

**CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL**

**SUPERIOR COURT OF QUEBEC  
(CLASS ACTION)**

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**No.: 500-06-000921-185**

**FELICE PICCOLO**

*Plaintiff*

v.

**JOHNSON & JOHNSON INC.**

-and-

**JOHNSON & JOHNSON**

-and-

**JOHNSON & JOHNSON CONSUMER  
COMPANIES, INC.**

*Defendants*

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**NATIONAL SETTLEMENT AGREEMENT**

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**I. RECITALS**

A. The Agreement is entered into by and among Plaintiff, on behalf of himself and the Settlement Class Members, and Defendants, Johnson & Johnson Inc., Johnson & Johnson and Johnson & Johnson Consumer Companies, Inc., and resolves in full the Action. Capitalized terms used herein are defined in Section II of the Agreement or indicated in parentheses elsewhere in the Agreement. Subject to Court approval as required by the Quebec *Code of Civil Procedure*, CQLR, c C-25.01 (“**CCP**”) and as provided herein, Plaintiff and Defendants hereby stipulate and agree that, in consideration for the promises and covenants set forth in the Agreement and upon the issuance by the Court of a Final Judgment Approving Settlement and the occurrence of the

Effective Date, the Action shall be settled and terminated upon the terms and conditions contained herein;

B. WHEREAS, on April 5, 2018, Plaintiff filed, against Defendants, the Application for Authorization, as defined hereinafter in Section II. The Application for Authorization asserted claims under the law *inter alia* for fraudulent, deceptive, false advertising, sales, and marketing practices regarding Defendants' Aveeno Active Naturals Products advertised as "Active Naturals";

C. WHEREAS, the Parties have reached the resolution set forth in the Agreement, providing for, among other things, the settlement of the Action between and among Plaintiff, on behalf of himself and the Settlement Class, and Defendants on the terms and subject to the conditions set forth below; and

D. WHEREAS, the Parties have determined that a settlement of the Action on the terms reflected in the Agreement is fair, reasonable, adequate, and in the best interests of the Parties and the Settlement Class; and

E. WHEREAS, the Parties, to avoid the costs, disruption and distraction of further litigation, and without admission, have concluded that it is desirable that the claims in the Action be settled on the terms reflected in the Agreement.

NOW, THEREFORE, the Agreement is entered into by and among the Parties, by and through their respective counsel and representatives, and in consideration of the mutual promises, covenants and agreements contained herein and for value received, the Parties agree that upon the Effective Date, the Action and all Released Claims shall be settled and terminated as between

Plaintiff and the Settlement Class on the one hand, and Defendants on the other hand, as detailed herein.

## II. DEFINITIONS

A. As used in the Agreement and the attached exhibits (which are an integral part of the Agreement and are incorporated in their entirety by reference), the following terms shall have the meanings set forth below, unless the Agreement specifically provides otherwise:

1. “**Action**” means *Piccolo v. Johnson & Johnson Inc., Johnson & Johnson and Johnson & Johnson Consumer Companies, Inc.* (S.C.M.: 500-06-000921-185).

2. “**Agreement**” means this National Settlement Agreement (including all exhibits attached hereto).

3. “**Application for Authorization**” means Plaintiff’s *Application to Authorize the Bringing of a Class Action & to Appoint the Petitioner as Representative Plaintiff* dated April 5, 2018, including any amendment thereto.

4. “**Attorneys’ Fees and Expenses**” means such attorneys’ fees and expenses as may be awarded by the Court based on the Agreement to compensate Class Counsel (subject to Court approval), as described more particularly in Section X of the Agreement.

5. “**Authorized Claimant(s)**” means any Settlement Class Member who submits a valid Claim Form that is approved by the Settlement Administrator.

6. “**Award**” means the relief obtained by Settlement Class Members pursuant to Section IV of the Agreement.

7. “**Claim**” means a request for relief submitted by a Settlement Class Member on a Claim Form to the Settlement Administrator in accordance with the terms of the Agreement.

8. “**Claim Form**” means the form to be used by a Settlement Class Member to submit a Claim to the Settlement Administrator. The proposed Claim Form is subject to Court approval and is attached hereto as Exhibit 4.

9. “**Claims Deadline**” means the date by which all Claim Forms must be postmarked or submitted online to the Settlement Administrator to be considered timely.

10. “**Claim Period**” means the time period during which Settlement Class Members may submit a Claim Form to the Settlement Administrator for review.

11. “**Class Counsel**” or “**Plaintiff’s Counsel**” means Consumer Law Group Inc.

12. “**Class Notice**” or “**Notice**” means the forms of notice to be disseminated to Settlement Class Members informing them about the Agreement.

13. “**Court**” means the Superior Court of Quebec, in which the Action was filed and where the parties will seek approval of the settlement contained in the Agreement.

14. **“Covered Product(s)”** means any size of any Aveeno product bearing the phrase “Active Naturals” on its label, including without limitation the following:

AVEENO Daily Moisturizing body yogurt vanilla and oats lotion	AVEENO Positively Ageless Rejuvenating Scrub
Aveeno Daily Moisturizing body yogurt apricot and honey lotion	AVEENO Positively Radiant Intensive Night Cream
AVEENO Positively Ageless Skin Strength Hand Cream	AVEENO Positively Radiant 60sec In-Shower Facial
AVEENO Positively Ageless Skin Strength Body Cream	AVEENO Positively Radiant Cleanser
AVEENO Creamy Moisturizing Oil	AVEENO Positively Radiant Sheer Daily Moisturizer SPF 30
AVEENO Daily Moisturizing Lotion Hand Cream/Tube/Pump	AVEENO Positively Radiant Daily Moisturizer SPF 15
AVEENO Positively Radiant Dark Spot Correction	AVEENO Positively Radiant make up removing Wipes
AVEENO Positively Radiant Lotion	AVEENO Positively Radiant Makeup Remover Cleanser
AVEENO Daily Moisturizing Lotion SPF15 Pump	AVEENO Positively Radiant Moisturizer with SPF 30
AVEENO Daily Moisturizing Lotion Sheer Hydration	AVEENO Positively Radiant Eye CC Cream Light
AVEENO Intense Relief Hand Cream	AVEENO Positively Radiant Toner
AVEENO Intense Relief Moisture Repair Cream	AVEENO Skin Brightening Daily Scrub
AVEENO Intense Relief Overnight Cream	AVEENO Positively Radiant overnight hydrating facial moisturizer
AVEENO Skin Relief Hand Cream	AVEENO Positively Radiant Skin Brightening Daily Scrub
AVEENO Skin Relief Fragrance Free Lotion	AVEENO Positively Radiant Eye CC Cream Medium
AVEENO Skin Relief Moisturizing Cream	AVEENO Positively Radiant CC Cream SPF30 Fair-Light
AVEENO Skin Relief Moisturizing Lotion	AVEENO Positively Radiant CC Cream SPF30 Medium
AVEENO Skin Relief Gentle Scent Coconut Moisturizing Lotion	AVEENO Positively Radiant Targeted Tone Correction
AVEENO Skin Relief Gentle Scent Chamomile Moisturizing Lotion	AVEENO Positively Radiant Intensive Night Cream
AVEENO Skin Relief Diabetes Dry Skin Moisture Lotion	AVEENO Ultra Calming Day SPF30
AVEENO Stress Relief Moisturizing Lotion	AVEENO Ultra Calming Night Cream
AVEENO Daily Moisturizing Yogurt Body Wash Vanilla and Oats	AVEENO Ultra-Calming Daily Moisturizer SPF15
AVEENO Daily Moisturizing Yogurt Body Wash Apricot and Honey	AVEENO Ultra-Calming Foaming Cleanser
AVEENO Daily Moisturizing Body Wash	AVEENO Ultra Calming hydra cleanser
AVEENO Active Naturals Purifying Body Wash Sea Kelp & Nourishing Oatmeal	AVEENO Ultra-Calming Gentle Makeup Removing Wipes
AVEENO Active Naturals Uplifting Body Wash Peach & Ginger	Aveeno Baby Sensitive Skin Wipes
AVEENO Calming Body Wash Lavender & Chamomile	AVEENO Baby Soothing Relief Diaper Rash Cream

