### **RASMUSSEN v. TESLA, INC. D/B/A TESLA MOTORS, INC.**

#### **Case No. 5:19-cv-04596 (N.D. Cal.)**

The Honorable Beth Labson Freeman (December 10, 2021): The Court has carefully considered the forms and methods of notice to the Settlement Class set forth in the Settlement Agreement ("Notice Plan"). The Court finds that the Notice Plan constitutes the best notice practicable under the circumstances and fully satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure, the requirements of due process, and the requirements of any other applicable law, such that the terms of the Settlement Agreement, the releases provided for therein, and this Court's final judgment will be binding on all Settlement Class Members.

### **CAMERON v. APPLE INC.**

#### **Case No. 4:19-cv-03074 (N.D. Cal.)**

The Honorable Yvonne Gonzalez Rogers (November 16, 2021): The parties' proposed notice plan appears to be constitutionally sound in that plaintiffs have made a sufficient showing that it is: (i) the best notice practicable; (ii) reasonably calculated, under the circumstances, to apprise the Class members of the proposed settlement and of their right to object or to exclude themselves as provided in the settlement agreement; (iii) reasonable and constitute due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) meet all applicable requirements of due process and any other applicable requirements under federal law.

### **RISTO v. SCREEN ACTORS GUILD - AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS**

#### **Case No. 2:18-cv-07241 (C.D. Cal.)**

The Honorable Christina A. Snyder (November 12, 2021): The Court approves the publication notice plan presented to this Court as it will provide notice to potential class members through a combination of traditional and digital media that will consist of publication of notice via press release, programmatic display digital advertising, and targeted social media, all of which will direct Class Members to the Settlement website...The notice plan satisfies any due process concerns as this Court certified the class under Federal Rule of Civil Procedure 23(b)(1)...

### **JENKINS v. NATIONAL GRID USA SERVICE COMPANY, INC.**

#### **Case No. 2:15-cv-01219 (E.D.N.Y.)**

The Honorable Joanna Seybert (November 8, 2021): Pursuant to Fed. R. Civ. P. 23(e)(1) and 23(c)(2)(B), the Court approves the proposed Notice Plan and procedures set forth at Section 8 of the Settlement...The Court finds that the proposed Notice Plan meets the requirements of due process under the United States Constitution and Rule 23, and that such Notice Plan—which includes direct notice to Settlement Class Members sent via first class U.S. Mail and email; the establishment of a Settlement Website (at the URL, [www.nationalgridtcpasettlement.com](http://www.nationalgridtcpasettlement.com)) where Settlement Class Members can view the full settlement agreement, the detailed long-form notice (in English and Spanish), and other key case documents; publication notice in forms attached as Exhibits E and F to

the Settlement sent via social media (Facebook and Instagram) and streaming radio (e.g., Pandora and iHeart Radio). The Notice Plan shall also include a paid search campaign on search engine(s) chosen by Angeion (e.g., Google) in the form attached as Exhibits G and the establishment of a toll-free telephone number where Settlement Class Members can get additional information—is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

### **NELLIS v. VIVID SEATS, LLC**

#### **Case No. 1:20-cv-02486 (N.D. Ill.)**

The Honorable Robert M. Dow, Jr. (November 1, 2021): The Notice Program, together with all included and ancillary documents thereto, (a) constituted reasonable notice; (b) constituted notice that was reasonably calculated under the circumstances to apprise members of the Settlement Class of the pendency of the Litigation...(c) constituted reasonable, due, adequate and sufficient notice to all Persons entitled to receive notice; and (d) met all applicable requirements of due process and any other applicable law. The Court finds that Settlement Class Members have been provided the best notice practicable of the Settlement and that such notice fully satisfies all requirements of law as well as all requirements of due process.

### **PELLETIER v. ENDO INTERNATIONAL PLC**

#### **Case No. 2:17-cv-05114 (E.D. Pa.)**

The Honorable Michael M. Baylson (October 25, 2021): The Court approves, as to form and content, the Notice of Pendency and Proposed Settlement of Class Action (the "Notice"), the Proof of Claim and Release form (the "Proof of Claim"), and the Summary Notice, annexed hereto as Exhibits A-1, A-2, and A-3, respectively, and finds that the mailing and distribution of the Notice and publishing of the Summary Notice, substantially in the manner and form set forth in ¶¶7-10 of this Order, meet the requirements of Rule 23 and due process, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all Persons entitled thereto.

### **BIEGEL v. BLUE DIAMOND GROWERS**

#### **Case No. 7:20-cv-03032 (S.D.N.Y.)**

The Honorable Cathy Seibel (October 25, 2021): The Court finds that the Notice Plan, set forth in the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order: (i) was the best notice practicable under the circumstances; (ii) was reasonably calculated to provide, and did provide, due and sufficient notice to the Settlement Class regarding the existence and nature of the Action...and (iii) satisfied the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and all other applicable law.

### **QUINTERO v. SAN DIEGO ASSOCIATION OF GOVERNMENTS**

#### **Case No. 37-2019-00017834-CU-NP-CTL (Cal. Super. Ct.)**

The Honorable Eddie C. Sturgeon (September 27, 2021): The Court has reviewed the class notices for the Settlement Class and the methods for providing notice and has determined that the parties will employ forms and methods of notice that constitute the best notice practicable under the circumstances; are reasonably calculated to apprise class members of the terms of the Settlement and of their right to participate in it, object, or opt-out; are reasonable and constitute due, adequate, and sufficient notice to all persons entitled to receive notice; and meet all constitutional and statutory requirements, including all due process requirements and the California Rules of Court.

### **HOLVE v. MCCORMICK & COMPANY, INC.**

#### **Case No. 6:16-cv-06702 (W.D.N.Y.)**

The Honorable Mark W. Pedersen (September 23, 2021): The Court finds that the form, content and method of giving notice to the Class as described in the Settlement Agreement and the Declaration of the Settlement Administrator: (a) will constitute the best practicable notice; (b) are reasonably calculated, under the

circumstances, to apprise the Settlement Class Members of the pendency of the Action...(c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members and other persons entitled to receive notice; and (d) meet all applicable requirements of law, including but not limited to 28 U.S.C. § 1715, Rule 23(c) and (e), and the Due Process Clause(s) of the United States Constitution.

### **CULBERTSON v. DELOITTE CONSULTING LLP**

#### **Case No. 1:20-cv-03962 (S.D.N.Y.)**

The Honorable Lewis J. Liman (August 27, 2021): The notice procedures described in the Notice Plan are hereby found to be the best means of providing notice under the circumstances and, when completed, shall constitute due and sufficient notice of the proposed Settlement Agreement and the Final Approval Hearing to all persons affected by and/or entitled to participate in the Settlement Agreement, in full compliance with the notice requirements of Rule 23 of the Federal Rules of Civil Procedure and due process of law.

### **PULMONARY ASSOCIATES OF CHARLESTON PLLC v. GREENWAY HEALTH, LLC**

#### **Case No. 3:19-cv-00167 (N.D. Ga.)**

The Honorable Timothy C. Batten, Sr. (August 24, 2021): Under Rule 23(c)(2), the Court finds that the content, format, and method of disseminating Notice, as set forth in the Motion, the Declaration of Steven Weisbrot filed on July 2, 2021, and the Settlement Agreement and Release, including notice by First Class U.S. Mail and email to all known Class Members, is the best notice practicable under the circumstances and satisfies all requirements provided in Rule 23(c)(2)(B) and due process.

