

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

SUPERIOR COURT  
(CLASS ACTION)

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N<sup>o</sup>.: 500-06-000574-117

**KATIEN LONG**

Petitioner

vs.

**BEIERSDORF CANADA INC.**

Respondent

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N<sup>o</sup>.: 500-06-000596-128

**ILANA DRAY**

Petitioner

vs.

**BEIERSDORF CANADA INC.**

Respondent

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### **BDF SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement is entered into between (i) Petitioner Long, individually and on behalf of the My Silhouette! Settlement Class, and Petitioner Dray, individually and on behalf of the GBC Settlement Class, on one hand and (ii) Respondent on the other hand.

### **RECITALS**

**WHEREAS**, Respondent distributes or distributed the Products for sale in Canada, and the Products were available for purchase in Canada, as follows:

- (i) My Silhouette! from approximately 2008 to December 31, 2011;  
and
- (ii) GBC from approximately 2006 to the present.

**WHEREAS**, on or about July 14, 2011, Petitioner Long filed a Motion to Authorize the Bringing of a Class Action & to Ascribe the Status of Representative against the Respondent in the My Silhouette! Class Action on behalf of the My Silhouette! Class;

**WHEREAS**, on or about February 27, 2012, Petitioner Dray filed a Motion to Authorize the Bringing of a Class Action & to Ascribe the Status of Representative against the Respondent in the GBC Class Action on behalf of the GBC Class;

**WHEREAS**, the Class Actions allege various claims against the Respondent in relation to false and misleading representations, as well as unfair and deceptive consumer practices, in connection with the Products;

**WHEREAS**, Petitioners and Respondent have reached an agreement in principle to finally settle all claims asserted in or relating to the Class Actions;

**WHEREAS**, Petitioners and Class Counsel have examined the law and facts relating to the Class Actions, including information produced by Respondent, and have concluded that this Settlement Agreement provides substantial benefits to Petitioners and to members of the Settlement Class, and resolves all issues that were or could have been raised in the Class Actions without prolonged litigation and the risks and uncertainties inherent in litigation;

**WHEREAS**, Petitioners have agreed to settle their claims, and those of the Settlement Class, upon the terms and conditions set forth herein after balancing the benefits that they and the Settlement Class will receive from this settlement against the uncertain outcome and risks from continued litigation;

**WHEREAS**, Petitioners and Class Counsel have concluded that this Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class;

**WHEREAS**, Respondent does not admit or accept any wrongdoing or liability, including any and all claims of liability or wrongdoing and all charges and allegations that have been asserted against it in the Class Actions;

**WHEREAS**, Respondent enters into this Settlement Agreement solely to avoid the expense, inconvenience, uncertainty and inherent risk of litigation, as well as the concomitant disruption of its business operations;

**WHEREAS**, nothing in this Settlement Agreement shall be construed as an admission or concession by Respondent of the truth of any allegations raised in the Class Actions, or of any fault, wrongdoing, or liability of any kind;

**WHEREAS**, this Settlement Agreement was reached after protracted, arm's-length negotiations over several months;

**WHEREAS**, the benefits to the Settlement Class provided under this Settlement Agreement are substantially similar to those provided in the settlements (a) approved for residents of Florida and California by Judge Christopher F. Droney on May 24, 2011 in *Phillips v. Beiersdorf North America, Inc. and Beiersdorf, Inc.*, No. 3:09-cv-1891-CFD (D. Conn.) and *Weiner v. Beiersdorf North America, Inc. and Beiersdorf, Inc.*, No. 3:10-cv-159-CFD (D. Conn.) and (b) preliminarily approved for residents elsewhere in the United States by Judge Franklin U. Velderrama on March 2, 2012 in *Joseph v. Beiersdorf North America, Inc. and Beiersdorf, Inc.*, No. 11 CH 20147;

**WHEREAS**, by Consent Agreement executed in September 7, 2011, the Respondent resolved a dispute with the Competition Bureau as to the Respondent's representations with respect to My Silhouette! and, in accordance or consistent with the Consent Agreement, the Respondent:

- (a) pursued a process to remove My Silhouette! from stores in Canada,
- (b) published extensive notices throughout Canada describing the Consent Agreement and the availability of consumer refunds for purchases of My Silhouette!;

- (c) paid refunds to all qualifying applicants,
- (d) paid an administrative monetary penalty of \$300,000, and
- (e) paid \$80,000 to the Competition Bureau for its costs of investigation;

**WHEREAS**, the Parties are unaware of any similar proceedings or complaints by the Competition Bureau or other regulatory authorities in Canada regarding GBC;

**WHEREAS**, commencing in August 2011, Respondent commenced and diligently pursued a process for the removal of My Silhouette! from the Canadian marketplace, and in September 2011 ceased shipping GBC labeling and packages in Canada containing representations forming the basis for the complaints raised in the GBC Class Action;

**WHEREAS**, this Settlement Agreement, its terms, documents related to it, and the negotiations or proceedings connected with it shall not be offered or received into evidence in the Class Actions, or any other action or proceeding to establish any liability or admission by Respondent;

**AND WHEREAS**, Petitioners and Respondent desire to promptly and fully resolve and settle with finality all of the claims asserted or that could have been asserted against Respondent in the Class Actions or otherwise and, to accomplish that goal, have reached a settlement by and through their respective undersigned counsel on the terms and conditions set forth in this Settlement Agreement.

**NOW, THEREFORE**, Petitioners and Respondent, in consideration of the agreements herein described, and intending to be legally bound, do hereby mutually agree as follows:

## SECTION 1- DEFINITIONS

### 1. Definitions

For the purposes of this Settlement Agreement only, including the Recitals and Schedules hereto:

- (1) *Certificate* means a certificate with a face value of \$2.00, good only for the purchase of any product distributed by Respondent, and expiring no sooner than six months after the date it is mailed by the Settlement Administrator to the claimant. Certificates shall be transferrable, but shall have no cash value.
- (2) *Class Actions* means the GBC Class Action and the My Silhouette! Class Action.
- (3) *Class Counsel* means Me Jeffrey Orenstein, Consumer Law Group Inc.
- (4) *Class Counsel Fees* means the amount of \$237,500 plus applicable taxes. Class Counsel Fees shall include all legal fees, court costs and disbursements incurred by Class Counsel for all professional services rendered in the context of the Class Actions, including the settlement negotiations, drafting of the proceedings the administration of the Settlement Agreement, any amounts owed by Class Counsel to the Fonds d'aide aux recours collectifs, and any other amounts awarded to or for Class Counsel by the Court.
- (5) *Court* means the Superior Court of Quebec.
- (6) *Effective Date* means the date upon which the time for all appeals from an order approving this Settlement Agreement and authorizing the Class Actions has expired without such order being set aside or materially varied.
- (7) *Final Notice* means a public notice of (i) the Court's approval of this Settlement Agreement and authorization of the Class Actions, (ii) the right to opt out of the Settlement Class and (iii) the process for making settlement claims.
- (8) *GBC* means all NIVEA Good-Bye Cellulite products and includes the product described in the GBC Class Action as "NIVEA Good-bye Cellulite<sup>TM</sup> Gel and Patch".

- (9) *GBC Class* means all residents of Canada who purchased GBC in Canada.
- (10) *GBC Class Action* means Superior Court of Quebec (C.S.M.: 500-06-000596-128).
- (11) *My Silhouette!* means all NIVEA My Silhouette!<sup>TM</sup> products and includes the product described in the My Silhouette! Class Action as “NIVEA My Silhouette!<sup>TM</sup> Slimming & Reshaping Gel-Cream”.
- (12) *My Silhouette! Class* means all residents of Canada who purchased My Silhouette!<sup>TM</sup> in Canada.
- (13) *My Silhouette! Class Action* means Superior Court of Quebec (C.S.M.: 500-06-000574-117).
- (14) *Parties* means Respondent and the Petitioners.
- (15) *Petitioner Dray* means Petitioner Ilana Dray.
- (16) *Petitioner Long* means Petitioner Katien Long.
- (17) *Petitioners* means Petitioner Dray and Petitioner Long.
- (18) *Preliminary Notice* means a public notice of a hearing to consider the approval of this Settlement Agreement.
- (19) *Products* means GBC and My Silhouette!
- (20) *Publisher* means Vizeum Canada Inc.
- (21) *Released Claims* means any and all actual or potential rights, duties, obligations, allegations, contentions, claims, actions, causes of action, demands, or liabilities, moral damages, exemplary or punitive damages, whether arising under municipal, provincial, or federal law, whether by statute, contract, consumer protection law, civil law or equity, whether brought in an individual, representative, or other capacity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen,