AVEENO Hydrating Body Wash Fig & Shea Butter	AVEENO Baby Calming Comfort Bath
AVEENO Invigorating Body Wash Grapefruit	AVEENO Baby Calming Comfort Lotion
AVEENO Invigorating Body Wash	AVEENO Baby Daily Moisturizing Lotion
AVEENO Skin Relief Gentle Scent Coconut Body Wash	AVEENO Baby Eczema Care Moisture Cream
AVEENO Skin Relief Gentle Scent Chamomile Body Wash	AVEENO Baby Eczema Care Night Balm
AVEENO Skin Relief Body Wash	AVEENO Baby Eczema Care Wash
AVEENO Skin Relief Fragrance Free Body Wash	AVEENO Baby Gentle Conditioner & Shampoo
AVEENO Positively Radiant Exfoliating Body Wash	AVEENO Baby Soothing Baby Bath Treatment
AVEENO Smoothing Body Wash Pomegranate & Rice	AVEENO Baby Soothing Relief Creamy Wash
AVEENO Stress Relief Body Wash	AVEENO Baby Soothing Relief Moisture Cream
AVEENO Eczema Care Itch-Relief Balm	AVEENO Baby Soothing Relief Wash
AVEENO Anti-itch Lotion	AVEENO Baby Wash & Shampoo
AVEENO Daily Moisturizing Bath	AVEENO Calming Comfort Baby Bath
AVEENO Eczema Care Hand Cream	AVEENO Baby Calming Comfort Lotion
AVEENO Eczema Care Body Wash	AVEENO Mom & Baby Gift Set
AVEENO Eczema Care Moisturizing Cream	AVEENO Baby Gift Set
AVEENO Moisturizing Bar - Dry Skin	AVEENO Protect +Hydrate Sun Lotion for Face and Body SPF30
AVEENO Positively Smooth Shave Gel	AVEENO Protect +Hydrate Sun Lotion for Face and Body SPF45
AVEENO Shower & Bath Oil	AVEENO Protect +Hydrate Sun Lotion Face SPF60
AVEENO Skin Relief Shave Gel	AVEENO Baby Sensitive Skin SPF 50
AVEENO Soothing Bath Treatment	AVEENO Baby Sensitive Skin Face Sun Stick SPF50
AVEENO Stress Relief Foaming Bath	AVEENO Baby Sunscreen lotion with SPF 55
AVEENO Positively Radiant Wipes	AVEENO Baby Sunscreen lotion with SPF 50
AVEENO Absolutely Ageless Daily Moisturizer SPF 30	AVEENO Active Naturals Living Color Preserving Conditioner Med-Thick Hair
AVEENO Absolutely Ageless Night Cream	AVEENO Active Naturals Living Color Preserving Conditioner Fine Hair
AVEENO Absolutely Ageless Eye Cream	AVEENO Active Naturals Living Color Preserving Shampoo Med-Thick Hair
AVEENO Absolutely Ageless Intense Serum	AVEENO Active Naturals Living Color Preserving Shampoo Fine Hair
AVEENO Absolutely Ageless Nourishing Cleanser	AVEENO Positively Nourishing Condition Treatment
AVEENO Absolutely Ageless Leave-on Mask Lotion	AVEENO Positively Nourishing Moisturize Conditioner
AVEENO Clear Complexion Foaming Cleanser	AVEENO Positively Nourishing Moisturize Shampoo
AVEENO Clear Complexion Cream Cleanser	AVEENO Positively Nourishing Revitalize Conditioner
AVEENO Clear Complexion Daily Moisturizer	AVEENO Positively Nourishing Revitalize Shampoo
AVEENO Clear Complexion Foaming Cleanser	AVEENO Positively Nourishing Shine Conditioner
AVEENO Fresh Essentials Daily Moist SPF 30	AVEENO Positively Nourishing Shine Shampoo

AVEENO Fresh Essentials Night Cream	AVEENO Positively Nourishing Volumize Conditioner
AVEENO Fresh Essentials Scrub	AVEENO Positively Nourishing Volumize Shampoo
AVEENO Positively Ageless Daily Exfoliating Cleanser	AVEENO Positively Nourishing Dandruff Ctrl Shampoo
AVEENO Positively Ageless Daily Moisturizer (SPF30)	AVEENO Pure Renewal Conditioner
AVEENO Positively Ageless Eye Cream	AVEENO Pure Renewal Shampoo

15. **“Days”** means calendar days, except that, when computing any period of time prescribed or allowed by the 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 the 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 legal holiday.

16. **“Defendants”** means Johnson & Johnson Inc., Johnson & Johnson and Johnson & Johnson Consumer Companies, Inc.

17. **“Defendants’ Counsel”** means Blake, Cassels & Graydon LLP.

18. **“Effective Date”** means:

(a) if no appeal is taken from the Final Judgment Approving Settlement, thirty (30) Days after the Court renders the Final Judgment Approving Settlement; or

(b) if an appeal is taken from the Final Judgment Approving Settlement, the date on which all appellate rights have expired, been exhausted,

or been finally disposed of in a manner that affirms the Final Judgment Approving Settlement.

19. “**Eligible Claims**” means claims submitted by Authorized Claimants against the Settlement Fund.

20. “**Escrow Account**” means the interest-bearing account to be established by the Settlement Administrator.

21. “**Escrow Agent**” means the Settlement Administrator agreed upon by the Parties and approved by the Court to hold funds pursuant to the terms of the Agreement.

22. “**Final Approval Hearing**” means the hearing to be conducted by the Court on such date as the Court may order to determine the fairness, adequacy, and reasonableness of the Agreement and to determine the Attorneys’ Fees and Expenses. The Parties shall request the Court set the Final Approval Hearing no earlier than forty-five (45) Days after the Notice Date.

23. “**Final Judgment Approving Settlement**” means the Final Judgment Approving Settlement to be rendered by the Court:

- (a) confirming the authorization of the national class action for settlement purposes;
- (b) approving the Settlement as fair, adequate, and reasonable;



- (c) discharging the Released Parties of and from all further liability for the Released Claims;
- (d) permanently barring and enjoining the Releasing Parties from instituting, filing, commencing, prosecuting, maintaining, continuing to prosecute, directly or indirectly, as an individual or collectively, representatively, derivatively, or on behalf of them, or in any other capacity of any kind whatsoever, any action in any Court, before any regulatory authority or in any other tribunal, forum or proceeding of any kind against the Released Parties that asserts any Released Claims; and
- (e) issuing such other findings and determinations as the Court and/or the Parties deem necessary and appropriate to implement the Agreement.