### **IN RE: BROILER CHICKEN GROWER ANTITRUST LITIGATION (NO II)**

#### **Case No. 6:20-md-02977 (E.D. Okla.)**

The Honorable Robert J. Shelby (August 23, 2021): The Court approves the method of notice to be provided to the Settlement Class as set forth in Plaintiffs' Motion and Memorandum of Law in Support of Motion for Approval of the Form and Manner of Class Notice and Appointment of Settlement Administrator and Request for Expedited Treatment and the Declaration of Steven Weisbrot on Angeion Group Qualifications and Proposed Notice Plan...The Court finds and concludes that such notice: (a) is the best notice that is practicable under the circumstances, and is reasonably calculated to reach the members of the Settlement Class and to apprise them of the Action, the terms and conditions of the Settlement, their right to opt out and be excluded from the Settlement Class, and to object to the Settlement; and (b) meets the requirements of Federal Rule of Civil Procedure 23 and due process.

### **ROBERTS v. AT&T MOBILITY, LLC**

#### **Case No. 3:15-cv-03418 (N.D. Cal.)**

The Honorable Edward M. Chen (August 20, 2021): The Court finds that such Notice program, including the approved forms of notice: (a) constituted the best notice that is practicable under the circumstances; (b) included direct individual notice to all Settlement Class Members who could be identified through reasonable effort, as well as supplemental notice via a social media notice campaign and reminder email and SMS notices; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the nature of this Action ...(d) constituted due, adequate and sufficient notice to all persons entitled to notice; and (e) met all applicable requirements of Federal Rule of Civil Procedure 23, Due Process under the U.S. Constitution, and any other applicable law.

### **PYGIN v. BOMBAS, LLC**

#### **Case No. 4:20-cv-04412 (N.D. Cal.)**

The Honorable Jeffrey S. White (July 12, 2021): The Court also concludes that the Class Notice and Notice Program set forth in the Settlement Agreement satisfy the requirements of due process and Rule 23 and provide the best notice practicable under the circumstances. The Class Notice and Notice Program are reasonably

calculated to apprise Settlement Class Members of the nature of this Litigation, the Scope of the Settlement Class, the terms of the Settlement Agreement, the right of Settlement Class Members to object to the Settlement Agreement or exclude themselves from the Settlement Class and the process for doing so, and of the Final Approval Hearing. Accordingly, the Court approves the Class Notice and Notice Program and the Claim Form.

### **WILLIAMS v. RECKITT BENCKISER LLC**

#### **Case No. 1:20-cv-23564 (S.D. Fla.)**

The Honorable Jonathan Goodman (April 23, 2021): The Court approves, as to form and content, the Class Notice and Internet Notice submitted by the parties (Exhibits B and D to the Settlement Agreement or Notices substantially similar thereto) and finds that the procedures described therein meet the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, and provide the best notice practicable under the circumstances. The proposed Class Notice Plan -- consisting of (i) internet and social media notice; and (ii) notice via an established a Settlement Website -- is reasonably calculated to reach no less than 80% of the Settlement Class Members.

### **IN RE: APPLE INC. DEVICE PERFORMANCE LITIGATION**

#### **Case No. 5:18-md-02827 (N.D. Cal.)**

The Honorable Edward J. Davila (March 17, 2021): Angeion undertook a comprehensive notice campaign...The notice program was well executed, far-reaching, and exceeded both Federal Rule of Civil Procedure 23(c)(2)(B)'s requirement to provide the "best notice that is practicable under the circumstances" and Rule 23(e)(1)(B)'s requirement to provide "direct notice in a reasonable manner."

### **IN RE: GOOGLE PLUS PROFILE LITIGATION**

#### **Case No. 5:18-cv-06164 (N.D. Cal.)**

The Honorable Edward J. Davila (January 25, 2021): The Court further finds that the program for disseminating notice to Settlement Class Members provided for in the Settlement, and previously approved and directed by the Court (hereinafter, the "Notice Program"), has been implemented by the Settlement Administrator and the Parties, and such Notice Program, including the approved forms of notice, is reasonable and appropriate and satisfies all applicable due process and other requirements, and constitutes best notice reasonably calculated under the circumstances to apprise Settlement Class Members.

### **NELSON v. IDAHO CENTRAL CREDIT UNION**

#### **Case No. CV03-20-00831, CV03-20-03221 (Idaho Jud. Dist.)**

The Honorable Robert C. Naftz (January 19, 2021): The Court finds that the Proposed Notice here is tailored to this Class and designed to ensure broad and effective reach to it...The Parties represent that the operative notice plan is the best notice practicable and is reasonably designed to reach the settlement class members. The Court agrees.

### **IN RE: HANNA ANDERSSON AND SALESFORCE.COM DATA BREACH LITIGATION**

#### **Case No. 3:20-cv-00812 (N.D. Cal.)**

The Honorable Edward M. Chen (December 29, 2020): The Court finds that the Class Notice and Notice Program satisfy the requirements of due process and Rule 23 of the Federal Rules of Civil Procedure and provide the best notice practicable under the circumstances.

### **IN RE: PEANUT FARMERS ANTITRUST LITIGATION**

#### **Case No. 2:19-cv-00463 (E.D. Va.)**

The Honorable Raymond A. Jackson (December 23, 2020): The Court finds that the Notice Program...constitutes the best notice that is practicable under the circumstances and is valid, due and sufficient notice to all persons



entitled thereto and complies fully with the requirements of Rule 23(c)(2) and the due process requirements of the Constitution of the United States.

### **BENTLEY v. LG ELECTRONICS U.S.A., INC.**

#### **Case No. 2:19-cv-13554 (D.N.J.)**

The Honorable Madeline Cox Arleo (December 18, 2020): The Court finds that notice of this Settlement was given to Settlement Class Members in accordance with the Preliminary Approval Order and constituted the best notice practicable of the proceedings and matters set forth therein, including the Litigation, the Settlement, and the Settlement Class Members' rights to object to the Settlement or opt out of the Settlement Class, to all Persons entitled to such notice, and that this notice satisfied the requirements of Federal Rule of Civil Procedure 23 and of due process.

### **IN RE: ALLURA FIBER CEMENT SIDING PRODUCTS LIABILITY LITIGATION**

#### **Case No. 2:19-mn-02886 (D.S.C.)**

The Honorable David C. Norton (December 18, 2020): The proposed Notice provides the best notice practicable under the circumstances. It allows Settlement Class Members a full and fair opportunity to consider the proposed settlement. The proposed plan for distributing the Notice likewise is a reasonable method calculated to reach all members of the Settlement Class who would be bound by the settlement. There is no additional method of distribution that would be reasonably likely to notify Settlement Class Members who may not receive notice pursuant to the proposed distribution plan.

### **ADKINS v. FACEBOOK, INC.**

#### **Case No. 3:18-cv-05982 (N.D. Cal.)**

The Honorable William Alsup (November 15, 2020): Notice to the class is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Tr. Co.*, 399 U.S. 306, 314 (1965).

### **IN RE: 21ST CENTURY ONCOLOGY CUSTOMER DATA SECURITY BREACH LITIGATION**

#### **Case No. 8:16-md-02737 (M.D. Fla.)**

The Honorable Mary S. Scriven (November 2, 2020): The Court finds and determines that mailing the Summary Notice and publication of the Settlement Agreement, Long Form Notice, Summary Notice, and Claim Form on the Settlement Website, all pursuant to this Order, constitute the best notice practicable under the circumstances, constitute due and sufficient notice of the matters set forth in the notices to all persons entitled to receive such notices, and fully satisfies the of due process, Rule 23 of the Federal Rules of Civil Procedure, 28 U.S.C. § 1715, and all other applicable laws and rules. The Court further finds that all of the notices are written in plain language and are readily understandable by Class Members.