actual or contingent, liquidated or unliquidated that have been, could have been, or could be brought and arise out of or are related in any way to (i) the acts, omissions, facts, statements, matters, transactions, or occurrences that have been alleged or referred to in the Class Actions or (ii) the Products, including, but not limited to their efficacy or performance, as well as any advertising, labeling, marketing, claims, or representations of any type whatsoever regarding the products.

(22) *Released Parties* means the following persons and entities: (i) Respondent and all of its present, former, and future direct and indirect parent companies, affiliates, agents, divisions, predecessors-in-interest, subsidiaries, and successors and each and all of their respective current and former officers, directors, employees, affiliates, agents, consultants, attorneys, representatives, beneficiaries, heirs, and assigns; (ii) any other person or entity in the chain of distribution of the Products (other than Settlement Class members), including but not limited to raw materials suppliers, distributors and retailers, and their present, former, and future indirect parent companies, affiliates, agents, divisions predecessors-in-interest, subsidiaries, and successors, members, imprints, and each and all of their respective current and former officers, directors, employees, affiliates, agents, consultants, attorneys, representatives, beneficiaries, heirs, and assigns.

(23) *Releasing Parties* shall mean the Petitioners and each member of the Settlement Class on behalf of themselves, and on the behalf of their spouses, as well as the present, past and future administrators, agents, assigns, attorneys, heirs, executors, predecessors-in-interest, successors, and assigns, and any person they represent.

(24) *Respondent* means Beiersdorf Canada Inc.

(25) *Respondent's Counsel* means McMillan S.E.N.C.R.L., s.r.l./LLP.

(26) *Settlement Administrator* means NPT Ricepoint Class Action Services Inc.

(27) *Settlement Agreement* means this Settlement Agreement and Release.

(28) *Settlement Class* means the members of the GBC Class and the My Silhouette! Class who purchased GBC or My Silhouette! in Canada at any time prior to the date on which this Settlement Agreement is approved by the Court and who do not opt out of the Settlement Class in accordance with this Settlement Agreement.

(29) *Tier 1 Claim* means a claim supported by cash register receipts or similar documentation that identifies the Product, its retail price, and its date and location of purchase.

(30) *Tier 2 Claim* means a claim supported by a solemn declaration that identifies the (i) Product(s) purchased, (ii) approximate retail price of each such purchase, and (iii) location(s) of the purchase(s).

(31) *Tier 3 Claim* means a claim supported by a solemn declaration affirming the purchase of a Product.

## **SECTION 2- SETTLEMENT APPROVAL**

### **2. Best Efforts**

The Parties shall use their best efforts to effectuate this settlement and to secure the prompt, complete and final dismissal with prejudice of the Class Actions.

### **3. Motion for Authorization for Settlement Purposes Only**

Subject to the Court's approval, Respondent consents to the authorization of the Class Actions and the definition of the Settlement Class for the purpose only of this Settlement Agreement. Respondent does not agree to the authorization of the Class Actions for any purpose other than to effectuate this Settlement Agreement.