24. “**Initial Claim Amount**” means the amount a Settlement Class Member claims on a Claim Form that is timely, valid, and approved by the Settlement Administrator. The value basis of the Initial Claim Amount is described in Section IV. The Initial Claim Amount is subject to *pro rata* increase or decrease, depending on the value of all approved Claims submitted, pursuant to Section IV.

25. “**Long-form Notice**” means the proposed Notice in the form provided at Exhibit 2, which will be submitted to the Court for approval.

26. “**Notice and Claim Administration Expenses**” means all costs and expenses incurred by the Settlement Administrator, including all notice expenses, the cost of administering the Notice Program and the costs of processing all Claims made by Settlement Class Members.

27. “**Notice Date**” means, subject to the Court’s approval, the forty-fifth (45<sup>th</sup>) Day after the Court approval of the Class Notice, by which the Settlement Administrator shall complete the Notice Program.

28. “**Notice Program**” means the notice program set forth in Exhibit 1 and described in Section VII.

29. “**Objection Date**” means the date by which Settlement Class Members must file with the Court and notify to the Parties any objections to the Settlement and shall be no later than 30 Days before the date first set for the Final Approval Hearing or as required by applicable law.

30. “**Opt-Out Date**” or “**Exclusion Date**” means the postmark date by which a Request for Exclusion must be submitted to the Settlement Administrator in order for a Settlement Class Member to be excluded from the Settlement Class, and shall be stated in the Class Notice and the actual date cannot be earlier than 60 Days before the date first set for the Final Approval Hearing, nor later than 20 Days before the date first set for the Final Approval Hearing. The Final Judgment Approving Settlement may ultimately confirm a different and final Opt-Out Date, which Opt-Out Date shall be posted and confirmed on the Settlement Website and on Class Counsel’s website, once the Final Judgment Approving Settlement has been issued.

31. “**Parties**” means, collectively, Plaintiff and Defendants; each of them, individually, being a “**Party**.”

32. “**Plaintiff**” means Felice Piccolo.

33. “**Regulation**” means the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives*, CQLR c F-3.2.0.1.1, r. 2.

34. “**Released Claims**” means any and all actions, claims, demands, rights, suits, and causes of action of whatever kind or nature that could reasonably have been, or in the future might reasonably be asserted by Plaintiff or Settlement Class Members or the Releasing Parties, either in the Action or in any action or proceeding in this Court or in any other court or forum, against the Released Parties, including damages, costs, expenses, penalties, and attorneys’ fees, known or unknown, suspected or unsuspected, in law or equity arising out of or relating to legal claims made by the Plaintiff or Members of the Settlement Class or the Releasing Parties arising out of or relating to the allegations in the Action or Defendants’ labelling, marketing, advertising, packaging, promotion, manufacture, sale and distribution of all Covered Products as alleged in the Action. For avoidance of doubt, this includes, *inter alia*, all such claims that related in any way to “natural” or “Active Naturals” statements that were or are contained on the Covered Products or otherwise relate to the labelling, marketing, advertising, packaging, promotion, manufacture, sale and distribution of the Covered Products as “Active Naturals” in connection with the Released Parties’ labelling, advertising, marketing, packaging, promotion, manufacture, sale and distribution of all Covered Products (as well as future identical statements about Covered Products), which have been asserted or which could

reasonably have been asserted by the Releasing Parties in the Action, including but not limited to claims alleging any type of fraud, misrepresentation, breach of warranty, unjust enrichment or unfair trade practice under any provincial or federal law (including all claims for injunctive or equitable relief), but not including claims for bodily injury.

35. “**Released Parties**” means Defendants, including all of their respective predecessors, successors, assigns, parents, subsidiaries, divisions, departments, and affiliates, and any and all of their past, present and future officers, directors, employees, stockholders, partners, agents, servants, successors, attorneys, insurers, representatives, licensees, licensors, subrogees and assigns. It is expressly understood that, to the extent a Released Party is not a Party to the Agreement, all such Released Parties are intended third-party beneficiaries of the Agreement.

36. “**Releasing Parties**” means Plaintiff and each and every Settlement Class Member, including each of their respective spouses, executors, representatives, heirs, successors, bankruptcy trustees, guardians, agents and assigns, and all those who claim through them or who assert duplicative claims for relief on their behalf. Excluded are any Settlement Class Members who properly request to be excluded from the Settlement Class as detailed herein.

37. “**Request(s) for Exclusion**” means the written communication that must be submitted to the Settlement Administrator and postmarked on or before the Opt-Out Date by a Settlement Class Member who wishes to be excluded from the Settlement Class.

38. “**Residual Settlement Amount**” means any funds remaining in the Settlement Fund after the payment of all Eligible Claims, Notice and Claim Administration Expenses, Attorneys’ Fees and Expenses, and any escrow charges and taxes related to the Settlement Fund.

39. “**Settlement Administrator**” means the entity retained by the Parties and approved by the Court to design and implement the Notice Program, administer the claims portion of this Settlement, and perform overall administrative functions.

40. “**Settlement Class**” and “**Settlement Class Member(s)**” each means all persons who purchased Covered Products within Canada at any time on or before the date of the judgment approving the Class Notices and each of their spouses, executors, heirs, successors, bankruptcy trustees, guardians, wards, agents, and assigns, and all those who claim through them or who assert duplicative claims for relief on their behalf. Excluded from the Settlement Class are: (i) those who purchased Covered Products for purpose of resale; (ii) those with claims for bodily injuries arising from the use of Covered Products; (iii) Defendants and their current or former officers, directors and employees or members of their immediate families; (iv) any person who files a valid and timely Request for Exclusion; and (v) the Judge to whom this Action is assigned and any members of his/her immediate family.

41. “**Settlement Fund**” means the amount of Six Hundred Seventy-Five Thousand US Dollars (US\$675,000.00) converted into Canadian dollars at the time of execution of the Agreement to be funded by Defendants and from which Eligible Claims, Notice and Claim Administration Expenses, any and all Attorneys’ Fees and Expenses and

any and all escrow charges and taxes related to the Settlement Fund are to be paid. The Settlement Fund is non-reversionary, and any Residual Settlement Amount will be distributed through a *cy pres* process to, subject to the Court's approval, an entity mutually agreed to by the Parties.

42. “**Settlement Website**” means the Internet website to be established for this Settlement by the Settlement Administrator, whose domain name shall be mutually agreed upon by the Parties, to provide information to the public and the Settlement Class about the Agreement and to permit Settlement Class Members to submit Claims online. The Settlement Website shall be activated no later than the date of the first publication of the Long-form Notice or Short-form Notice, whether online, via print publication, or via press release, whichever is earlier (the Court will approve the actual date in this regard) and shall remain active until the Effective Date or such later date as may be agreed to by Class Counsel and Defendants' Counsel.

43. “**Short-form Notice**” means the proposed Notice in the form provided at Exhibit 3, which will be submitted to the Court for approval.

B. Other capitalized terms in the Agreement but not specifically defined in Section II (A) shall have the meanings ascribed to them elsewhere in the Agreement.