### **MARINO v. COACH INC.**

#### **Case No. 1:16-cv-01122 (S.D.N.Y.)**

The Honorable Valerie Caproni (August 24, 2020): The Court finds that the form, content, and method of giving notice to the Settlement Class as described in paragraph 8 of this Order: (a) will constitute the best practicable notice; (b) are reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action, the terms of the proposed Settlement, and their rights under the proposed Settlement, including but not limited to their rights to object to or exclude themselves from the proposed Settlement and other rights under the terms of the Settlement Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members and other persons entitled to receive notice; and (d) meet all applicable requirements of law, including but not limited to 28 U.S.C. § 1715, Rule 23(c) and (e), and the Due Process Clause(s) of the United States Constitution. The Court further finds that all of the notices are written in

plain language, are readily understandable by Settlement Class Members, and are materially consistent with the Federal Judicial Center's illustrative class action notices.

### **BROWN v. DIRECTV, LLC**

#### **Case No. 2:13-cv-01170 (C.D. Cal.)**

The Honorable Dolly M. Gee (July 23, 2020): Given the nature and size of the class, the fact that the class has no geographical limitations, and the sheer number of calls at issue, the Court determines that these methods constitute the best and most reasonable form of notice under the circumstances.

### **IN RE: SSA BONDS ANTITRUST LITIGATION**

#### **Case No. 1:16-cv-03711 (S.D.N.Y.)**

The Honorable Edgardo Ramos (July 15, 2020): The Court finds that the mailing and distribution of the Notice and the publication of the Summary Notice substantially in the manner set forth below meet the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process and constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all Persons entitled to notice.

### **KJESSLER v. ZAAPPAAZ, INC.**

#### **Case No. 4:18-cv-00430 (S.D. Tex.)**

The Honorable Nancy F. Atlas (July 14, 2020): The Court also preliminarily approves the proposed manner of communicating the Notice and Summary Notice to the putative Settlement Class, as set out below, and finds it is the best notice practicable under the circumstances, constitutes due and sufficient notice to all persons and entities entitled to receive such notice, and fully satisfies the requirements of applicable laws, including due process and Federal Rule of Civil Procedure 23.

### **HESTER v. WALMART, INC.**

#### **Case No. 5:18-cv-05225 (W.D. Ark.)**

The Honorable Timothy L. Brooks (July 9, 2020): The Court finds that the Notice and Notice Plan substantially in the manner and form set forth in this Order and the Agreement meet the requirements of Federal Rule of Civil Procedure 23 and due process, is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all Persons entitled thereto.

### **CLAY v. CYTOSPORT INC.**

#### **Case No. 3:15-cv-00165 (S.D. Cal.)**

The Honorable M. James Lorenz (June 17, 2020): The Court approves the proposed Notice Plan for giving notice to the Settlement Class through publication, both print and digital, and through the establishment of a Settlement Website, as more fully described in the Agreement and the Claims Administrator's affidavits (docs. no. 222-9, 224, 224-1, and 232-3 through 232-6). The Notice Plan, in form, method, and content, complies with the requirements of Rule 23 and due process, and constitutes the best notice practicable under the circumstances.

### **GROGAN v. AARON'S INC.**

#### **Case No. 1:18-cv-02821 (N.D. Ga.)**

The Honorable J.P. Boulee (May 1, 2020): The Court finds that the Notice Plan as set forth in the Settlement Agreement meets the requirements of Fed. R. Civ. P. 23 and constitutes the best notice practicable under the circumstances, including direct individual notice by mail and email to Settlement Class Members where feasible and a nationwide publication website-based notice program, as well as establishing a Settlement Website at the web address of [www.AaronsTCPASettlement.com](http://www.AaronsTCPASettlement.com), and satisfies fully the requirements the Federal Rules of Civil Procedure, the U.S. Constitution, and any other applicable law, such that the Settlement Agreement and Final Order and Judgment will be binding on all Settlement Class Members.

## **CUMMINGS v. BOARD OF REGENTS OF THE UNIVERSITY OF NEW MEXICO**

### **Case No. D-202-CV-2001-00579 (N.M. Jud. Dist.)**

The Honorable Carl Butkus (March 30, 2020): The Court has reviewed the Class Notice, the Plan of Allocation and Distribution and Claim Form, each of which it approves in form and substance. The Court finds that the form and methods of notice set forth in the Agreement: (i) are reasonable and the best practicable notice under the circumstances; (ii) are reasonably calculated to apprise Settlement Class Members of the pendency of the Lawsuit, of their rights to object to or opt-out of the Settlement, and of the Final Approval Hearing; (iii) constitute due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) meet the requirements of the New Mexico Rules of Civil Procedure, the requirements of due process under the New Mexico and United States Constitutions, and the requirements of any other applicable rules or laws.

## **SCHNEIDER v. CHIPOTLE MEXICAN GRILL, INC.**

### **Case No. 4:16-cv-02200 (N.D. Cal.)**

The Honorable Haywood S. Gilliam, Jr. (January 31, 2020): Given that direct notice appears to be infeasible, the third-party settlement administrator will implement a digital media campaign and provide for publication notice in People magazine, a nationwide publication, and the East Bay Times. SA § IV.A, C; Dkt. No. 205-12 at ¶¶ 13–23...The Court finds that the proposed notice process is “‘reasonably calculated, under all the circumstances,’ to apprise all class members of the proposed settlement.” Roes, 944 F.3d at 1045 (citation omitted).

## **HANLEY v. TAMPA BAY SPORTS AND ENTERTAINMENT LLC**

### **Case No. 8:19-cv-00550 (M.D. Fla.)**

The Honorable Charlene Edwards Honeywell (January 7, 2020): The Court approves the form and content of the Class notices and claim forms substantially in the forms attached as Exhibits A-D to the Settlement. The Court further finds that the Class Notice program described in the Settlement is the best practicable under the circumstances. The Class Notice program is reasonably calculated under the circumstances to inform the Settlement Class of the pendency of the Action, certification of a Settlement Class, the terms of the Settlement, Class Counsel’s attorney’s fees application and the request for a service award for Plaintiff, and their rights to opt-out of the Settlement Class or object to the Settlement. The Class notices and Class Notice program constitute sufficient notice to all persons entitled to notice. The Class notices and Class Notice program satisfy all applicable requirements of law, including, but not limited to, Federal Rule of Civil Procedure 23 and the Constitutional requirement of Due Process.

## **CORCORAN v. CVS HEALTH**

### **Case No. 4:15-cv-03504 (N.D. Cal.)**

The Honorable Yvonne Gonzalez Rogers (November 22, 2019): Having reviewed the parties’ briefings, plaintiffs’ declarations regarding the selection process for a notice provider in this matter and regarding Angeion Group LLC’s experience and qualifications, and in light of defendants’ non-opposition, the Court APPROVES Angeion Group LLC as the notice provider...Having considered the parties’ revised proposed notice program, the Court agrees that the parties’ proposed notice program is the “best notice that is practicable under the circumstances.” The Court is satisfied with the representations made regarding Angeion Group LLC’s methods for ascertaining email addresses from existing information in the possession of defendants. Rule 23 further contemplates and permits electronic notice to class members in certain situations. See Fed. R. Civ. P. 23(c)(2)(B).

## **PATORA v. TARTE, INC.**

### **Case No. 7:18-cv-11760 (S.D.N.Y.)**

The Honorable Kenneth M. Karas (October 2, 2019): The Court finds that the form, content, and method of giving notice to the Class as described in Paragraph 9 of this Order: (a) will constitute the best practicable notice; (b) are reasonably calculated, under the circumstances, to apprise the Settlement Class Members...(c) are reasonable

and constitute due, adequate, and sufficient notice to all Settlement Class Members and other persons entitled to receive notice; and (d) meet all applicable requirements of law, including but not limited to 28 U.S.C. § 1715, Rule 23(c) and (e), and the Due Process Clauses of the United States Constitution. The Court further finds that all of the notices are written in simple terminology, are readily understandable by Settlement Class Members, and are materially consistent with the Federal Judicial Center's illustrative class action notices.

