

**EXECUTION VERSION**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

TONY LUIB, *individually on behalf of  
himself and all others similarly situated,*

Plaintiff,

– against –

HENKEL CONSUMER GOODS INC.,

Defendant.

No. 1:17-cv-03021-BMC

**CLASS SETTLEMENT AGREEMENT**

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**CLASS SETTLEMENT AGREEMENT**

This Class Settlement Agreement is entered into this 27th day of February, 2019, by and between Plaintiff Tony Luib (“Plaintiff”), on behalf of himself and each of the Settlement Class Members (defined below), on the one hand, and Defendant Henkel Consumer Goods Inc. (“Defendant”) (Defendant together with Henkel Corporation and Henkel U.S. Operations Corporation, “Henkel”), on the other hand (Plaintiff and Henkel are each a “Party” and collectively, the “Parties”).

The Parties intend for the Class Settlement Agreement to fully, finally, and forever resolve, discharge, and settle all released rights and claims, subject to the terms and conditions set forth herein.

**I. RECITALS**

1.1. On May 19, 2017, Plaintiff commenced the Action by filing a complaint on behalf of himself and a proposed class against Defendant in the United States District Court for the Eastern District of New York (the “Complaint”). The Action was assigned Case Number 1:17-cv-03021-BMC, and is pending before Judge Brian M. Cogan. The Complaint alleges that the “Natural Elements” statements on the labeling, marketing, and advertising of Henkel’s Purex Natural Elements laundry detergent Products (further defined herein) are misleading because the Products include synthetic ingredients. Based on these allegations, Plaintiff asserted the following causes of action: (1) violation of New York General Business Law Section 349 (“GBL § 349”); (2) violation of New York General Business Law Section 350 (“GBL § 350”); (3) violation of the consumer protection laws of 41 states other than New York; (4) breach of express warranty in violation of the laws of all 50 states; (5) breach of implied warranty of merchantability; and (6) breach of implied warranty of fitness for a particular purpose.

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1.2. On August 17, 2017, Defendant filed a letter requesting a pre-motion conference with the Court regarding its planned motion to dismiss the Complaint.

1.3. By minute order entered August 29, 2017, the Court deemed the letter to be the motion to dismiss. On August 29, 2017, Plaintiff filed his letter opposing the motion. On September 7, 2017, Defendant filed a letter informing the Court of relevant case law issued after its motion to dismiss was filed.

1.4. At a hearing held September 13, 2017, the Court *sua sponte* converted Defendant's motion to one for summary judgment and offered Defendant the opportunity to submit factual evidence regarding the composition of the Products to demonstrate the basis for the "Natural Elements" claim. The Court also permitted Plaintiff to request summary judgment in his favor in his opposition to Defendant's motion. *See* Minute Entry and Order entered September 14, 2017.

1.5. On October 11, 2017, Defendant filed its Converted Motion for Summary Judgment. Plaintiff filed his opposition to the Converted Motion for Summary Judgment and requested summary judgment in his favor on November 30, 2017. Defendant filed its Reply in Support of the Converted Motion for Summary Judgment on January 8, 2018.

1.6. On February 5, 2018, the Court denied summary judgment to both Parties, finding that the question of whether a reasonable person would be misled by the Products' "Natural Elements" claim depended on genuine issues of material fact that would have to be resolved by a jury. *See* Dkt. No. 40.

1.7. On June 13, 2018, the Parties mediated the claims in the Action before the Honorable Stephen M. Orlofsky (Ret.). Mediation did not lead to a settlement.

1.8. The Parties have engaged in substantial fact discovery, including the production

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of documents, responses to interrogatories, and responses to requests for admissions. Defendant has produced approximately 12,545 documents (totaling more than 43,400 pages) in response to Plaintiff's discovery requests.

1.9. As discovery progressed, the Parties' counsel conducted further settlement discussions, informed by facts exchanged in discovery. On December 18, 2018, as a result of those discussions, the Parties entered into a Settlement Term Sheet that would resolve all the claims in this Action on behalf of a nationwide class.

1.10. Before entering into this Class Settlement Agreement, Plaintiff's counsel conducted an extensive and thorough examination, investigation, and evaluation of the relevant law, facts, and allegations to assess the merits of the claims, potential claims, and potential defenses asserted in this Action. As part of that investigation, as well as through formal discovery, Plaintiff's counsel obtained documents and other extensive information from Defendant through confidential informal and formal discovery, including information concerning the Products' development, label design, formulation, marketing, sales, and pricing information, as well as survey and marketing study information concerning the Products' purchasers and their purchasing decisions.