### **III. CONDITIONAL AUTHORIZATION OF THE CLASS ACTION FOR SETTLEMENT PURPOSES ONLY**

#### **A. Authorization of the Class Action**

1. The Agreement is for settlement purposes only, and neither the fact of, nor any provision contained in the Agreement, nor any action taken hereunder, shall constitute or be construed as an admission of: (a) the validity of any claim or allegation by Plaintiff, or of any defence asserted by Defendants, in the Action, or (b) any wrongdoing, fault, violation of law, or liability on the part of any Party, Released Party, Settlement Class Member, or their respective counsel; or (3) the propriety of class action authorization in the Action or any other action or proceeding.

2. As part of his application for approval of the Settlement Agreement, Plaintiff will seek authorization of the Class Action for settlement purposes only, leave to amend the definition of the class therein to conform to the Settlement Class as defined herein, and leave to discontinue proceedings (without costs) against Johnson & Johnson and Johnson & Johnson Consumer Companies, Inc. Defendants hereby consent, solely for purposes of the Agreement, to the authorization of the Class Action against Johnson & Johnson Inc. only and to the approval of Plaintiff as suitable representative plaintiff of the Settlement Class; provided, however, that if the Court fails to approve the Agreement or the Agreement otherwise fails to be consummated by the Effective Date, then Defendants shall retain all rights they had immediately preceding the execution of the Agreement to oppose the Application for Authorization and the Action and the Agreement shall be void and will not constitute, be construed as, or be admissible in evidence as, an admission of any kind or be used for any purpose in the Action or in any other pending or future action. Moreover, the Court's authorization of the Settlement Class shall not be deemed to be an adjudication of any fact or issue for any purpose other than the accomplishment of the provisions of the Agreement, and shall not be considered the law of the case, *res judicata*, unless and until the Court enters a Final Judgment Approving Settlement, and regardless of whether the Effective

Date occurs, the Parties' agreement to class action authorization for settlement purposes only (and any statements or submissions made by the Parties in connection with seeking the Court's approval of the Agreement) shall not be deemed to be a stipulation as to the propriety of class action authorization, or any admission of fact or law regarding any request for class action authorization, in any other action or proceeding, whether or not involving the same or similar claims. In the event the Court does not render a Final Judgment Approving Settlement, or the Effective Date does not occur, or the Agreement is otherwise terminated or rendered null and void under the terms of the Agreement, the Parties' agreement to class action authorization for settlement purposes shall be null and void, the Court's authorization order shall be vacated, and thereafter no class or classes will remain authorized; provided, however that Plaintiff may thereafter seek authorization of the same or a new class or classes in the Action, and the Defendants may oppose such authorization on any available grounds.

**B. Final Approval of the Settlement**

1. Upon final Approval of the Settlement by the Court, the Final Judgment Approving Settlement will be rendered by the Court.

**IV. SETTLEMENT RELIEF**

**A. Settlement Fund and Cash Payments**

1. Defendants shall establish the Settlement Fund in the amount of Six Hundred Seventy-Five Thousand US Dollars (US\$675,000.00) converted into Canadian dollars at the time of execution of the Agreement by depositing with the Escrow Agent this amount no later than thirty (30) Days after the Court renders the Final Judgment Approving Settlement. Until such



time as these funds have been deposited with the Escrow Agent, Defendants shall be responsible for payment of any and all Notice and Claim Administration Expenses, with any such amounts paid to be deducted from the Settlement Fund before it is deposited with the Escrow Agent. In the event the Court does not render a Final Judgment Approving Settlement, or the Effective Date does not occur, or the Agreement is otherwise terminated or rendered null and void under the terms of the Agreement, Defendants will solely be responsible for payment of any and all Notice and Claim Administration Expenses.

2. Upon the establishment of the Escrow Account, the Settlement Fund may be invested in interest-bearing, short-term instruments—to be agreed upon by Class Counsel and Defendants (the “**Instruments**”). The interest proceeds and the principal may thereafter be reinvested as they mature in similar Instruments, bearing in mind the liquidity requirements of the Escrow Account to ensure that it contains sufficient cash available to pay all invoices, taxes, fees, costs, expenses, and other required disbursements, in a timely manner. Any interest proceeds will be added to the Settlement Fund. Except as otherwise specified herein, the Instruments at all times will remain in the Escrow Account.

3. Defendants, Defendants’ counsel, Plaintiff and Class Counsel, will have no liability or responsibility for any possible taxes related to the Settlement Fund. The Settlement Fund will indemnify and hold Defendants, Defendants’ counsel, Plaintiff and Class Counsel, harmless for all taxes (including, without limitation, taxes payable by reason of any such indemnification).

4. A Settlement Class Member is eligible to obtain Three Dollars and Fifteen Cents (Can\$3.15) for each purchase of a Covered Product for up to a maximum of twenty (20)

Covered Products purchased during the Class Period defined in the Agreement, without the need to present a proof of purchase. To receive a payment Award, each claimant must submit a valid and timely Claim Form (sample attached hereto at Exhibit 4) either by mail or electronically. There will be a maximum of one claim per household (civic address). The actual amount paid to individual claimants will depend upon the number of valid claims made, as described in Section IV (C), *infra*. For each Claim made, the claimant must include the number of Covered Products and the type of Covered Product(s) purchased and a representation that the purchase(s) occurred in Canada during the Class Period.

5. If the Effective Date does not occur, all amounts paid into the settlement fund and any interest proceeds, less amounts incurred for Notice and Claims Administration Expenses, shall be promptly returned to Defendants.

**B. Injunctive Relief**

As part of the consideration for the Agreement, Defendants agree to remove the term “Active Naturals” from the front label of all in-market Covered Products, where applicable, and if the term “Active Naturals” remains on the back or side of the label and if the product is not comprised entirely of naturally-derived ingredients, Defendants agree to include language on the back or side of the label that the Covered Products contain both naturally derived and non-naturally derived ingredients. Given the logistics of designing and implementing label changes for the large number of Covered Products, they will be updated on a rolling basis from March 1, 2021 to June 30, 2023. Nothing in the Agreement shall preclude Defendants from making further changes to any of its products labels or marketing: (1) that Defendants reasonably believe are necessary to comply with any applicable advertising rules, guidelines, decisions, statute, regulation, or other

law of any kind; (2) that are permitted by product changes or additional testing or development work and/or to ensure Defendants provide accurate product descriptions; or (3) that are more detailed than those required by the Agreement. Moreover, nothing in this Agreement shall preclude existing inventory of Covered Products with the former label to be sold by Defendants or independent retailers or wholesalers during or after the roll-out period provided in this Section.

**C. Disbursements from the Settlement Fund**

1. In accordance with the payment schedule set forth in the Agreement, money from the Settlement Fund shall be applied as follows:

- (a) First, to pay any Escrow charges and Taxes incurred by the Settlement Fund;
- (b) Next, to pay the Notice and Claims Administration Expenses, and the Attorneys' Fees and Expenses, all as approved by the Court; and
- (c) Next, to pay Eligible Claims.

2. The money remaining in the Settlement Fund after deduction of the Notice and Claims Administration Expenses, and the Attorneys' Fees and Expenses is the “**Net Settlement Fund**”.