### **CARTER v. GENERAL NUTRITION CENTERS, INC., AND GNC HOLDINGS, INC.**

#### **Case No. 2:16-cv-00633 (W.D. Pa.)**

The Honorable Mark R. Hornak (September 9, 2019): The Court finds that the Class Notice and the manner of its dissemination described in Paragraph 7 above and Section VII of the Agreement constitutes the best practicable notice under the circumstances and is reasonably calculated, under all the circumstances, to apprise proposed Settlement Class Members of the pendency of this action, the terms of the Agreement, and their right to object to or exclude themselves from the proposed Settlement Class. The Court finds that the notice is reasonable, that it constitutes due, adequate and sufficient notice to all persons entitled to receive notice, and that it meets the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, and any other applicable laws.

### **CORZINE v. MAYTAG CORPORATION**

#### **Case No. 5:15-cv-05764 (N.D. Cal.)**

The Honorable Beth L. Freeman (August 21, 2019): The Court, having reviewed the proposed Summary Notice, the proposed FAQ, the proposed Publication Notice, the proposed Claim Form, and the proposed plan for distributing and disseminating each of them, finds and concludes that the proposed plan will provide the best notice practicable under the circumstances and satisfies all requirements of federal and state laws and due process.

### **MEDNICK v. PRECOR, INC.**

#### **Case No. 1:14-cv-03624 (N.D. Ill.)**

The Honorable Harry D. Leinenweber (June 12, 2019): Notice provided to Class Members pursuant to the Preliminary Class Settlement Approval Order constitutes the best notice practicable under the circumstances, including individual email and mail notice to all Class Members who could be identified through reasonable effort, including information provided by authorized third-party retailers of Precor. Said notice provided full and adequate notice of these proceedings and of the matter set forth therein, including the proposed Settlement set forth in the Agreement, to all persons entitled to such notice, and said notice fully satisfied the requirements of F.R.C.P. Rule 23 (e) and (h) and the requirements of due process under the United States and California Constitutions.

### **GONZALEZ v. TCR SPORTS BROADCASTING HOLDING LLP**

#### **Case No. 1:18-cv-20048 (S.D. Fla.)**

The Honorable Darrin P. Gayles (May 24, 2019): The Court finds that notice to the class was reasonable and the best notice practicable under the circumstances, consistent with Rule 23(e)(1) and Rule 23(c)(2)(B).

### **ANDREWS v. THE GAP, INC.**

#### **Case No. CGC-18-567237 (Cal. Super. Ct.)**

The Honorable Richard B. Ulmer Jr. (May 10, 2019): The Court finds that (a) the Full Notice, Email Notice, and Publication constitute the best notice practicable under the circumstances, (b) they constitute valid, due, and sufficient notice to all members of the Class, and (c) they comply fully with the requirements of California Code of Civil Procedure section 382, California Rules of Court 3.766 and 3.769, the California and United States Constitutions, and other applicable law.

### **COLE v. NIBCO, INC.**

#### **Case No. 3:13-cv-07871 (D.N.J.)**

The Honorable Freda L. Wolfson (April 11, 2019): The record shows, and the Court finds, that the Notice Plan has been implemented in the manner approved by the Court in its Preliminary Approval Order. The Court finds that the Notice Plan constitutes: (i) the best notice practicable to the Settlement Class under the circumstances; (ii) was reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of this..., (iii) due, adequate, and sufficient notice to all Persons entitled to receive notice; and (iv) notice that fully satisfies the requirements of the United States Constitution (including the Due Process Clause), Fed. R. Civ. P. 23, and any other applicable law.

### **DIFRANCESCO v. UTZ QUALITY FOODS, INC.**

#### **Case No. 1:14-cv-14744 (D. Mass.)**

The Honorable Douglas P. Woodlock (March 15, 2019): The Court finds that the Notice plan and all forms of Notice to the Class as set forth in the Settlement Agreement and Exhibits 2 and 6 thereto, as amended (the "Notice Program"), is reasonably calculated to, under all circumstances, apprise the members of the Settlement Class of the pendency of this action, the certification of the Settlement Class, the terms of the Settlement Agreement, and the right of members to object to the settlement or to exclude themselves from the Class. The Notice Program is consistent with the requirements of Rule 23 and due process, and constitutes the best notice practicable under the circumstances.

### **IN RE: CHRYSLER-DODGE-JEEP ECODIESEL MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION**

#### **Case No. 3:17-md-02777 (N.D. Cal.)**

The Honorable Edward M. Chen (February 11, 2019): Also, the parties went through a sufficiently rigorous selection process to select a settlement administrator. See Proc. Guidance for Class Action Sett. ¶ 2; see also Cabraser Decl. ¶¶ 9-10. While the settlement administration costs are significant – an estimated \$1.5 million – they are adequately justified given the size of the class and the relief being provided.

In addition, the Court finds that the language of the class notices (short and long-form) is appropriate and that the means of notice – which includes mail notice, electronic notice, publication notice, and social media "marketing" – is the "best notice...practicable under the circumstances." Fed. R. Civ. P. 23(c)(2)(B); see also Proc. Guidance for Class Action Sett. ¶¶ 3-5, 9 (addressing class notice, opt-outs, and objections). The Court notes that the means of notice has changed somewhat, as explained in the Supplemental Weisbrot Declaration filed on February 8, 2019, so that notice will be more targeted and effective. See generally Docket No. 525 (Supp. Weisbrot Decl.) (addressing, inter alia, press release to be distributed via national newswire service, digital and social media marketing designed to enhance notice, and "reminder" first-class mail notice when AEM becomes available).

Finally, the parties have noted that the proposed settlement bears similarity to the settlement in the Volkswagen MDL. See Proc. Guidance for Class Action Sett. ¶ 11.

### **RYSEWYK v. SEARS HOLDINGS CORPORATION**

#### **Case No. 1:15-cv-04519 (N.D. Ill.)**

The Honorable Manish S. Shah (January 29, 2019): The Court holds that the Notice and notice plan as carried out satisfy the requirements of Rule 23(e) and due process. This Court has previously held the Notice and notice plan to be reasonable and the best practicable under the circumstances in its Preliminary Approval Order dated August 6, 2018. (Dkt. 191) Based on the declaration of Steven Weisbrot, Esq. of Angeion Group (Dkt. No. 209-2), which sets forth compliance with the Notice Plan and related matters, the Court finds that the multi-pronged notice strategy as implemented has successfully reached the putative Settlement Class, thus constituting the best practicable notice and satisfying due process.

## **MAYHEW v. KAS DIRECT, LLC, AND S.C. JOHNSON & SON, INC.**

### **Case No. 7:16-cv-06981 (S.D.N.Y.)**

The Honorable Vincent J. Briccetti (June 26, 2018): In connection with their motion, plaintiffs provide the declaration of Steven Weisbrot, Esq., a principal at the firm Angeion Group, LLC, which will serve as the notice and settlement administrator in this case. (Doc. #101, Ex. F: Weisbrot Decl.) According to Mr. Weisbrot, he has been responsible for the design and implementation of hundreds of class action administration plans, has taught courses on class action claims administration, and has given testimony to the Judicial Conference Committee on Rules of Practice and Procedure on the role of direct mail, email, and digital media in due process notice. Mr. Weisbrot states that the internet banner advertisement campaign will be responsive to search terms relevant to “baby wipes, baby products, baby care products, detergents, sanitizers, baby lotion, [and] diapers,” and will target users who are currently browsing or recently browsed categories “such as parenting, toddlers, baby care, [and] organic products.” (Weisbrot Decl. ¶ 18). According to Mr. Weisbrot, the internet banner advertising campaign will reach seventy percent of the proposed class members at least three times each. (Id. ¶ 9). Accordingly, the Court approves of the manner of notice proposed by the parties as it is reasonable and the best practicable option for confirming the class members receive notice.