1.11. This Class Settlement Agreement is the product of extensive, arms-length, and vigorously contested motion practice, settlement negotiations, and exchange of information through formal and informal means.

1.12. The Action has not been certified as a class action. Subject to the approval of the Court, the Parties agree that a class may be conditionally certified for purposes of this Class Settlement Agreement. Henkel agrees to class certification and class-action treatment of the

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claims asserted in this Action solely for the purpose of compromising and settling those claims on a class basis as set forth in this Class Settlement Agreement.

1.13. Plaintiff, as proposed representative of the Settlement Class Members, believes the claims settled herein have merit. Plaintiff and his counsel recognize, however, the litigation risk involved, including the expense and length of continued proceedings necessary to prosecute the claims through trial and appeal, and they have taken into account those factors, as well as the Action's inherent difficulties and delays. They believe the terms of this Settlement Agreement confer substantial benefits upon the Settlement Class Members. They have evaluated the terms set forth in this Settlement Agreement and have determined them to be fair, reasonable, adequate to resolve their grievances, and in the best interest of the Settlement Class Members.

1.14. Henkel has denied, and continues to deny, that the marketing, advertising, and/or labeling of the Products at issue are in any way false, deceptive, or misleading to consumers, breached any warranty, or otherwise violate any legal requirement. Henkel's willingness to resolve the Action on the terms and conditions embodied in this Class Settlement Agreement is based on, *inter alia*: (i) the time and expense associated with continuing to litigate this Action through trial and any appeals; (ii) the benefits of resolving the Action, including limiting further expense, inconvenience, and distraction, and permitting Henkel to conduct its business without the distractions of continued litigation; and (iii) the uncertainty and risk inherent in any litigation, regardless of legal merit.

1.15. This Class Settlement Agreement, any negotiations, proceedings, or documents related to this Agreement, its implementation, or its judicial approval, cannot be asserted or used by any person to support a contention that class certification is proper or that liability does or does not exist, or for any other reason, in this Action or in any other proceedings, *provided*,

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*however*, that Settlement Class Members, Class Counsel (as defined below), Henkel, other related persons, and any person or entity that is a beneficiary of a release set forth herein, may reference and file this Class Settlement Agreement with the Court, or any other tribunal or proceeding, in order to implement or enforce its terms, including but not limited to the releases.

**THEREFORE**, in consideration of the mutual promises and covenants contained herein and of the releases and dismissals of claims described below, the Parties agree to resolve the claims asserted in this Action, subject to the Final Approval of the Court, upon the following terms and conditions.

**II. DEFINITIONS**

2.1. “Action” means the lawsuit styled as *Luib v. Henkel Consumer Goods, Inc.*, Case Number 1:17-cv-03021-BMC, pending in the U.S. District Court for the Eastern District of New York.

2.2. “Agreement” or “Settlement” or “Settlement Agreement” means this Class Settlement Agreement and its exhibits, attached hereto or incorporated herein, including any subsequent amendments agreed to by the Parties and any exhibits to such amendments.

2.3. “Attorneys’ Fees and Expenses” means such funds as the Court may award to Class Counsel to compensate Class Counsel for the fees and expenses they have incurred or will incur in connection with this Action and Settlement, as described in Article VIII of this Agreement. Attorneys’ Fees and Expenses do not include any costs or expenses associated with the Class Notice or administration of the Settlement.

2.4. “Claim” means a claim for payment under this Settlement Agreement, submitted by a Claimant in accordance with the terms of this Agreement.

2.5. “Claim Form” means the document to be submitted by Claimants seeking payment pursuant to Section 4.2 of this Agreement. The Claim Form will be part of the Class



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Notice and will be available online at the Settlement Website, substantially in the form of Exhibit A to this Agreement.

2.6. “Claim Period” means the time period during which Settlement Class Members may submit a Claim Form to the Settlement Administrator for review. The Claim Period shall run for a period of time ordered by the Court, and last at least one-hundred and twenty (120) calendar days from the date of the first publication of the Summary Settlement Notice or Class Notice, whether online, via print publication, or via press release, whichever is earlier.

2.7. “Claimant” means a Settlement Class Member who submits a claim for payment as described in Section 4.2 of this Agreement.

2.8. “Class Action Settlement Administrator,” “Settlement Administrator,” or “Notice Administrator” means Epiq Class Action & Claims Solutions, Inc., the company jointly selected by Class Counsel and Defendant’s Counsel and approved by the Court to provide Class Notice and to administer the claims process.