## **SECTION 3- BENEFITS TO THE SETTLEMENT CLASS**

### **4. Payment to Claimants**

Members of the Settlement Class are entitled to seek compensation as follows:

- (a) Tier 1 Claims: claimants receive 85% of the actual retail purchase price of a Product, up to a maximum of six (6) packages;
- (b) Tier 2 Claims: claimants receive 70% of the actual retail purchase price of a Product, up to a maximum of four (4) packages.
- (c) Tier 3 Claims: claimants receive one (1) Certificate for each purchase of a Product, up to a maximum of three (3) Certificates.
- (d) Any member of the Settlement Class may submit claims under one or more tiers subject to a total maximum recovery of \$100.

## **5. All Valid Claims Paid**

Subject to the intra-tier and aggregate per-claimant caps set out above, Respondent shall pay all valid claims.

## **6. Claims Must Be Valid**

A claim for compensation shall not be valid, and shall not entitle a Settlement Class member to compensation, unless it (i) is postmarked no later than sixty (60) days from the date the Final Notice is first published, (ii) contains all of the information and documentation required by the Final Notice, claim form, or any applicable court order, (iii) is truthful and signed by the Settlement Class member as a solemn declaration, and (iv) satisfies any other requirements for compensation set out in this Agreement. The Claim Form to be posted is attached as **Exhibit A**.

## **SECTION 4 - CLASS COUNSEL FEES**

### **7. Application for Class Counsel Fees**

Respondent shall not object to any application by Class Counsel for Class Counsel Fees in the amount of \$237,500 plus applicable taxes and an incentive award of \$1,000 to each of the named Petitioners. It is agreed that any incentive award approved by the Court will be paid out of the Class Counsel Fees. This Settlement Agreement is not

contingent upon the Court's response to Class Counsel's application for Class Counsel Fees.

## SECTION 5 - RELEASES

### 8. Release of Claims by Petitioners and the Settlement Class

Upon the Effective Date, the Releasing Parties shall be deemed to, and do, forever and absolutely release the Released Parties from all Released Claims. This constitutes a transaction within the meaning of Article 2631 C.C.Q.

## SECTION 6- SETTLEMENT APPROVAL PROCESS

### 9. Motion for Notice Approval and Preliminary Notice

The Parties will bring to the Court a motion and a draft judgment for notice approval in substantially the form attached as **Exhibit B**. That motion will ask the Court to, *inter alia*:

- (a) approve the publication of the Preliminary Notice, substantially in the form of **Exhibit C** and in accordance with the plan of dissemination attached as **Exhibit D**; and
- (b) set a date for the hearing for the motions for settlement approval, authorization and Class Counsel Fees.

### 10. Publication of Preliminary Notice

Respondent shall publish the Preliminary Notice approved by the Court in accordance with the dissemination plan approved by the Court no fewer than 30 days prior to the date set by the Court for the hearing of the motions for settlement approval, authorization and Class Counsel Fees.

### 11. Motion for Settlement Approval

The Parties will bring to the Court a motion and a draft judgment for settlement approval and authorization seeking an order in substantially the form attached as **Exhibit E**. The

Parties shall jointly present the motion for settlement approval which will provide, *inter alia*, that:

- (a) the Petitioners' Motions to Authorize the Bringing of a Class Action & to Ascribe the Status of Representative should be granted, conditionally to the Court's approval of the Settlement Agreement;
- (b) the Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class;
- (c) the Final Notice, in substantially the form of **Exhibit F**, fully complies with the requirements of article 1006 of the *Code of Civil Procedure* and due process, constitute the best notice practicable under the circumstances, and are due and sufficient notice to all persons entitled to notice of the settlement of the Class Actions;
- (d) Petitioners and all Settlement Class members are permanently enjoined and barred from commencing or continuing any proceeding asserting any of the Released Claims, either directly, representatively, derivatively, or in any other capacity, whether by a complaint, counterclaim, defense, or otherwise, in any court, or in any agency or other authority or forum wherever located;
- (e) NPT Ricepoint Class Action Services Inc. shall be appointed as Settlement Administrator; and
- (f) the Court shall retain continuing jurisdiction over the Class Actions, the Parties, and all Settlement Class members to determine all matters relating in any way to the Class Actions and to the Settlement Agreement, including but not limited to their administration, implementation, interpretation, or enforcement.