## **IN RE: OUTER BANKS POWER OUTAGE LITIGATION**

### **Case No. 4:17-cv-00141 (E.D.N.C.)**

The Honorable James C. Dever III (May 2, 2018): The court has reviewed the proposed notice plan and finds that the notice plan provides the best practicable notice under the circumstances and, when completed, shall constitute fair, reasonable, and adequate notice of the settlement to all persons and entities affected by or entitled to participate in the settlement, in full compliance with the notice requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process. Thus, the court approves the proposed notice plan.

## **GOLDEMBERG v. JOHNSON & JOHNSON CONSUMER COMPANIES, INC.**

### **Case No. 7:13-cv-03073 (S.D.N.Y.)**

The Honorable Nelson S. Roman (November 1, 2017): Notice of the pendency of the Action as a class action and of the proposed Settlement, as set forth in the Settlement Notices, was given to all Class Members who could be identified with reasonable effort, consistent with the terms of the Preliminary Approval Order. The form and method of notifying the Class of the pendency of the Action as a class action and of the terms and conditions of the proposed Settlement met the requirements of Rule 23 of the Federal Rules of Civil Procedure, due process, and any other applicable law in the United States. Such notice constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

## **HALVORSON v. TALENTBIN, INC.**

### **Case No. 3:15-cv-05166 (N.D. Cal.)**

The Honorable Joseph C. Spero (July 25, 2017): The Court finds that the Notice provided for in the Order of Preliminary Approval of Settlement has been provided to the Settlement Class, and the Notice provided to the Settlement Class constituted the best notice practicable under the circumstances, and was in full compliance with the notice requirements of Rule 23 of the Federal Rules of Civil Procedure, due process, the United States Constitution, and any other applicable law.

## **IN RE: ASHLEY MADISON CUSTOMER DATA SECURITY BREACH LITIGATION**

### **MDL No. 2669/Case No. 4:15-md-02669 (E.D. Mo.)**

The Honorable John A. Ross (July 21, 2017): The Court further finds that the method of disseminating Notice, as set forth in the Motion, the Declaration of Steven Weisbrot, Esq. on Adequacy of Notice Program, dated July 13, 2017, and the Parties’ Stipulation—including an extensive and targeted publication campaign composed of both consumer magazine publications in People and Sports Illustrated, as well as serving 11,484,000 highly targeted digital banner ads to reach the prospective class members that will deliver approximately 75.3% reach with an

average frequency of 3.04 —is the best method of notice practicable under the circumstances and satisfies all requirements provided in Rule 23(c)(2)(B) and all Constitutional requirements including those of due process.

The Court further finds that the Notice fully satisfies Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process; provided, that the Parties, by agreement, may revise the Notice, the Claim Form, and other exhibits to the Stipulation, in ways that are not material or ways that are appropriate to update those documents for purposes of accuracy.

### **TRAXLER v. PPG INDUSTRIES INC.**

#### **Case No. 1:15-cv-00912 (N.D. Ohio)**

The Honorable Dan Aaron Polster (April 27, 2017): The Court hereby approves the form and procedure for disseminating notice of the proposed settlement to the Settlement Class as set forth in the Agreement. The Court finds that the proposed Notice Plan contemplated constitutes the best notice practicable under the circumstances and is reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action and their right to object to the proposed settlement or opt out of the Settlement Class in full compliance with the requirements of applicable law, including the Due Process Clause of the United States Constitution and Rules 23(c) and (e). In addition, Class Notice clearly and concisely states in plain, easily understood language: (i) the nature of the action; (ii) the definition of the certified Settlement Class; (iii) the claims and issues of the Settlement Class; (iv) that a Settlement Class Member may enter an appearance through an attorney if the member so desires; (v) that the Court will exclude from the Settlement Class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

### **IN RE: THE HOME DEPOT, INC., CUSTOMER DATA SECURITY BREACH LITIGATION**

#### **Case No. 1:14-md-02583 (N.D. Ga.)**

The Honorable Thomas W. Thrash Jr. (March 10, 2017): The Court finds that the form, content, and method of giving notice to the settlement class as described in the settlement agreement and exhibits: (a) constitute the best practicable notice to the settlement class; (b) are reasonably calculated, under the circumstances, to apprise settlement class members of the pendency of the action, the terms of the proposed settlement, and their rights under the proposed settlement; (c) are reasonable and constitute due, adequate, and sufficient notice to those persons entitled to receive notice; and (d) satisfy the requirements of Federal Rule of Civil Procedure 23, the constitutional requirement of due process, and any other legal requirements. The Court further finds that the notice is written in plain language, uses simple terminology, and is designed to be readily understandable by settlement class members.

### **ROY v. TITFLEX CORPORATION T/A GASTITE AND WARD MANUFACTURING, LLC**

#### **Case No. 384003V (Md. Cir. Ct.)**

The Honorable Ronald B. Rubin (February 24, 2017): What is impressive to me about this settlement is in addition to all the usual recitation of road racing litanies is that there is going to be a) public notice of a real nature and b) about a matter concerning not just money but public safety and then folks will have the knowledge to decide for themselves whether to take steps to protect themselves or not. And that's probably the best thing a government can do is to arm their citizens with knowledge and then the citizens can make decision. To me that is a key piece of this deal. *I think the notice provisions are exquisite.*

### **IN RE: LG FRONT LOADING WASHING MACHINE CLASS ACTION LITIGATION**

#### **Case No. 2:08-cv-00051 (D.N.J.)**

The Honorable Madeline Cox Arleo (June 17, 2016): This Court further approves the proposed methods for giving notice of the Settlement to the Members of the Settlement Class, as reflected in the Settlement Agreement and...finds that the Members of the Settlement Class will receive the best notice practicable under the

circumstances. The Court specifically approves the Parties' proposal to use reasonable diligence to identify potential class members and an associated mailing and/or email address in the Company's records, and their proposal to direct the ICA to use this information to send absent class members notice both via first class mail and email. The Court further approves the plan for the Publication Notice's publication in two national print magazines and on the internet. The Court also approves payment of notice costs as provided in the Settlement. The Court finds that these procedures, carried out with reasonable diligence, will constitute the best notice practicable under the circumstances and will satisfy.

### **FENLEY v. APPLIED CONSULTANTS, INC.**

#### **Case No. 2:15-cv-00259 (W.D. Pa.)**

The Honorable Mark R. Hornak (June 16, 2016): The Court would note that it approved notice provisions of the settlement agreement in the proceedings today. That was all handled by the settlement and administrator Angeion. The notices were sent. The class list utilized the Postal Service's national change of address database along with using certain proprietary and other public resources to verify addresses. the requirements of Fed.R.Civ.P. 23(c)(2), Fed.R.Civ.P. 23(e) (l), and Due Process....