2.9. “Class Counsel” means Reese LLP, 100 West 93<sup>rd</sup> Street, 16<sup>th</sup> Floor, New York, NY 10025; Halunen Law, 80 South Eighth Street, Suite 1650, Minneapolis, MN 55402; and, The Sultzer Law Group, P.C., 85 Civic Center Plaza, #200, Poughkeepsie, NY 12601.

2.10. “Class Notice” or “Long-Form Notice” means the legal notice of the proposed Settlement terms, as approved by Defendant’s Counsel and Class Counsel, subject to approval by the Court, to be provided to potential Settlement Class Members pursuant to Section 5.1 below. The Class Notice shall be substantially in the form attached hereto as Exhibit B. Any changes to the Class Notice from Exhibit B must be jointly approved by Class Counsel and Defendant’s Counsel.

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2.11. “Class Period” means the period from May 19, 2013, up to and including the date of the Court’s Preliminary Approval Order.

2.12. “Court” means the United States District Court for the Eastern District of New York, where the Action is pending.

2.13. “Defendant” means Henkel Consumer Goods Inc.

2.14. “Defendant’s Counsel” means Venable LLP, 1270 Avenue of the Americas, New York, NY 10020.

2.15. “Effective Date” means:

(a) if no appeal is taken from the Order and Final Judgment approving this Settlement Agreement, thirty-five (35) days after the Court enters the Order and Final Judgment;  
or

(b) if an appeal is taken from the Order and Final Judgment approving this Settlement Agreement, the date on which all appellate rights (including petitions for rehearing or re-argument, petitions for rehearing *en banc*, petitions for certiorari or any other form of review, and proceedings in the United States Supreme Court or any other appellate court) have expired, been exhausted, or been finally disposed of in a manner that affirms the Order and Final Judgment.

2.16. “Final Approval” of this Class Settlement Agreement means the date that the Order and Final Judgment is entered in this Action approving this Class Settlement Agreement.

2.17. “Fund Institution” means a third-party banking institution where the Settlement Funds will be deposited into an interest-bearing Qualified Settlement Fund account. Pursuant to Section 4.1, Henkel will select the Fund Institution, subject to Class Counsel’s approval.

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2.18. “Henkel” means Henkel Consumer Goods Inc., Henkel Corporation, and Henkel U.S. Operations Corporation, collectively.

2.19. “Incentive Award” means the amount the named Plaintiff Tony Luib will receive for his service as class representative, pursuant to Section 8.4.

2.20. “Initial Claim Amount” means the amount a Settlement Class Member claims as a cash payment on a Claim Form that is timely, valid, and is approved by the Settlement Administrator subject to Section 4.2 of this Agreement. The value basis of the Initial Claim Amount is described in Section 4.3 of this Agreement. The Initial Claim Amount is subject to *pro rata* increase or decrease, as provided in this Settlement Agreement.

2.21. “Notice Plan” means the plan for publication of Class Notice developed by the Settlement Claim Administrator, as described in the Declaration of Cameron Azari attached hereto as Exhibit C.

2.22. “Order and Final Judgment” means the final order to be entered by the Court approving the Settlement pursuant to the terms and conditions of this Agreement, dismissing the Action with prejudice, releasing claims, and otherwise directing as the Court or the Parties deem necessary and appropriate to effectuate the terms and conditions of this Agreement.

2.23. “Plaintiff’s Counsel” means Reese LLP, 100 West 93<sup>rd</sup> Street, 16<sup>th</sup> Floor, New York, NY 10025; Halunen Law, 80 South Eighth Street, Suite 1650, Minneapolis, MN 55402; and The Sultzer Law Group, P.C., 85 Civic Center Plaza, #200, Poughkeepsie, NY 12601.

2.24. “Preliminary Approval” means the Court order preliminarily approving the Class Settlement Agreement, preliminarily certifying the Settlement Class, approving the Notice of Proposed Settlement, and issuing any necessary related orders.

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2.25. “Products” means all varieties and container sizes of Henkel’s Purex laundry detergent products that bear the phrase “Natural Elements” on the label, including but not limited to Purex Natural Elements Laundry Detergent, Purex Ultra Natural Elements HE Detergent, Purex Natural Elements HE Laundry Detergent, and Purex Natural Elements Ultra Concentrate HE, as well as all scents of such products, including but not limited to Linen & Lilies Scent, Lilac & White Lavender Scent, and Tropical Splash Scent.