3. If the total amount of the timely, valid, and approved Eligible Claims submitted by Settlement Class Members exceeds the Net Settlement Fund, considering any fees, payments, and costs set forth in the Agreement that must also be paid from the Settlement Fund, each eligible Settlement Class Member's Initial Claim Amount shall be proportionately reduced on a *pro rata* basis, such that the aggregate value of the cash payments does not exceed the

Settlement Fund balance. If the total amount of the timely, valid, and approved Eligible Claims submitted by Settlement Class Members results in there being any remaining value in the Settlement Fund (i.e. resulting in a positive Net Settlement Fund), it shall be used to increase eligible Settlement Class Members' relief on a *pro rata* basis such that Settlement Class Members shall receive an additional increased payment of up to one hundred percent (100%) of the Eligible Class Members' Initial Claim Amount, so that if the Settlement Class Member submitted an Initial Claim of Can\$63.00 and sufficient funds are remaining, the Settlement Class Member could receive up to a Can\$126.00 payment from the Settlement Fund. The Settlement Administrator shall determine each authorized Settlement Class Member's *pro rata* share based upon each Settlement Class Member's Claim Form and the total number of valid Claims. Accordingly, the actual amount recovered by each Settlement Class Member will not be determined until after the Claim Period has ended and all Claims have been calculated.

4. Any payment issued to a Settlement Class Member under this Settlement shall be negotiable for at least one hundred and eighty (180) Days. Individual payments that have not been negotiated within one hundred and eighty (180) Days after issuance, if any, shall be void, and the underlying funds shall become part of the Residual Settlement Amount.

5. In accordance with the *cy pres* doctrine, the Residual Settlement Amount shall, subject to Court approval, be paid to the Montreal Children's Hospital Foundation after payment of any amounts owing to the Quebec *Fonds d'aide aux actions collective* pursuant to the Regulation, if any. In this regard, and based on the fact that Quebec's population is approximately 22.6% of the population of Canada, it is agreed that the *Fonds d'aide aux actions collectives* would only be able to claim its percentage based on 22.6% of the Residual Settlement Amount, if any. Such distribution of the Residual Settlement Amount, if any, shall be made within twelve (12)

months after all other payments in the Settlement Fund have been paid according to the payment distribution date outlined in Section V (C), *infra*.

## **V. CLAIM FORM SUBMISSION AND REVIEW**

A. Settlement Class Members may submit a Claim for Settlement relief and the Settlement Administrator shall review and process the Claim pursuant to the guidelines set forth below. Each Settlement Class Member shall sign and submit a Claim Form that states, to the best of his or her knowledge, the total number and type of purchased Covered Products, and location of his or her purchases. The Claim Form shall be signed (including electronically) under an affirmation stating the following or substantially similar language: “I affirm that the information in this Claim Form is true and correct to the best of my knowledge, that I purchased the Covered Products claimed above during the Class Period for personal or household use and not for resale, and that the purchase(s) occurred in Canada. I understand that my Claim Form may be subject to audit, verification, and review.”

B. The Claim Period shall run for a period of time ordered by the Court, and last at least one hundred and twenty (120) Days from the date of the first publication of the Long-form Notice or Short-form Notice, whether online, via print publication, or via press release, whichever is earlier.

C. The Claims Deadline shall be stated in the Class Notice, on the Settlement Website, and in the Claim Form, and shall be no later than the 120<sup>th</sup> Day after the date of the first publication of the Long-form Notice or Short-form Notice, whether online, via print publication, or via press release, whichever is earlier. All Claims postmarked or submitted online after the Claims Deadline

shall be untimely and barred from entitlement to any monetary Award, unless the Parties agree otherwise.

D. Claim Forms will be distributed as part of the Notice Program, will be available for online submission from the Settlement Website and available for download from the Settlement Website. Upon request, Claim Forms will be mailed or emailed to Settlement Class Members by the Settlement Administrator. The Claim Form will also be available for download from Class Counsel's website and may be submitted to the Settlement Administrator by mail or by email.

E. The Settlement Administrator shall not begin to pay Eligible Claims until the later in time of (i) thirty (30) Days after the Claims Deadline or (ii) fourteen (14) Days after the Effective Date, whichever is later.

F. **Claim Form Protocol**

The Settlement Administrator shall gather and review the Claim Forms received pursuant to the Agreement and fulfill valid claims.

1. Settlement Class Members who submit a timely and valid Claim Form shall be designated as Authorized Claimants. The Settlement Administrator shall examine the Claim Form before designating the Settlement Class Member as an Authorized Claimant to determine that the information on the Claim Form is reasonably complete and contains sufficient information to issue the Settlement payment to the Settlement Class Member.

2. No Settlement Class Member may submit more than one Claim Form. The Settlement Administrator shall identify any Claim Forms that appear to seek

relief on behalf of the same Settlement Class Member (“**Duplicate Claims**”). The Settlement Administrator shall determine whether there is any duplication of claims, if necessary by contacting the claimant(s) or their counsel. The Settlement Administrator shall designate any such Duplicate Claims as invalid Claims to the extent they are made on behalf of the same Settlement Class Member.

3. The Settlement Administrator shall exercise, in its discretion, all usual and customary steps to prevent fraud and abuse in the Claim process, including, but without limiting the generality of the foregoing, by examining and verifying, in its discretion, a random sample of Claims. The Settlement Administrator may, in its discretion, deny in whole or in part, any Claim to prevent actual or possible fraud or abuse. In the event a Settlement Class Member disagrees with the determination of the Settlement Administrator, the Settlement Class Member may send a letter to the Settlement Administrator requesting reconsideration of the rejection and the Settlement Administrator shall reconsider such determination, which shall include consultation with Class Counsel and Defendants’ Counsel. The Parties shall meet and confer regarding resolution of those Claims and, if unable to agree, the Settlement Administrator shall make the final determination.

4. By agreement of the Parties, the Parties can instruct the Settlement Administrator to take whatever steps they deem appropriate to preserve the Settlement Fund to further the purposes of the Agreement if the Settlement Administrator identifies actual or possible fraud or abuse relating to the submission of Claims, including, but not limited to, denying in whole or in part, any Claim to prevent actual or possible fraud or abuse.

5. The Settlement Administrator shall provide monthly reports to Class Counsel and Defendants' Counsel, or in more frequent intervals at either Party's request, regarding the implementation of the Agreement and this protocol, which reports shall include the number of Claims submitted, average number of claims, and such other information as required for Class Counsel or Defendants to exercise their rights under the Agreement. Claim Forms and supporting documentation will be kept confidential by the Settlement Administrator and will be provided only to the Court upon request. The Settlement Administrator shall also provide such reports and such other information as the Court may require and shall prepare and file its final report regarding the settlement administration, as required by the CCP and/or the Rules of practice of the Superior Court of Quebec in civil matters. The Settlement Administrator shall maintain records of all Claims submitted until at least three hundred sixty-five (365) Days after the last of the Claims payment to Settlement Class Members is issued and such records will be made available upon request to Class Counsel and Defendants' Counsel.

6. If a Claim Form cannot be processed without additional information, the Settlement Administrator shall promptly email or mail a letter that advises the claimant of the additional information and/or documentation needed to validate the Claim. The claimant shall have thirty (30) Days from the postmark date of the letter sent by the Settlement Administrator to respond to the request from the Settlement Administrator and the claimant shall be so advised.

(a) In the event the claimant timely provides the requested information, the Claim shall be deemed validated and shall be processed for payment.



- (b) In the event the claimant does not timely provide the information, the Claim may be denied or reduced to the Claim amount reasonably supported by the information or documentation without further communication with the claimant.
- (c) If a Claim is reduced or denied because the Settlement Administrator determined that the additional information and/or documentation was not sufficient to support or prove the Claim, the Settlement Administrator shall provide a report to Class Counsel and Defendants' counsel.