The Court finds and concludes that the mechanisms and methods of notice to the class as identified were reasonably calculated to provide all notice required by the due process clause, the applicable rules and statutory provisions, and that the results of *the efforts of Angeion were highly successful and fulfilled all of those requirements.*

### **FUENTES v. UNIRUSH, LLC D/B/A UNIRUSH FINANCIAL SERVICES**

#### **Case No. 1:15-cv-08372 (S.D.N.Y.)**

The Honorable J. Paul Oetken (May 16, 2016): The Court approves, as to form, content, and distribution, the Claim Form attached to the Settlement Agreement as Exhibit A, the Notice Plan, and all forms of Notice to the Settlement Class as set forth in the Settlement Agreement and Exhibits B-D, thereto, and finds that such Notice is the best notice practicable under the circumstances, and that the Notice complies fully with the requirements of the Federal Rules of Civil Procedure. The Court also finds that the Notice constitutes valid, due and sufficient notice to all persons entitled thereto, and meets the requirements of Due Process. The Court further finds that the Notice is reasonably calculated to, under all circumstances, reasonably apprise members of the Settlement Class of the pendency of the Actions, the terms of the Settlement Agreement, and the right to object to the settlement and to exclude themselves from the Settlement Class. The Parties, by agreement, may revise the Notices and Claim Form in ways that are not material, or in ways that are appropriate to update those documents for purposes of accuracy or formatting for publication.

### **IN RE: WHIRLPOOL CORP. FRONTLOADING WASHER PRODUCTS LIABILITY LITIGATION**

#### **MDL No. 2001/Case No. 1:08-wp-65000 (N.D. Ohio)**

The Honorable Christopher A. Boyko (May 12, 2016): The Court, having reviewed the proposed Summary Notices, the proposed FAQ, the proposed Publication Notice, the proposed Claim Form, and the proposed plan for distributing and disseminating each of them, finds and concludes that the proposed plan for distributing and disseminating each of them will provide the best notice practicable under the circumstances and satisfies all requirements of federal and state laws and due process.

### **SATERIALE v. R.J. REYNOLDS TOBACCO CO.**

#### **Case No. 2:09-cv-08394 (C.D. Cal.)**

The Honorable Christina A. Snyder (May 3, 2016): The Court finds that the Notice provided to the Settlement Class pursuant to the Settlement Agreement and the Preliminary Approval Order has been successful, was the best notice practicable under the circumstances and (1) constituted notice that was reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the Action, their right to



object to the Settlement, and their right to appear at the Final Approval Hearing; (2) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and (3) met all applicable requirements of the Federal Rules of Civil Procedure, Due Process, and the rules of the Court.

### **FERRERA v. SNYDER'S-LANCE, INC.**

#### **Case No. 0:13-cv-62496 (S.D. Fla.)**

The Honorable Joan A. Lenard (February 12, 2016): The Court approves, as to form and content, the Long-Form Notice and Short- Form Publication Notice attached to the Memorandum in Support of Motion for Preliminary Approval of Class Action Settlement as Exhibits 1 and 2 to the Stipulation of Settlement. The Court also approves the procedure for disseminating notice of the proposed settlement to the Settlement Class and the Claim Form, as set forth in the Notice and Media Plan attached to the Memorandum in Support of Motion for Preliminary Approval of Class Action Settlement as Exhibits G. The Court finds that the notice to be given constitutes the best notice practicable under the circumstances, and constitutes valid, due, and sufficient notice to the Settlement Class in full compliance with the requirements of applicable law, including the Due Process Clause of the United States Constitution.

### **SOTO v. THE GALLUP ORGANIZATION, INC.**

#### **Case No. 0:13-cv-61747 (S.D. Fla.)**

The Honorable Marcia G. Cooke (June 16, 2015): The Court approves the form and substance of the notice of class action settlement described in ¶ 8 of the Agreement and attached to the Agreement as Exhibits A, C and D. The proposed form and method for notifying the Settlement Class Members of the settlement and its terms and conditions meet the requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons and entities entitled to the notice. The Court finds that the proposed notice is clearly designed to advise the Settlement Class Members of their rights.

### **OTT v. MORTGAGE INVESTORS CORPORATION OF OHIO, INC.**

#### **Case No. 3:14-cv-00645 (D. Or.)**

The Honorable Janice M. Stewart (July 20, 2015): The Notice Plan, in form, method, and content, fully complies with the requirements of Rule 23 and due process, constitutes the best notice practicable under the circumstances, and is due and sufficient notice to all persons entitled thereto. The Court finds that the Notice Plan is reasonably calculated to, under all circumstances, reasonably apprise the persons in the Settlement Class of the pendency of this action, the terms of the Settlement Agreement, and the right to object to the Settlement and to exclude themselves from the Settlement Class.

### **IN RE: POOL PRODUCTS DISTRIBUTION MARKET ANTITRUST LITIGATION**

#### **MDL No. 2328/Case No. 2:12-md-02328 (E.D. La.)**

The Honorable Sarah S. Vance (December 31, 2014): To make up for the lack of individual notice to the remainder of the class, the parties propose a print and web-based plan for publicizing notice. The Court welcomes the inclusion of web-based forms of communication in the plan. The Court finds that the proposed method of notice satisfies the requirements of Rule 23(c)(2)(B) and due process. The direct emailing of notice to those potential class members for whom Hayward and Zodiac have a valid email address, along with publication of notice in print and on the web, is reasonably calculated to apprise class members of the settlement. Moreover, the plan to combine notice for the Zodiac and Hayward settlements should streamline the process and avoid confusion that might otherwise be caused by a proliferation of notices for different settlements. Therefore, the Court approves the proposed notice forms and the plan of notice.

# **Exhibit B**

**Angeion Group Project Proposal Schedule of Fees and Charges**

Case/Project Name: *Similasin*  
 Type of Case: **Consumer**  
 Angeion Representative: **Steven Weisbrot, Esq.**



<b>Case Management Fee</b>	<b>TOTAL (\$)</b>
Case/project start-up fee may include pre-administration consulting, preparing the technology environment, establishing project management workflows, securing the QSF/bank account, obtaining EIN, and database set-up/management.	
<b>SUBTOTAL</b>	<b>2,500.00</b>

<b>Notification Fees &amp; Costs</b>	<b>TOTAL (\$)</b>
<b>Angeion Media Campaign (70% Reach Plan)</b>	
The recommended media plan will deliver 70.17% reach with an average frequency of 3.05x. Tactics include programmatic display ads, paid social media (Facebook/Instagram/X), and search engine marketing with an est. 9.90MM impressions. <i>* Target audience - Purchasers of eye wash and drops and homeopathic medicine</i> CLRA Publication - 4x weekly insert in USA Today California Regional Edition	
<b>SUBTOTAL</b>	<b>63,748.00</b>

<b>Processing Notice Requests &amp; Class Member Correspondence</b>	<b>TOTAL (\$)</b>
Processing notice requests and handling class member inquiries	
<b>SUBTOTAL</b>	<b>7,000.00</b>

<b>Website Requirements</b>	<b>TOTAL (\$)</b>
Set-up fee for Angeion Group website w/ relevant case documents, online claims filing capability, maintenance/hosting, revisions, and additional programming time for online out-out/deficiency/dispute portal	
<b>SUBTOTAL</b>	<b>7,500.00</b>

<b>Call Center Requirements</b>	<b>TOTAL (\$)</b>
Set-up fee for IVR (integrated voice response), class member calls (per minute), and transcription services for class members	
<b>SUBTOTAL</b>	<b>2,000.00</b>

<b>Angeion Reporting Requirements / Project Management</b>	<b>TOTAL (\$)</b>
General reporting to counsel, the Court, project management and internal reporting requirements	
<b>RANGE</b>	<b>12,000 - 20,000</b>

<b>Process Opt-Outs &amp; Objections</b>	<b>TOTAL (\$)</b>
Review and process Opt-Outs and Objections received	
<b>SUBTOTAL</b>	<b>65.00</b>