2.26. “Qualified Settlement Fund” means the fund, account, or trust, created pursuant to 26 C.F.R. § 1.468B-1, that the Fund Institution will establish to receive the Settlement Funds and make payments pursuant to Sections 4.1 through 4.5 of this Agreement.

2.27. “Related Actions” means any action filed, threatened to be filed, or filed in the future in other state or federal courts asserting claims and alleging facts substantially similar to those asserted and alleged in this Action.

2.28. “Released Claims” means any claim, cross-claim, liability, right, demand, action, suit, matter, obligation, damage, restitution, disgorgement, loss or cost, attorney’s fee, expense, indemnity, or cause of every kind and/or description that Plaintiff, the Settlement Class or any member thereof had or have, including assigned claims, whether in arbitration, administrative, or judicial proceedings, whether in law or equity, whether as individual claims, claims asserted on a class basis or on behalf of the general public, whether known or unknown, asserted or unasserted, suspected or unsuspected, latent or patent, that is, has been, could reasonably have been, or in the future might reasonably be asserted by Plaintiff or members of the Settlement Class either in the Action or in any action or proceeding in this Court or in any other court or forum, including any Related Actions, regardless of legal theory or the law under which such action may be brought, and regardless of the type or amount of relief or damages claimed,

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against any of the Released Persons, arising out of or relating to “natural” or other nature-related representations, claims, images or colors, including but not limited to the term “Natural Elements” and other uses of “natural” or similar terms, on the labeling, marketing, ingredients, or advertising of the Products, through any medium (including but not limited to on-label, Internet, television, radio, and print). Released Claims do not include any claims for bodily injury.

2.29. “Released Persons” means and includes Henkel Consumer Goods Inc., Henkel Corporation, and Henkel U.S. Operations Corporation, their successors and predecessors, each of their parents, subsidiaries, affiliates, and any of their officers, directors, employees, shareholders, partners, privies, agents, attorneys, representatives, accountants, insurers, assignees, trustees, executors, and all persons acting by, through, under the direction of, or in concert with them. Released Persons also means and includes all suppliers, distributors, resellers, retailers, customers, co-packers, advertisers, and any other persons involved in the development, advertising, marketing, labeling, formulation, distribution, or sale of the Products.

2.30. “Residual Fund” means the value of funds remaining in the Qualified Settlement Fund, less all Claimants’ Initial Claim Amounts; less Class Notice and administration costs; and less all Attorneys’ Fees and Expenses and the Incentive Award pursuant to Court Order or otherwise specified in this Agreement.

2.31. “Settlement Class” or “Settlement Class Member” means all persons and entities who, during the Class Period, both resided in the United States (defined to including both states and territories of the United States), and purchased any of the Products in the United States. Excluded from the Settlement Class are: (a) Henkel’s officers, directors, employees and attorneys; (b) governmental entities; (c) the Court, the Court’s immediate family, and the Court

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staff; and (d) any person who timely and properly excludes himself or herself from the Settlement Class in accordance with the procedures approved by the Court.

2.32. “Settlement Funds” means the One Million Five Hundred Thousand Dollars (U.S.) and No Cents (\$1,500,000.00) that Henkel will deposit into the Qualified Settlement Fund.

2.33. “Settlement Hearing(s)” means the hearing(s) the Court will hold to consider and determine whether it should approve the proposed settlement contained in this Class Settlement Agreement as fair, reasonable, and adequate, and whether it should enter Judgment approving the terms of the Class Settlement Agreement. Settlement Hearings include both a “Preliminary Approval Hearing” and a “Final Approval Hearing” or “Fairness Hearing,” to be held after preliminary approval is granted, as the Court so orders, as well as any other hearings conducted by the Court for purposes of considering and approving this Settlement Agreement.

2.34. “Settlement Website” means the website to be created for this Settlement that will include information about the Actions and the Settlement, relevant documents, and electronic and printable forms relating to the Settlement, including the Claim Form. The Settlement Website shall be activated by the date of the first publication of the Summary Settlement Notice or Class Notice, whichever is earlier, and shall remain active until one hundred and twenty (120) calendar days after the Effective Date.

2.35. “Summary Settlement Notice” or “Short Form Notice” means the Summary Class Notice of proposed class action settlement, to be disseminated by publication substantially in the form of Exhibit D attached to this Agreement. Any changes to the Summary Settlement Notice or Short Form Notice from the form set forth in Exhibit D must be jointly approved by Class Counsel and Defendant’s Counsel.