## **VI. RETENTION OF THE SETTLEMENT ADMINISTRATOR**

A. The Parties have retained Angeion Group as the Settlement Administrator to help implement the terms of the Agreement. As provided herein, all Notice and Claims Administration Expenses shall be paid out of the Settlement Fund.

B. The Settlement Administrator shall assist with various administrative tasks, including, without limitation: (1) mailing or arranging for the mailing, emailing or other distribution of the Long-form Notice and Claim Form to Settlement Class Members who so request; (2) arranging for publication of the Short-form Notice, including on the Settlement Website; (3) handling returned mail and email not delivered to Settlement Class Members; (4) attempting to obtain updated address information for Settlement Class Members whose correspondence is returned without a forwarding address or an expired forwarding address; (5) making any additional mailings required under the terms of the Agreement; (6) answering oral and

written inquiries from Settlement Class Members and/or forwarding such inquiries to Class Counsel or its designee; (7) receiving and maintaining, on behalf of the Court and the Parties, any Settlement Class Member correspondence regarding Requests for Exclusion to the Settlement; (8) establishing the Settlement Website that posts notices, Claim Forms and other related documents; (9) establishing a toll-free telephone number, mutually agreed to among the Parties, that will provide Settlement-related information to Settlement Class Members; (10) receiving and processing Claims and distributing payments to Settlement Class Members; and (11) otherwise assisting with administration of the Agreement.

C. The contract with the Settlement Administrator shall obligate the Settlement Administrator to abide by the following performance standards:

1. The Settlement Administrator shall accurately and objectively describe, and shall train and instruct its employees and agents to accurately and objectively describe the provisions of the Agreement in communications with Settlement Class Members.

2. The Settlement Administrator shall provide prompt, accurate and objective responses to inquiries from Class Counsel or its designee and/or Defendants' Counsel.

3. The Settlement Administrator shall keep a clear and careful record of all communications with Settlement Class Members, all Claims decisions, all expenses, and all tasks performed in administering the notice and Claims review processes.

## **VII. NOTICE TO THE SETTLEMENT CLASS**

### **A. Notice**

1. No later than by the Notice Date, the Settlement Administrator shall cause the Class Notice to be disseminated to potential Settlement Class Members pursuant to the Notice Program.

2. At or prior to the Final Approval Hearing, the Settlement Administrator shall provide the Court with an affidavit attesting that Notice was disseminated pursuant to the Notice Program.

### **B. Long-form Notice**

The Long-form Notice shall be in substantially the form of Exhibit 2, attached hereto, agreed to by the Parties and to be approved by the Court, and shall be posted on the Settlement Website. At a minimum, the Long-form Notice shall: (a) include a short, plain statement of the background of the Action and the Agreement; (b) describe the proposed Settlement relief as set forth in the Agreement; (c) inform Settlement Class Members that, if they do not exclude themselves from the Settlement Class, they may be eligible to receive relief; (d) describe the procedures for participating in the Settlement, including all applicable deadlines, and advise Settlement Class Members of their rights, including their right to submit a Claim to receive an Award under the Agreement by submitting the Claim Form; (e) explain the scope of the Release; (f) state that any Award to Settlement Class Members under the Agreement is contingent on the Court's final approval of the Agreement; (g) state the identity of Class Counsel and the amount sought in Attorney's Fees and Expenses; (h) explain the procedures for opting out of the Settlement

Class, including the applicable deadline for opting out; (i) explain the procedures for objecting to the Agreement, including the applicable deadline; (j) explain that any judgment or orders entered in the Action, whether favorable or unfavourable to the Settlement Class, shall include and be binding on all Settlement Class Members who have not been excluded; and (k) provide any other information judicially required.

**C. Short-form Notice**

The Short-form Notice shall be in substantially the form attached hereto as Exhibit 3. At a minimum, the Short-form Notice shall: (a) include the web address of the Settlement Website and a telephone number for the Settlement Administrator; (2) include the class definition; (3) include a brief description of relief available to the Settlement Class Members; and (4) inform of the right to object and/or opt-out of the Settlement Class and the deadlines to exercise these rights.

**D. Notice Program and Dissemination of the Class Notice**

1. Publication of the Notice: The Short-form Notice (Exhibit 3) shall be published in accordance with the Notice Program no later than forty-five (45) Days after the Court approval of the Class Notice. As set forth in the Notice Program, publication will include Internet notice, directed website notice, press release and national publication notice. The Short-form Notice shall also be posted on the Settlement Website until the Effective Date, or such later date as may be agreed to by Class Counsel and Defendants' Counsel and will be posted on Class Counsel's website.

2. Posting of the Notice: No later than ten (10) Days from the Court approval of the Class Notice, the Settlement Administrator will post the Long-form Notice (Exhibit 2) and Claim Form (Exhibit 4) on the Settlement Website. The Long-form Notice and Claim Form shall

remain available by these means until the Effective Date. The Long-form Notice and/or the Short-form Notice and the Claim Form may also be posted on the website(s) of Class Counsel.

3. Upon Request: The Long-form Notice and the Claim Form shall also be sent via electronic mail or regular mail to Settlement Class Members who so request.

## **VIII. OBJECTIONS, REQUESTS FOR EXCLUSION, AND MEDIA COMMUNICATIONS**

### **A. Objections**

1. Unless otherwise authorized by the Court, any Settlement Class Member who intends to object to the fairness of the Agreement must do so in writing no later than the Objection Date. The written objection must be filed with the Court and served on Class Counsel identified in the Notice and Defendants' Counsel no later than the Objection Date. The written objection must include: (a) a heading which refers to the Action; (b) the objector's name, address, telephone number and, if represented by counsel, of his/her counsel; (c) a statement that the objector purchased Covered Products during the Class Period; (d) a statement whether the objector intends to appear at the Final Approval Hearing, either in person, remotely or through counsel; (e) a statement of the objection and the grounds supporting the objection; (f) copies of any papers, briefs, or other documents upon which the objection is based; (g) the objector's signature.

2. Any Settlement Class Member who files and serves a written objection, as described in the preceding Section, may appear at the Final Approval Hearing, either in person, remotely or through counsel hired at the Settlement Class Member's expense, to object to any aspect of the fairness, reasonableness, or adequacy of the Agreement.

3. Unless otherwise authorized by the Court, any Settlement Class Member who fails to comply with the provisions of Section VIII (A) (1) and (2) above shall waive and forfeit any and all rights he or she may have to appear separately and/or to object, and shall be bound by all the terms of the Agreement and by all proceedings, orders and judgments, including, but not limited to, the Release, in the Action.

**B. Requests for Exclusion (Opt Out)**

1. Any member of the Settlement Class may request to be excluded from the Settlement Class. A Settlement Class Member who wishes to opt out of the Settlement Class must do so by sending to the Settlement Administrator a written Request for Exclusion that is postmarked no later than the Opt-Out Date. The Request for Exclusion must be personally signed by the Settlement Class Member requesting exclusion, include their email and mailing address, and contain a statement that indicates a desire to be excluded from the Settlement Class. No Settlement Class Member shall be deemed excluded from the Settlement Class through any purported “mass” or “class” opt-outs, or via any class actions, mass actions, or collective or representative actions.