<b>Claims Administration Fees &amp; Costs</b>	<b>TOTAL (\$)</b>
Receive and process claims - online & hardcopy; includes ClaimScore third party review; 750,000 - 4,000,000 claim submissions	
<b>RANGE</b>	<b>135,000 - 430,000</b>

<b>AngeionAffirm Fraud Monitoring &amp; Deficiency Process</b>	<b>TOTAL (\$)</b>
Deficiency claim support with documentation, including AngeionAffirm 2.0 real-time fraud prevention and deficiency portal for submissions and claim cure/appeals	
<b>SUBTOTAL</b>	<b>11,500.00</b>

<b>Distribution &amp; Post Distribution</b>	<b>TOTAL (\$)</b>
Distribution of awards via digital payment** (check issued to those with undeliverable digital payments and those that request a check) - Assumes ~75,000 - 400,000 disbursements (95% Digital / 5% Check)	
<b>RANGE</b>	<b>30,500 - 129,500</b>

<b>Tax Return</b>	<b>TOTAL (\$)</b>
Tax return for the QSF (assumes 1 year) and issuing tax forms, as applicable***	
<b>SUBTOTAL</b>	<b>2,100.00</b>

<b>Other Relevant Costs</b>	<b>TOTAL (\$)</b>
CAFA noticing (includes postage*); Spanish translation of the relevant documents; P.O. Box for Opt-Outs & Objections; Miscellaneous ****	
<b>SUBTOTAL</b>	<b>7,000.00</b>

<b>ESTIMATED PROJECT FEES &amp; COSTS (excl. postage)</b>	<b>277,000 - 670,000</b>
<b>ESTIMATED POSTAGE COSTS</b>	<b>2,500 - 15,000</b>
<b>TOTAL ESTIMATED COSTS</b>	<b>280,000 - 685,000</b>

\* Postage is an estimate and based upon USPS rates effective July 2024.  
 \*\* Digital distribution available to domestic claimants only. If international digital payments are required, there will be additional fees.  
 \*\*\* If applicable, costs of escheatment/unclaimed funds process are estimated separately. Additional fees will apply.  
 \*\*\*\* Banking fees associated with distribution related accounts may be charged.

# EXHIBIT D

**UNITED STATES DISTRICT COURT  
DISTRICT OF COLORADO**

Case No.: 1:23-cv-02511-DDD-STV

DAVID PLOWDEN, MARIO ORTEGA, and  
KAMILLE FAYE VINLUAN-JULARBAL,  
each individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

SIMILASAN CORP., a Colorado Corporation,

Defendant.

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**[PROPOSED] ORDER GRANTING PLAINTIFFS' UNOPPOSED MOTION FOR  
PRELIMINARY APPROVAL OF SETTLEMENT, CERTIFICATION OF  
SETTLEMENT CLASS AND APPOINTMENT OF SETTLEMENT CLASS COUNSEL**

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Before this Court is Plaintiffs' Unopposed Motion for Preliminary Approval of Settlement, Certification of Settlement Class and Appointment of Settlement Class Counsel ("Motion"). The Court has reviewed the Motion and Settlement Agreement between Named Plaintiffs and Defendant Similasan Corp. ("Defendant"). After reviewing Named Plaintiffs' request for preliminary approval, this Court grants the Motion and preliminarily concludes that the proposed Settlement is fair, reasonable and adequate. In making this determination, the Court has considered the monetary benefits provided to the Settlement Class through the Settlement, the specific risks faced by the Settlement Class in prevailing on their claims, the good faith, arms'-length negotiations between the Parties and absence of evidence of collusion in the Settlement, the effectiveness of the proposed method for notifying and distributing relief to the Settlement Class, the proposed manner of allocating benefits to Settlement Class Members, the equitable treatment of Settlement Class Members under the Settlement, and all of the other factors required by Fed. R. Civ. P. 23 and relevant case law.

IT IS HEREBY ORDERED THAT:

1. The Court, pursuant to 28 U.S.C. § 1332, has jurisdiction over the Action, Named Plaintiffs, Settlement Class Members and Defendant.
2. The Settlement Agreement,<sup>1</sup> including the proposed Class Notice and Class Notice Program, the appointment of Named Plaintiffs David Plowden, Mario Ortega and Kamille Faye Vinluan-Jularbal as the Class Representatives, the appointment of Class Counsel for Plaintiffs and the Class, the appointment of Angeion Group, LLC as the Claims Administrator, the Class relief

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<sup>1</sup> Capitalized terms not otherwise defined shall have the meaning ascribed to such terms in the Settlement Agreement, which is filed as Exhibit 1 to Plaintiffs' Unopposed Motion for Preliminary Approval of Settlement, Certification of Settlement Class and Appointment of Settlement Class Counsel.

provided under the terms of the Settlement and the proposed method of distribution of Settlement benefits, is fair, reasonable and adequate, subject to further consideration at the Fairness Hearing described below.

3. The Court does hereby preliminarily and conditionally approve and certify, solely for settlement purposes, the following “Settlement Class”:

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

Specifically excluded from the Settlement Class are the following persons:

- (i) Defendant and its respective subsidiaries and affiliates, members, employees, officers, directors, agents, and representatives and their family members;
- (ii) Class Counsel;
- (iii) The judges who have presided over the Action;
- (iv) Local, municipal, state, and federal governmental agencies;  
and
- (v) All persons who have timely elected to become Opt-Outs from the Settlement Class in accordance with the Court’s Orders.

4. Based on the information provided and solely for settlement purposes, the Court preliminarily finds: the Settlement Class is ascertainable; it consists of, at a minimum, thousands of Settlement Class Members satisfying numerosity; there are common questions of law and fact—including whether or not the Covered Products were illegal to sell—satisfying commonality; the proposed Class Representatives’ claims are typical in that they are members of the Settlement Class and allege they have been damaged by the same conduct as the other members of the Settlement Class; the proposed Class Representatives and Class Counsel fully, fairly and adequately protect the interests of the Settlement Class; questions of law and fact common to

members of the Settlement Class predominate over questions affecting only individual members; and a class action is superior to other available methods for the fair and efficient adjudication of this Action.

5. The Court preliminarily appoints Named Plaintiffs David Plowden, Mario Ortega and Kamille Faye Vinluan-Jularbal as the Class Representatives.

6. The Court preliminarily appoints Melissa S. Weiner of Pearson Warshaw, LLP, Nick Suciu III and Rachel Soffin of Milberg Coleman Bryson Phillips Grossman PLLC, Jonas Jacobson of Dovel Luner LLP and William H. Anderson of Handley, Farah & Anderson PLLC as Class Counsel.

7. The Court appoints Angeion Group, LLC, as the Claims Administrator.

8. The Court approves, as to the form and content, the Class Notice as compliant with due process as the Class Notice, form and manner of transmission are reasonably calculated to adequately apprise Settlement Class Members of the following:

- a. a short, plain statement of the background of the Action and the proposed Settlement;
- b. describes the proposed Settlement relief as set forth in the Agreement;
- c. informs Settlement Class Members that, if they do not exclude themselves from the Settlement Class, they may be eligible to receive relief and will release their claims;
- d. describes the procedures for participating in the Settlement and advises Settlement Class Members of their rights, including their right to file a Claim Form to receive a Cash Award under the Settlement, to Opt-Out of the same, or object thereto;
- e. explains the impact of the proposed Settlement on any existing litigation, arbitration or other proceeding;



- f. states that any Cash Award to Settlement Class Members under the Settlement is contingent on the Court's final approval of the proposed Settlement;
- g. explains the procedures for opting-out of the Settlement;
- h. specifies that Opt-Outs shall be allowed on an individual basis only, and that so-called "mass" or "class" Opt-Outs shall not be allowed;
- i. provides that any objection to the Settlement, and any papers submitted in support of said objection, will be considered only if the Settlement Class Member making an objection has followed the guidelines for objecting as set forth in the Agreement; and
- j. explains that a Class Member who fails to follow the procedures and deadlines set forth in the Class Notice for submitting their comments to the proposed Settlement, will waive their right to be heard by the Court and will waive their right to appeal.