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2.36. “Tally” or “Final Tally” means the calculation and report the Settlement Administrator shall provide to the Parties, which shall include the value, number, and type of timely, valid, and approved Claims, indicate all Claims paid and all Claims not paid (with reasons stated), and shall account for all payments in and out of the Qualified Settlement Fund. The Settlement Administrator shall give the Final Tally to the Parties no later than seven (7) calendar days after the close of the Claim Period.

**III. CERTIFICATION OF THE SETTLEMENT CLASS AND PRELIMINARY APPROVAL**

3.1. Solely for the purposes of settlement and the proceedings contemplated herein, the Parties stipulate and agree that a nationwide Settlement Class should be certified. Class certification shall be for settlement purposes only and shall have no effect for any other purpose.

3.2. The certification of the Settlement Class shall be binding only with respect to this Class Settlement Agreement. In the event that Final Approval does not occur for any reason, the Preliminary Approval, and all of its provisions, shall be vacated by its own terms, and this Action shall revert to its status that existed prior to the date of this Class Settlement Agreement.

3.3. For purposes of effectuating the Settlement Agreement, Henkel consents to Plaintiff’s application to the Court for entry of an order which, among other things: (a) preliminarily certifies the Settlement Class in accordance with the definition set forth in this Agreement; (b) preliminarily approves this Agreement for purposes of issuing Class Notice; (c) approves the timing, content, and manner of the Class Notice and Summary Settlement Notice or Short Form Notice; (d) appoints the Settlement Administrator; (e) appoints Reese LLP; Halunen Law; and, The Sultzer Law Group P.C. as Class Counsel and Plaintiff Tony Luib as the named Class Representative; and (f) makes such orders as are necessary and appropriate to effectuate the terms and conditions of this Agreement.

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**IV. SETTLEMENT CONSIDERATION AND BENEFITS**

The settlement relief includes two components to benefit the Settlement Class: (a) a Qualified Settlement Fund from which Claimants who submit timely, valid, and approved claims will obtain refunds and (b) modifications to the Products' labeling.

4.1. **Qualified Settlement Fund**

(a) Henkel shall establish the Qualified Settlement Fund at the Fund Institution. Funds held in the Qualified Settlement Fund shall earn interest at an appropriate market rate. Within ten (10) calendar days after the entry of the Preliminary Approval Order, Henkel shall deposit Three Hundred Thousand Dollars and No Cents (\$300,000.00) of the Settlement Funds into the Qualified Settlement Fund. Within ten (10) calendar days after the Final Approval, Henkel will deposit the remainder of the Settlement Funds (i.e., One Million Two Hundred Thousand Dollars and No Cents (\$1,200,000.00)) into the Qualified Settlement Fund. These deadlines may be extended by mutual consent of the Parties.

(b) The Qualified Settlement Fund shall be applied to pay in full and in the following order:

- (i) any necessary taxes and tax expenses;
- (ii) all costs and expenses associated with disseminating notice to the Settlement Class, including but not limited to, the Class Notice and Summary Settlement Notice;
- (iii) all costs and expenses associated with the administration of the Settlement, including but not limited to, processing claims and fees of the Class Action Settlement Administrator.
- (iv) any Attorneys' Fees and Expenses award made by the Court to Class Counsel pursuant to Article VIII of this Agreement;



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(v) any Incentive Award made by the Court to Plaintiff under Section 8.4 of this Agreement;

(vi) cash payments distributed to Claimants who have submitted timely, valid, and approved Claims in accordance with Section 4.2 of this Agreement, as set forth in Sections 4.3 through 4.5 of this Agreement; and

(vii) the Residual Funds, if any, pursuant to Section 4.5(c) of this Agreement.

(c) Class Counsel and Defendant's Counsel must approve in writing any payment of costs or expenses under Sections 4.1(b)(i), (ii), or (iii) of this Agreement. Any payments under Sections 4.1(b) (iv), (v), (vi) or (vii) shall be made as approved by the Court in an Order and Final Judgment, and only after the Effective Date.

(d) The Parties agree that the Settlement Funds constitute the full extent of Henkel's payment obligations under this Settlement Agreement. Payment of the Settlement Funds, together with Henkel's non-monetary obligations under this Agreement, will be in full satisfaction of all individual and class claims asserted in, or that could have been asserted in, this Action. In no circumstances shall Henkel's contribution to the Qualified Settlement Fund exceed One Million Five Hundred Thousand Dollars and No Cents (\$1,500,000.00), nor shall Henkel be required to pay any further amounts under this Settlement Agreement.