2. Any Settlement Class Member who does not file a timely written Request for Exclusion shall be bound by all subsequent proceedings, orders and the Final Judgment Approving Settlement in the Action, unless he or she has already pending litigation, arbitration or any other proceeding against Defendants relating to the Released Claims.

3. Any Settlement Class Member who properly requests to be excluded from the Settlement Class shall not: (a) be bound by any orders or judgments entered in the Action; (b)

be entitled to an Award from the Settlement Fund, 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 Agreement.

4. The Settlement Administrator shall provide Class Counsel and Defendants' Counsel with a final list of all timely Requests for Exclusion within seven (7) Days after the Opt-Out Date. Class Counsel shall file the final list of all timely Requests for Exclusion prior to or at the Final Approval Hearing.

**C. Media Communications**

1. Following the issuance of the judgment approving the Class Notice, the Parties agree that they may issue a joint press release. Defendants and Class Counsel may post the joint press release on Defendants' website(s) and Class Counsel's website, if they so choose. Any such joint press release shall only include information relating to the Action or the Agreement available in the public record. Defendants may make such disclosures regarding the Action and the terms of the Agreement as it deems necessary in their filings with the Securities Commissions, to their auditors, or as otherwise required by provincial or federal law.

2. Nothing herein shall prevent Class Counsel from responding to class member inquiries regarding the Settlement in a manner consistent with the terms and conditions of the Agreement and Class Counsel will be entitled to post on its firm website the relevant settlement documents, notices, proceedings, judgments, etc.

## **IX. RELEASES**

A. The Agreement shall be the sole and exclusive remedy for any and all Released Claims of all Releasing Parties against all Released Parties. No Released Party shall be subject to liability of any kind to any Releasing Party with respect to any Released Claim. Upon the Effective Date, and subject to fulfillment of all of the terms of the Agreement, each and every Releasing Party shall be permanently barred and enjoined from initiating, asserting and/or prosecuting any Released Claim against any Released Party in any court or any forum.

B. On the Effective Date, each Releasing Party shall be deemed to have released and forever discharged each of the Released Parties of and from any and all liability for any and all Released Claims.

C. On the Effective Date, each of the Released Parties shall be deemed to have released and forever discharged each of the Releasing Parties and their respective counsel, including Plaintiff's Counsel, for all claims arising out of or relating to the institution, prosecution and resolution of the Action, except to enforce terms and conditions contained in the Agreement.

D. The Parties agree that the Court shall retain exclusive and continuing jurisdiction over the Parties and the Settlement Class Members to interpret and enforce the terms, conditions, and obligations under the Agreement.

## **X. ATTORNEYS' FEES AND EXPENSES**

A. The award of Attorneys' Fees and Expenses will be paid from the Settlement Fund and as set forth in Section IV (C) above. Within the application for approval of the Settlement



Agreement, Class Counsel shall make an application for an award of Attorneys' Fees and Expenses, on which Defendants will take no position, in the amount of Two Hundred Two Thousand Five Hundred US Dollars (US\$202,500) converted into Canadian dollars at the time of execution of the Agreement plus GST and QST, representing 30% of the Settlement Fund.

B. The Attorneys' Fees and Expenses awarded by the Court shall be paid to Class Counsel within thirty (30) Days of the Effective Date.

## **XI. FINAL JUDGMENT APPROVING SETTLEMENT**

The Agreement is subject to and conditional upon the issuance by the Court of the Final Judgment Approving Settlement that finally authorizes the class action for the purposes of this Settlement, grants final approval of the Agreement, and provides the relief specified herein, which relief shall be subject to the terms and conditions of the Agreement and the Parties' performance of their continuing rights and obligations hereunder.

## **XII. REPRESENTATIONS AND WARRANTIES**

A. Defendants represent and warrant: (1) that they have the requisite corporate power and authority to execute, deliver and perform the Agreement and to consummate the transactions contemplated hereby; (2) that the execution, delivery and performance of the Agreement and the consummation by it of the actions contemplated herein have been duly authorized by necessary corporate action on the part of Defendants; and (3) that the Agreement has been duly and validly executed and delivered by Defendants and constitutes their legal, valid and binding obligation.

B. Plaintiff represents and warrants that he is entering into the Agreement on behalf of himself individually and as proposed representative of the Settlement Class Members, of his own free will and without the receipt of any consideration other than what is provided in the Agreement or disclosed to, and authorized by, the Court. Plaintiff represents and warrants that he has reviewed the terms of the Agreement in consultation with Class Counsel and believes them to be fair and reasonable. Class Counsel represent and warrant that they are fully authorized to execute the Agreement on behalf of Plaintiff.

C. The Parties warrant and represent that no promise, inducement or consideration for the Agreement has been made, except those set forth herein. No consideration, amount or sum paid, accredited, offered, or expended by Defendants in their performance of the Agreement constitutes a fine, penalty, punitive damage, or other form of assessment for any claim against them.

### **XIII. NO ADMISSIONS, NO USE**

The Agreement and every stipulation and term contained in it is conditional upon final approval of the Court and is made for settlement purposes only. Whether or not consummated, the Agreement shall not be: (a) construed as, offered in evidence as, received in evidence as, and/or deemed to be, evidence of a presumption, concession or an admission by Plaintiff, Defendants, any Settlement Class Member or Releasing or Released Party, of the truth of any fact alleged or the validity of any claim or defence that has been, could have been, or in the future might be asserted in any litigation or the deficiency of any claim or defence that has been, could have been, or in the future might be asserted in any litigation, or of any liability, fault, wrongdoing or otherwise of such Party; or (b) construed as, offered in evidence as, received in evidence as, and/or

deemed to be, evidence of a presumption, concession or an admission of any liability, fault or wrongdoing, or in any way referred to for any other reason, by Plaintiff, Defendants, any Releasing Party or Released Party in the Action or in any other civil, criminal or administrative action or proceeding other than such proceedings as may be necessary to effectuate the provisions of the Agreement.

#### **XIV. TERMINATION OF THIS AGREEMENT**

A. Either Party may terminate the Agreement by providing written notice to the other Party within ten (10) Days of the occurrence of any of the following:

1. The Court does not authorize the class action for settlement purposes as defined herein or the Court's order authorizing the class action is reversed, vacated, or modified in any material respect by another court; or

2. The Court does not enter the Final Judgment Approving Settlement in its entirety, or, if entered, such Final Judgment Approving Settlement is reversed, vacated, or modified in any material respect by another court before the Effective Date.

B. It is expressly agreed that neither the failure of the Court to approve the Attorneys' Fees and Expenses Award, nor the amount of any attorneys' fees and costs that may be finally determined and awarded, shall provide a basis for termination of the Agreement.

C. Defendants may unilaterally withdraw from and terminate the Agreement up to five (5) Days before the Final Approval Hearing if more than two hundred and fifty (250) Settlement Class Members have submitted valid and timely Requests for Exclusion. If Defendants elect to

terminate the Agreement pursuant to this Section XIV (C), the Agreement and all related documents exchanged or signed by the Parties or submitted to the Court shall be null and void and shall have no effect whatsoever on the Action or its adjudication.

D. In the event of termination, the terminating Party shall cause the Settlement Administrator to post information regarding the termination on the Settlement Website.

E. In the event the Agreement terminates for any reason, all Parties shall be restored to their respective positions as of immediately prior to the date of execution of the Agreement. Upon termination, Section III (A) herein shall survive and be binding on the Parties, but the Agreement shall otherwise be null and void, although Defendants will remain solely liable for the payment of any and all Notice and Claim Administration Expenses.