**12. Right to Object**

Any Settlement Class member who objects to this Settlement Agreement may appear in person or through counsel, at his or her own expense, at the hearing of the motion for settlement approval and authorization. A Settlement Class member who intends to object to the Settlement Agreement must file any such objection with the Court no later than 15 days before the hearing of the motion and provide a copy of the objection to Class Counsel and counsel for the Respondent. Any objector to the Settlement Agreement must provide in writing (a) the Settlement Class member's full name and current address; (b) a signed declaration that he or she is a member of the Settlement Class and that identifies the products purchased as well as the approximate date and location of the purchases; (c) the specific grounds for the objection or comment in support of the settlement; (d) all documents or writings that such Settlement Class member desires the Court to consider; and (e) a notice of intention to appear (if any). Except as the Court may order otherwise, no Settlement Class member objecting to the Settlement shall be heard and no papers, briefs, pleadings, or other documents submitted by any such member shall be received and considered by the Court, unless such member has complied with the provisions of this paragraph.

## SECTION 7 - FINAL NOTICE

### 13. Publication of Final Notice

As soon as practicable after the Effective Date, the Publisher shall cause to be published a summary version of the Final Notice substantially in the form of **Exhibit G** and in accordance with the plan of dissemination attached as **Exhibit H**. The long form version of the Final Notice shall be posted by Class Counsel on its website at <http://www.clg.org>. No additional notice or extra-judicial publicity shall be permitted.

## SECTION 8 – OPT-OUTS

### 14. Right to Opt Out

Settlement Class members shall have until a date set by the Court (that is approximately thirty (30) days from the date the Final Notice is first published in any form) to opt out of the Settlement Class. All Settlement Class members who timely file a properly completed written request to opt out shall be excluded from the Settlement Class, shall have no rights as Settlement Class members pursuant to this Settlement Agreement, and shall receive no payments as provided herein.

### 15. Form and Timing for Request to Opt Out

To be effective, a request to opt out must be fully and properly completed in the form of **Exhibit I** and mailed to the Settlement Administrator at the address provided in the Final Notice and must be postmarked no later than the date set by the Court. A request for exclusion that does not include all of the foregoing information, or that is sent to any address other than the one designated in the Final Notice, or that is not sent within the time specified, shall be invalid, and the person(s) serving such a request shall be a member(s) of the Settlement Class and shall be bound as a Settlement Class member(s) by the settlement of the Class Actions, if approved. The Settlement Administrator shall forward copies of all opt out requests to Counsel for Respondent and to Class Counsel no later than seven (7) days after the deadline for the Settlement Class Members to submit such requests.

**16. Effect of Opt Outs**

Respondent shall have the option to withdraw from and terminate this Settlement Agreement, and thereby render this Settlement Agreement null and void, if the number of persons submitting valid and timely written requests to opt out of the Settlement Class equals or exceeds the number set out in **confidential Exhibit J**. Any such election shall be made by notice in writing to Class Counsel no later than fourteen (14) days after Respondent's counsel has received copies of all opt out requests from the Settlement Administrator.

**SECTION 9 - PAYMENT OF SETTLEMENT BENEFITS****17. Settlement of Class Member Claims**

Respondent shall have no obligation to make any payments under this Settlement Agreement before the Effective Date. Thereafter, no more frequently than each thirty (30) days, the Settlement Administrator shall report to Respondent on the valid claims processed since the previous such report and Respondent shall forthwith provide to the Settlement Administrator the funds and Certificates necessary to satisfy such claims. The final such report shall be made by the Settlement Administrator no later than forty-five (45) days after the close of the period within which claims may be made.

**18. Payments by Settlement Administrator**

The Settlement Administrator shall distribute funds and Certificates to claimants in connection with their valid claims, and in accordance with this Settlement Agreement, within thirty (30) days of its receipt of such funds and Certificates from Respondent in accordance with the provisions of this section.