(e) Henkel and the Released Persons are not obligated (and shall not be obligated) to compute, estimate, or pay any taxes on behalf of Plaintiff, Plaintiff's Counsel, Class Counsel, any Settlement Class Member, the Notice Administrator, or the Settlement Administrator.

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(f) In the event the Effective Date does not occur for any reason, including but not limited to a decision by the Court not to approve this Settlement Agreement or a decision on appeal that does not result in affirmance of an Order and Final Judgment, the Fund Institution shall promptly pay to Henkel all amounts in the Qualified Settlement Fund, including any accumulated interest, less amounts incurred for claims administration and notice.

**4.2. Eligibility and Process for Obtaining a Cash Payment**

To be eligible for a cash payment, a Settlement Class Member must submit a timely and valid Claim Form, which will be evaluated by the Settlement Administrator.

(a) **Claim Form Availability.** The Claim Form shall be in a substantially similar form to that attached as Exhibit A. The Claim Form will be: (i) included on the Settlement Website to be designed and administered by the Settlement Administrator; and (ii) made readily available from the Settlement Administrator, including by requesting a Claim Form from the Settlement Administrator by mail, e-mail, or calling a toll-free number provided by the Settlement Administrator.

(b) **Timely Claim Forms.** Settlement Class Members must submit a timely Claim Form, which is one postmarked or submitted online before or on the last day of the Claim Period, the specific date of which will be prominently displayed on the Claim Form and Class Notice. For a non-online Claim Form, the Claim Form will be deemed to have been submitted on the date of the postmark on the envelope or mailer. For an online Claim Form and in all other cases, the Claim Form will be deemed to have been submitted on the date it is received by the Settlement Administrator.

(c) **Validity of Claim Forms.** Settlement Class Members must submit a valid Claim Form, which must contain the Settlement Class Member's name and mailing address,

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container size(s) and number of Products purchased, approximate date of purchase, location(s) of purchase(s), and an attestation of purchase(s) declaring under penalty of perjury that the Claimant purchased the Product(s) claimed in his or her Claim Form in the United States and while residing in the United States during the Class Period and that neither the Claimant nor any other member of the Claimant's household has previously submitted a Claim Form in this Settlement. Settlement Class Members will also have the option to submit receipts or other evidence establishing that they purchased a specific quantity of Products at a specific price, on a specific date, from a specific location ("Proof of Purchase"). Claim Forms that do not meet the requirements set forth in this Agreement and in the Claim Form instructions may be rejected. The Settlement Administrator will determine a Claim Form's validity. Where a good faith basis exists, the Settlement Administrator may reject a Settlement Class Member's Claim Form for, among other reasons, the following:

- (i) Failure to attest to the purchase of the Products, or purchase of products that are not covered by the terms of this Settlement Agreement;
- (ii) Failure to provide adequate verification or additional information of the Claim pursuant to a request from the Settlement Administrator;
- (iii) Failure to fully complete and/or sign the Claim Form;
- (iv) Failure to submit a legible Claim Form;
- (v) Submission of a fraudulent Claim Form;
- (vi) Submission of a Claim Form that is duplicative of another Claim Form;
- (vii) Submission of a Claim Form by a person who is not a Settlement Class Member;

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- (viii) Request by person submitting the Claim Form to pay funds to a person or entity that is not the Settlement Class Member for whom the Claim Form is submitted;
- (ix) Failure to submit a Claim Form by the end of the Claim Period; or
- (x) Failure to otherwise meet the requirements of this Settlement Agreement.

**4.3. Settlement – Claimants’ Cash Recovery**

The relief to be provided to each Settlement Class Member who submits a timely and valid Claim Form pursuant to the terms and conditions of this Agreement shall be a payment in the form of a partial cash refund. The amount of the payment will vary based on: (i) the container size of the Products that the Claimant purchased; (ii) whether the Claimant submits a valid Proof of Purchase; (iii) whether the Claimant submits a valid Claim Form for all qualifying purchases; and (iv) the total amount of valid claims submitted. Such payments will be made by the Settlement Administrator by check.

(a) On the Claim Form, a Settlement Class Member must state the number of Product(s) purchased during the Class Period, and the container size and variety of each.