## **XV. MISCELLANEOUS PROVISIONS**

A. **Entire Agreement:** The Agreement, including all exhibits hereto, shall constitute the entire Agreement among the Parties with regard to the Agreement and shall supersede any previous agreements, representations, communications and understandings among the Parties with respect to the subject matter of the Agreement. The Agreement may not be changed, modified, or amended except in a writing signed by Class Counsel and Defendants' Counsel and, if required, approved by the Court. The Parties contemplate that the exhibits to the Agreement may be modified by subsequent agreement of Defendants' Counsel and Class Counsel, or by the Court. The Parties may make non-material changes to the exhibits to the extent deemed necessary, as agreed to in writing by all Parties.

B. **Governing Law and Jurisdiction:** The Agreement shall be construed under and governed by the laws of the Province of Quebec, Canada, in which the Court is located, applied without regard to the rules on conflict of laws. The Parties hereby submit themselves exclusively to the Superior Court of Québec, District of Montreal, concerning any and all matters related to the interpretation or application of the Agreement.

C. **Execution in Counterparts:** The Agreement may be executed by the Parties in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile signatures or signatures scanned to PDF and sent by email shall be treated as original signatures and shall be binding.

D. **Notices:** Whenever the Agreement requires or contemplates that one Party shall or may give notice to the other, notice shall be provided in writing by mail and email to:

1. If to Plaintiff or Class Counsel:

Mtre. Jeff Orenstein  
**Consumer Law Group Inc.**  
1030 Berri Street, Suite 102  
Montreal, Quebec, Canada  
H2L 4C3  
[jorenstein@clg.org](mailto:jorenstein@clg.org)

2. If to Defendants or Defendants' Counsel:

Mtre Robert J. Torralbo  
**Blake, Cassels & Graydon LLP**  
1 Place Ville Marie, Suite 3000  
Montreal, Quebec, Canada  
H3B 4N8  
[robert.torralbo@blakes.com](mailto:robert.torralbo@blakes.com)

E. **Stay of Proceedings:** Upon the execution of the Agreement, all discovery and other proceedings in this Action shall be stayed until further order of the Court, except for proceedings

that may be necessary to implement the Agreement or comply with or effectuate the terms of the Agreement.

F. **Good Faith:** The Parties agree that they will act in good faith and will not engage in any conduct that will or may frustrate the purpose of the Agreement. The Parties further agree, subject to Court approval as needed, to reasonable extensions of time to carry out any of the provisions of the Agreement.

G. **Binding on Successors:** The Agreement shall be binding upon, and inure to the benefit of, the heirs, successors and assigns of the Released Parties.

H. **Arms'- Length Negotiations:** The determination of the terms and conditions contained herein and the drafting of the provisions of the Agreement has been by mutual understanding after negotiation, with consideration by, and participation of, the Parties hereto and their counsel. The Agreement shall not be construed against any Party on the basis that the Party was the drafter or participated in the drafting. Any statute or rule of construction that ambiguities are to be resolved against the drafting party shall not be employed in the implementation of the Agreement and the Parties agree that the drafting of the Agreement has been a mutual undertaking.

I. **Waiver:** The waiver by one Party of any provision or breach of the Agreement shall not be deemed a waiver of any other provision or breach of the Agreement.

J. **Variance:** In the event of any variance between the terms of the Agreement and any of the exhibits hereto, the terms of the Agreement shall control and supersede the exhibit(s).

K. **Exhibits:** All exhibits to the Agreement are material and integral parts hereof, and are incorporated by reference as if fully rewritten herein.

L. **Taxes:** No opinion concerning the tax consequences of the Agreement to any Settlement Class Member is given or will be given by Defendants, Defendants' Counsel, Class Counsel, or Plaintiff; nor is any Party or their counsel providing any representation or guarantee respecting the tax consequences of the Agreement as to any Settlement Class Member. Each Settlement Class Member is responsible for his/her tax reporting and other obligations respecting the Agreement, if any.

M. **Implementation Before Effective Date:** The Parties may agree in writing to implement the Agreement, or any portion thereof, after the entry of the Final Judgment Approving Settlement, but prior to the Effective Date.

N. **Modification in Writing:** The Agreement may be amended or modified only by written instrument signed by Class Counsel and Defendants' Counsel. Amendments and modifications may be made without additional notice to the Settlement Class Members unless such notice is required by the Court.

O. **Integration:** The Agreement represents the entire understanding and agreement among the Parties and supersedes all prior proposals, negotiations, agreements, and understandings related to the subject matter of the Agreement. The Parties acknowledge, stipulate and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation or undertaking concerning any part or all of the subject matter of the Agreement has been made or relied upon except as set forth expressly herein.

P. **Retain Jurisdiction:** The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of the Agreement, and all Parties hereto submit to

the jurisdiction of the Court for purposes of implementing and enforcing the agreement embodied in the Agreement.

Q. **Language:** The Parties acknowledge that they have required and consented to the Agreement and all related documents be drafted in English. *Les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais.* Nevertheless, the Defendants' counsel shall prepare, at the Defendants' cost, a French translation of this Agreement, as well as the Class Notices, prior to the filing of the application to approve the Class Notices. In the event of any dispute as to the interpretation or application of the Agreement, the English version shall govern.

R. **Transaction:** The present Agreement constitutes a transaction in accordance with Articles 2631 and following of the *Civil Code of Quebec*, and the Parties hereby renounce to any errors of fact, of law and/or calculation;

S. **Recitals:** The recitals to the Agreement are true and form part of the Agreement.

T. **Authorized Signatures:** Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, the Agreement, on behalf of the Parties identified above and their law firms.

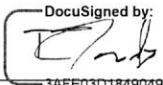
IN WITNESS WHEREOF, each of the Parties hereto has caused the Agreement to be executed on its behalf by its duly authorized counsel of record, all as of the day set forth below.

- Signature page follows -



Dated: August 13, 2021

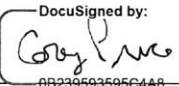
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**Mtre. Robert J. Torralbo**  
Blake, Cassels & Graydon LLP  
Attorneys for Defendants Johnson & Johnson Inc.,  
Johnson & Johnson and Johnson & Johnson  
Consumer Companies, Inc.

Dated: Aug 13 2021

City: Toronto

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By:   
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**Ms. Cory Price**  
Duly authorized representative of Johnson &  
Johnson Inc., as he so declares

Dated: August 13, 2021

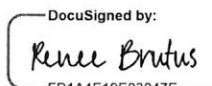
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**Ms. Tina French**  
Duly authorized representative of Johnson &  
Johnson Consumer Inc., successor to Johnson &  
Johnson Consumer Companies, Inc., as she so  
declares

Dated: 8/13/2021


City: New Brunswick, NJ, USA

DocuSigned by:  
By:   
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**Ms. Renee Brutus**  
Duly authorized representative of Johnson &  
Johnson, as she so declares

Dated: August 22, 2021

City: Montreal, QC

By: 

**Mtre. Jeff Orenstein**  
Consumer Law Group Inc.  
Attorneys for Plaintiff and for the Settlement Class  
Members

Dated: August 22 2021

City: Montreal QC

By: 

Plaintiff Mr. Felice Piccolo