**19. Unclaimed Funds**

Cheques issued to pay any amounts due under this Settlement Agreement and related Court orders shall expire 180 days after the date of issue, and shall no longer be negotiable after that date. All funds represented by such expired cheques irrevocably become on the expiration date the sole property of Respondent. To the extent that such cheques were issued by the Settlement Administrator, all funds represented by such cheques shall be returned to Respondent by the Settlement Administrator within 10 days of the expiration of such cheques. Respondent shall have no obligation to distribute the proceeds of any uncashed cheques to or on behalf of any member of the Settlement Class.

**20. Class Counsel Fees**

Respondent shall pay to Class Counsel any Class Counsel Fees awarded by the Court (but no more than \$237,500 plus applicable taxes) no later than 30 days after the Effective Date.

**SECTION 10- PUBLICATION OF NOTICES AND SETTLEMENT ADMINISTRATION****21. Notice and Administration Costs**

Respondent agrees to pay for the cost of (i) publishing the Preliminary and Final Notices to the Publisher and (ii) administering this Settlement Agreement to the Settlement Administrator.

**22. Settlement Administration**

The Parties agree that NPT Ricepoint Class Action Services Inc. shall serve as the Settlement Administrator to administer the settlement. The Settlement Administrator shall work under the direction of Class Counsel and counsel for Respondent and be responsible for, *inter alia*, establishing and operating a settlement website, mailing claim forms, processing and reviewing claims, and arranging for the payment of valid claims as provided in this Settlement Agreement.

**23. Claims Processing**

The Settlement Administrator shall be responsible for reviewing all claims to determine their validity. Any claim that does not comply with the terms of the Final Notice, claim form, or any applicable court order shall be rejected as invalid. The decision of the Claims Administrator with respect to the acceptance or the denial of a claim shall be final and binding unless the Settlement Class member timely and properly invokes the dispute process outlined in this paragraph.

#### **24. Disputes**

A Settlement Class member may dispute the denial of his or her claim, but may not dispute the amount of money he or she claims is due to them pursuant to this Agreement, or may be due, or for any other Settlement Class member, or for the Settlement Class in general. If a Settlement Class member elects to challenge a rejected claim, he or she must, within thirty (30) days of the denial of his or her claim, present the dispute in writing to the Settlement Administrator who shall in turn present it to the Parties. If the Parties cannot resolve the dispute to the satisfaction of the claimant, the disputed claim may be submitted to the Court for final resolution at the option of the Settlement Class member and at the Settlement Class Member's expense.

### **SECTION 11 - WITHDRAWAL AND TERMINATION**

#### **25. Effect of Withdrawal or Rejection**

In the event that (i) Respondent withdraws from the Settlement Agreement pursuant to Paragraph 16; (ii) this Settlement Agreement is not approved in all material respects by the Court; or (iii) the approval of this Settlement Agreement is reversed, set aside or modified in any material respect by this or any other Court; then (a) this Settlement Agreement shall become null and void; and (b) Respondent shall cease to have any payment or other obligations, except for any notice and administrative costs incurred as of the date the Settlement Administrator is notified that the Settlement Agreement has become null and void.

**26. Setting Aside Settlement Authorization**

In the event that the Settlement Agreement is terminated pursuant to its terms, or is not approved in all material respects by the Court, or is reversed, set aside, or modified in any material respect by the Court or any other court, the Parties shall in good faith negotiate such amendments to the Settlement Agreement designed to resolve the basis upon which this Settlement Agreement was not finally approved in its current form. If those negotiations are unsuccessful for any reason, any prior authorization of the Class Actions shall be set aside and those proceedings shall continue as though they had never been authorized and this Settlement Agreement had never existed.

**27. Immediate and Continuing Effect of Certain Paragraphs**

The provisions of paragraphs 3, 16, 26 and 41 shall become effective when this Settlement Agreement has been signed by the Parties and shall be binding on the Parties and their counsel regardless of whether the Settlement Agreement is approved by this Court or any other court and regardless of whether the Settlement Agreement is otherwise rendered null and void.