(b) Claimants may seek a refund for each qualifying purchase of a Product on a Claim Form that is supported by Proof of Purchase, regardless of the quantity of such qualifying purchases. In the absence of Proof of Purchase, a Claimant may not receive any refund for more than 10 qualifying purchases of Products. For all Claimants, the Initial Claim Amount will be calculated as follows, subject to the *pro rata* adjustments set forth in Section 4.5:

- (i) Products with a container size less than 150 ounces: \$2.00 per container.
- (ii) Products with a container size equal to or greater than 150 ounces: \$4.00 per container.

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4.4. **Distribution to Authorized Settlement Class Members**

(a) The Settlement Administrator shall begin paying timely, valid, and approved Claims via first-class mail no later than thirty (30) calendar days after the Effective Date. The Settlement Administrator may begin to pay timely, valid, and approved Claims sooner upon Henkel's and Class Counsel's joint direction, but not before the Effective Date.

(b) The Settlement Administrator shall have completed the payment to Claimants who have submitted timely, valid, and approved Claims pursuant to the Claims Process (defined herein) no later than sixty (60) calendar days after the Effective Date.

4.5. **Excess or Insufficient Funds in the Qualified Settlement Fund**

(a) **Excess Funds.** If a Residual Fund exists after the payment of all valid Claims, Notice and Administration costs, Attorneys' Fees and Expenses, Incentive Award, and any other claim, cost, or fee specified by this Agreement, the Residual Fund shall be used to increase the relief to Claimants, on a *pro rata* basis, in the following order of priority:

- (i) each Claimant whose Claim Form includes qualifying purchases that are supported by Proof of Purchase will receive, *pro rata*, an additional refund of up to 100% of the value of the Initial Claim Amount with respect to those qualifying purchases supported by Proof of Purchase;
- (ii) if a Residual Fund remains after the additional refunds in (i) are issued, then each Claimant will receive, *pro rata*, an additional refund of up to 100% of the value of the Initial Claim Amount with respect to those qualifying purchases that were not supported by Proof of Purchase;

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- (iii) if a Residual Fund remains after the additional refunds in (ii) are issued, then each Claimant whose Claim Form includes qualifying purchases that are supported by Proof of Purchase will receive, *pro rata*, a further refund of up to 100% of the value of the Initial Claim Amount with respect to those qualifying purchases supported by Proof of Purchase;
- (iv) if a Residual Fund remains after the additional refunds in (iii) are issued, then each Claimant will receive, *pro rata*, a further refund of up to 100% of the value of the Initial Claim Amount with respect to those qualifying purchases that were not supported by Proof of Purchase.

The Settlement Administrator shall determine each authorized Claimant's additional payment based upon the Claimant's Claim Form and the total number of valid Claims. Accordingly, the actual amount recovered by each Claimant will not be determined until after the Claim Period has ended and all Claims have been calculated.

(b) **Insufficient Funds.** If the total amount of the timely, valid, and approved Claims submitted by Claimants exceeds the funds available in the Qualified Settlement Fund, considering any fees, payments, and costs set forth in this Agreement that must also be paid from the Qualified Settlement Fund, each eligible Claimant's Initial Claim Amount shall be proportionately reduced on a *pro rata* basis, such that the aggregate value of the cash payments distributed does not exceed the balance of the Qualified Settlement Fund after payment of all other costs. The Settlement Administrator shall determine each authorized Claimant's *pro rata* share based upon the Claimant's Claim Form and the total number of valid Claims.

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Accordingly, the actual amount recovered by each Claimant will not be determined until after the Claim Period has ended and all Claims have been calculated.

(c) If Residual Funds exist after the process described in Sections 4.4(a) and (b) is concluded, including any checks that were not cashed, then the Settlement Administrator shall distribute the Residual Funds to the following non-profit organization: Consumer Reports. The Residual Funds will not be returned to Henkel. Henkel represents and warrants that any payment of Residual Funds to any charities, non-profit organizations, or government entities shall not reduce any of its donations or contributions to any entity, charity, charitable foundation or trust, and/or non-profit organization.

4.6. **Injunctive Relief: Modification of the Products' Labels and Website**

Henkel will add the following language to the front label of the Products to qualify the meaning of "Natural Elements": "contains naturally derived and other ingredients." Henkel also will add to the front label of the Products: "USDA Certified Bio-Based" with the certified percentage of the overall ingredients that meets the bio-based standard. Within twelve (12) months after the Effective Date ("Label Change Date"), Henkel agrees to cease manufacturing Products with labels bearing "Natural Elements" or other variations of the term "natural" unless they conform to these modifications. Henkel shall not be required to change or replace the labels on any Products that were labeled prior to the Label Change Date. Henkel further agrees to modify within twelve (12) months of the Effective Date the content of Henkel's website, *www.purex.com*, to correspond to these labeling changes. Nothing in this Settlement Agreement shall (i) prevent Henkel from making other changes to the Products' labeling or website, provided those changes are not inconsistent with the foregoing; (ii) apply to any Henkel brands other than Purex, or (iii) restrict or limit how Henkel labels, markets, or otherwise describes

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Purex brand laundry detergent products whose labels do not include “Natural Elements” or other variations of the term “natural.”