9. In order to be a Valid Claim under the Settlement, a Claim Form must be postmarked or electronically submitted no later than ninety (90) days after the Fairness Hearing. The Claims Administrator will ensure that all specific dates and deadlines are included in the Class Notice and posted on the Settlement Website after this Court enters this Order in accordance with the settlement timeline below.

10. All requests to Opt-Out to the proposed Settlement must be received by the Claims Administrator no later than ninety-five (95) days after the Preliminary Approval Date. All objections to the proposed Settlement must be filed by Settlement Class Members with the Court no later than ninety-five (95) days after the Preliminary Approval Date.

11. Settlement Class Members may submit an objection to the proposed Settlement under Federal Rule of Civil Procedure 23(e)(5). For an Objection to be valid, it must be filed (or

mailed to the Clerk of Court at Alfred A. Arraj United States Courthouse, Room A-105, 901 19<sup>th</sup> Street, Denver, Colorado 80294-3589) with the Court no later than ninety-five (95) days after the Preliminary Approval Date and include each and all of the following:

- a. the Settlement Class Member's printed name, address and telephone number;
- b. whether the Settlement Class Member is represented by counsel and, if so, contact information for their counsel;
- c. evidence showing that the objector is a Settlement Class Member;
- d. whether the objection applies to that Settlement Class Member or to a specific subset of the Settlement Class, or to the entire Settlement Class, and state with specificity the grounds for the objection;
- e. any other supporting papers, materials or briefs that the Settlement Class Member wishes the Court to consider when reviewing the objection;
- f. the actual written or electronic signature of the Settlement Class Member making the objection; and
- g. a statement on whether the objecting Settlement Class Member and/or their counsel intend to appear at the Fairness Hearing.

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

13. All Settlement Class Members who have not excluded themselves from the Settlement Class shall be bound by the Settlement Agreement and the Release, and all of their

respective claims shall be dismissed with prejudice and released, irrespective of whether they received actual notice of the Action or this Settlement.

14. Based on the foregoing, the proposed form of Class Notice is hereby approved.

15. Non-substantive changes, such as typographical errors, can be made to the Class Notice documents by agreement of the Parties without leave of the Court.

16. The Court approves the implementation of the Class Notice Program substantially in the form as presented in the exhibits to the Motion, and finds that such Class Notice Program meets the requirements of Fed. R. Civ. P. 23 and due process, and is the best notice practicable under the circumstances, including digital/internet publication designed to target purchasers of the Covered Products, a Settlement Website and a toll-free telephone number, and shall constitute due and efficient notice to all persons or entities entitled to notice.

17. A Fairness Hearing shall be held before the Court on \_\_\_[date]\_\_\_\_\_, 2025 at \_\_\_[time]\_\_\_\_\_ for the following purposes:

- a. To determine whether the proposed Settlement is fair, reasonable and adequate to the Settlement Class and should be approved by the Court;
- b. To determine whether to grant and issue the Final Order and Judgment, as defined in the Settlement Agreement;
- c. To determine whether the Class Notice Program as implemented was appropriate;
- d. To determine whether the claims process under the Settlement is fair, reasonable and adequate and should be approved by the Court;
- e. To determine whether the requested Class Representative Service Awards of two thousand and five-hundred dollars (\$2,500.00) to each of the Named

Plaintiffs, and Class Counsel’s Attorneys’ Fees in an amount not to exceed one-third (1/3) of the Settlement Amount and litigation expenses should be approved by the Court;

- f. To determine whether the settlement benefits are fair, reasonable and adequate; and
- g. To rule upon such other matters as the Court may deem appropriate.

18. The Court hereby sets the below schedule for the dissemination of Class Notice to the Settlement Class and for the Court’s Fairness Hearing, at which time the Court will determine whether the Settlement Agreement should be finally approved as fair, reasonable and adequate. The Fairness Hearing may take place remotely via telephone or video conference. This Court may order the Fairness Hearing to be postponed, adjourned or continued. If that occurs, the updated hearing date shall be posted on the Settlement Website, but other than the Settlement Website posting the Parties will not be required to provide any additional notice to Settlement Class Members.

**SETTLEMENT TIMELINE**

<b><u>DATE</u></b>	<b><u>EVENT</u></b>
Thirty (30) days after the Preliminary Approval Date (“Notice Date”)	Claims Administrator to commence the Class Notice Program.
No later than sixty (60) days after the Preliminary Approval Date	Class Counsel to file their Motion for Attorneys’ Fees, Costs and Class Representative Service Awards (“Fee and Cost Application”).
No later than sixty (60) days after the Preliminary Approval Date	Class Counsel to file their Motion for Final Approval of Class Action Settlement.
Ninety-five (95) days after the Preliminary Approval Date (“Opt-Out and Objection Date”)	Last day for Settlement Class Members to postmark an appropriate, timely request for exclusion from the Settlement Class, or file an objection to the Settlement or the Fee and Cost Application with the Court or mail the objection to the Court at the address specified in the Official Notice.

<u>DATE</u>	<u>EVENT</u>
Seven (7) days before the Fairness Hearing	Any response to an objection shall be filed with the Court.
No later than one-hundred and eight (108) days after the Preliminary Approval Date	Class Counsel to file with the Court the Opt-Out List with an affidavit from the Claims Administrator attesting to its completeness and accuracy.
No earlier than one hundred and ten (111) days after the Preliminary Approval Date	Fairness Hearing

19. Pursuant to stipulation of the Parties, stay all proceedings in the Action until the approval of this Agreement has been finally determined shall be stayed, except the stay of proceedings shall not prevent the filing of any motions, affidavits and other matters necessary to obtain and preserve final judicial approval of this Agreement.

20. If, for any reason, the Settlement Agreement fails to become Final in accordance with the applicable provisions of the Settlement Agreement, the orders, judgment and dismissal to be entered pursuant to the Settlement Agreement shall be vacated, and the Parties will be returned to the status *quo ante* with respect to the Action as if the Parties had never entered into this Agreement.

21. This Order and the Settlement Agreement is for settlement purposes only. Neither the fact of, nor any provision contained in, the Settlement Agreement nor any action taken thereunder shall constitute or be construed as an admission of the validity of any claim or any fact alleged in the Action or of any wrongdoing, fault, violation of law or liability of any kind on the part of Defendant or any admission by Defendant of any claim or allegation made in any action or proceeding against Defendant or any concession as to the validity of any of the claims asserted by the Named Plaintiffs in the Action. This Agreement shall not be offered, or be admissible, in evidence against the Parties or cited or referred to in any action or proceeding, except in an action or proceeding brought to enforce its terms. Nothing contained therein is, or shall be, construed or

admissible as, an admission by Defendant that the Named Plaintiffs' claims or any similar claims are either valid or suitable for class treatment.

22. The Court reserves the right to adjourn the date of the Fairness Hearing without further notice to the potential Settlement Class Members and retains jurisdiction to consider all further requests or matters arising out of or connected with the proposed Settlement. The Court may approve the Settlement consistent with the Settlement Agreement without further notice to the Settlement Class.

IT IS SO ORDERED.

/s/ \_\_\_\_\_  
The Honorable Daniel D. Domenico  
United States District Judge