**SECTION 12 - MISCELLANEOUS PROVISIONS****28. Interpretation**

This Settlement Agreement contains the entire agreement among the Parties hereto and supersedes any prior negotiations, agreements or understandings among them. All terms are contractual and not mere recitals. In the event of an alleged ambiguity, there will be no presumption or construction against either side as the drafter.

**29. No Solicitation**

The Parties agree that neither they nor their counsel will solicit or otherwise encourage directly or indirectly Class Members to request exclusion from the Class, object to the Settlement Agreement, or appeal any order approving this Settlement Agreement.

**30. Entire Agreement**

No representations, warranties, or inducements have been made to any of the Parties other than those representations, warranties and covenants contained in this Settlement Agreement. This Settlement Agreement and its exhibits shall constitute the entire agreement of the Parties and may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by all parties to this Settlement Agreement or their successors-in-interest.

### **31. Materiality**

The Parties have negotiated all of the terms and conditions of this Settlement Agreement at arm's-length. All terms, conditions and exhibits are material and necessary to this Settlement Agreement and have been relied upon by the Parties in entering into this Settlement Agreement.

### **32. Binding on Successors**

This Settlement Agreement shall be binding upon each of the Parties hereto, their administrators, agents, assigns, attorneys, executors, heirs, partners, representatives, predecessors-in-interest, and successors, and upon all other persons claiming any interest in the subject matter hereto through any of the Parties hereto including any member of the Settlement Class.

### **33. Severability**

In the event any one or more of the provisions contained in this Settlement Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the other provisions of this Settlement Agreement should counsel for the Parties jointly elect to proceed as if such invalid, illegal or unenforceable provision had never been included in this Settlement Agreement.

**34. Extensions**

The Parties may agree upon a reasonable extension of time for deadlines and dates reflected in this Settlement Agreement, without further notice and subject to Court approval if required.

**35. Authorization**

Class Counsel warrant and represent that they are authorized by Petitioners, and counsel for Respondent warrant and represent that they are authorized by Respondent, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement Agreement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement Agreement, or any supplemental provisions that may become necessary to effectuate the terms of this Settlement Agreement, the Parties agree to seek the assistance of the Court and in all cases all such documents, supplemental provisions and assistance of the Court shall be consistent with this Settlement Agreement.

**36. No Recision on Grounds of Mistake**

The Parties acknowledge that they have made their own investigations of the matters covered by this Settlement Agreement to the extent they have deemed it necessary to do so. The Parties shall cooperate to the extent necessary to respond to questions of fact that may be raised by parties not party to this Settlement Agreement during the approval process. The Parties agree that they will not seek to set aside any part of the Settlement Agreement on the grounds of mistake or error. Moreover, the Parties understand, agree, and expressly assume the risk that any fact not recited, contained, or embodied in the Settlement Agreement may turn out hereinafter to be other than, different from, or contrary to the facts now known to them or believed by them to be true, and further agree that the Settlement Agreement shall be effective in all respects

notwithstanding and shall not be subject to termination, modification, or rescission by reason of any such difference in facts.

### **37. Amendment**

This Settlement Agreement may be amended or modified only by a written agreement signed by the Parties or their counsel, or by a document filed with the Court and agreed to or not objected to by the Parties with the Court. Amendments and modifications may be made without notice to the Settlement Class unless notice is required by law or by the Court.

### **38. Construction**

For the purpose of construing or interpreting this Settlement Agreement, the Parties agree that it is to be deemed to have been drafted equally by all Parties hereto and shall not be construed strictly for or against any party.

### **39. Integration of Exhibits**

The exhibits to this Settlement Agreement are an integral and material part of the settlement and are hereby incorporated and made a part of the Settlement Agreement.

### **40. Jurisdiction**

The Court has jurisdiction over the Parties to this Settlement Agreement, the Settlement Class members, the claims asserted in the Class Actions, and the claims being released and compromised pursuant to the Settlement Agreement.

### **41. No Admissions**

This Settlement Agreement and every stipulation and term contained herein is conditioned upon final approval of the Court and is made for settlement purposes only. Neither the fact of, nor any provision contained in this Settlement Agreement, nor any action taken hereunder, shall constitute, or be construed as, any admission of the validity of any claim or any fact alleged in the Class Actions or of any wrongdoing, fault,

violation of law, or liability of any kind on the part of Respondent, or any admission by Respondent of any claim or allegation made in any action or proceeding by or against Respondent. This Settlement Agreement shall not be offered or be admissible in evidence by or against any of the Parties or cited or referred to in any action or proceeding, except in an action or proceeding brought to enforce its terms. Information provided by Respondent to Petitioners or Class Counsel in connection with settlement negotiations is for settlement purposes only. Nothing in this Paragraph shall preclude any of the Parties from offering, or any Court from admitting into evidence and considering, this Settlement Agreement in connection with any motion to stay or dismiss any action asserting a Released Claim, or a motion to enjoin any member of the Settlement Class from prosecuting such an action.

#### **42. Governing Law**

This Settlement Agreement shall be governed by the laws of the Province of Quebec.

#### **43. No Media Statements**

Neither the Parties nor their counsel shall issue any press release, or make any statement to any media or press of any sort, regarding this Settlement Agreement, including any references on web sites maintained by Petitioners or their Class Counsel, other than to state that the Class Actions has been resolved on terms satisfactory to the Parties as reflected in this Settlement Agreement. Class Counsel may provide a copy of the long-form notice, claim forms, and a link to its existing website at <http://www.clg.org> with accompanying language to be reviewed and approved by Respondent before posting of the same.

#### **44. Language**

The present Settlement Agreement has been drafted in English at the request of the Parties. Les parties ont volontairement choisi de rédiger la présente entente de règlement en anglais.

**IN WITNESS WHEREOF**, the undersigned have caused this Settlement Agreement to be executed as of the dates set forth below:

September 16, 2012

(s) Katien Long  
Katien Long, Petitioner

(s) Ilana Dray  
Ilana Dray, Petitioner

September 16, 2012

(s) Jeffrey Orenstein  
**Consumer Law Group Inc.**  
**M<sup>e</sup> Jeffrey Orenstein**  
1123 Clark Street  
3rd floor  
Montreal, Quebec  
H2Z 1K3

Attorneys for Petitioners Katien Long and  
Ilana Dray

September 27, 2012

(s) Pierre Locas  
Pierre Locas  
Finance & Administration Director  
Beiersdorf Canada Inc., Respondent

(s) Lawrence LaPorta  
Lawrence LaPorta  
General Manager  
Beiersdorf Canada Inc., Respondent

October 5, 2012

(s) Emmanuelle Saucier  
**McMillan S.E.N.C.R.L., s.r.l./LLP**  
**M<sup>e</sup> Emmanuelle Saucier**  
1000 Sherbrooke Street, West,  
Suite 2700  
Montreal Quebec  
H3A 3G4

Attorneys for Respondent Beiersdorf  
Canada Inc.

## LIST OF EXHIBITS

<b>Exhibit A :</b>	<b>Claim Forms to be posted on the Class Counsel existing law firm website.</b>
<b>Exhibit B :</b>	<b>A copy of the proposed Motion and draft judgment for Notice Approval</b>
<b>Exhibit C:</b>	<b>Preliminary Notice</b>
<b>Exhibit D:</b>	<b>Dissemination Plan of the Preliminary Notice</b>
<b>Exhibit E:</b>	<b>Proposed Motion and draft judgment for settlement approval and authorization</b>
<b>Exhibit F:</b>	<b>Final Notice to be posted on the Class Counsel existing law firm website.</b>
<b>Exhibit G:</b>	<b>Summary form of the Final Notice</b>
<b>Exhibit H:</b>	<b>Dissemination Plan of the Final Notice</b>
<b>Exhibit I:</b>	<b>Request for Exclusion Form</b>
<b>Exhibit J:</b> <b>CONFIDENTIAL</b>	<b>Number of opt outs</b>