**4.7. Other Injunctive Relief Terms and Conditions**

(a) Plaintiff and the Settlement Class agree that the modifications to the labeling, marketing, and advertising of the Products described in Section 4.6 are satisfactory to Plaintiff and the Settlement Class and alleviate each and every alleged deficiency with regard to the labeling, packaging, advertising, and marketing of the Products and their ingredients (and similar deficiencies, if any, with regard to other or future Henkel products) set forth in or related to the Complaint, Related Actions, or otherwise.

(b) The injunctive relief requirements by which Henkel agrees to abide as part of this Settlement Agreement and as described in Section 4.6 and this Section shall expire on the earliest of the following dates: (i) the date upon which there are changes to any applicable statute, regulation, pronouncement, guidance, or other law that Henkel reasonably believes would require a modification to any of the Product labeling in order to comply with the applicable statute, regulation, pronouncement, guidance, or other law; (ii) the date upon which there are any changes to any applicable federal or state statutes or regulations that would allow Henkel to use the term “Natural Elements” or other variations of the term “natural” or similar terms, without the labeling modifications set forth in Section 4.5, including but not limited to changes in U.S. Food and Drug Administration (“FDA”), Federal Trade Commission, U.S. Department of Agriculture, U.S. Environmental Protection Agency, U.S. Consumer Product Safety Commission, and other governmental agencies’ regulations, guidance, or pronouncements; or (iii) five (5) years from the Effective Date.



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(c) For purposes of this Agreement, Henkel shall not be required at any time to (i) destroy any existing Products or components of such Products, or (ii) remove any existing Products from the marketplace.

**V. NOTICE TO CLASS AND ADMINISTRATION OF PROPOSED SETTLEMENT**

**5.1. Duties and Responsibilities of the Settlement Administrator**

Class Counsel and Henkel recommend Epiq Class Action & Claims Solutions, Inc. to be the Settlement Administrator for this Agreement. The Settlement Administrator shall abide by and shall administer the Settlement in accordance with the terms, conditions, and obligations of the Settlement Agreement and the Orders issued by the Court in this Action.

(a) **Class Notice Duties.** The Settlement Administrator shall, in cooperation with the Parties, be responsible for consulting on and designing the Class Notice, Summary Class Notice, and Claim Form. After the Court's Preliminary Approval of this Settlement Agreement and Appointment of the Settlement Administrator, the Settlement Administrator shall also be responsible for disseminating the Class Notice, substantially in the form as described in the Notice Plan attached as Exhibit C to this Settlement Agreement, as specified in the Preliminary Approval Order, and as specified in this Settlement Agreement. The Class Notice and Summary Class Notice will comply with all applicable laws, including, but not limited to, the Due Process Clause of the Constitution. Class Notice duties include, but are not limited to:

(i) consulting on, drafting, and designing the Class Notice, Summary Class Notice, and Claim Form. Class Counsel and Defendant's Counsel shall have input and joint approval rights, which shall not be unreasonably withheld, over these Notices and Form or any changes to the Notices and Form;

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(ii) developing a Notice Plan, attached as Exhibit C to this Settlement Agreement. Class Counsel and Defendant's Counsel shall have input and joint approval rights, which shall not be unreasonably withheld, over this Notice Plan or changes to this Notice Plan;

(iii) implementing and arranging for the publication of the Summary Settlement Notice and Class Notice via various forms of paper and electronic media, including implementing media purchases, all in substantial accordance with the Notice Plan attached as Exhibit C. To the extent that the Settlement Administrator believes additional or different Notice should be undertaken than that provided for in the Notice Plan, Class Counsel and Defendant's Counsel shall have input and joint approval rights, which shall not be unreasonably withheld, over any additional or different Notice;

(iv) establishing and publishing the Settlement Website, which will contain the Class Notice and related documents, including a Claim Form capable of being completed and submitted on-line. The Settlement Website, including the Class Notice, shall remain available for 120 days after the Effective Date;

(v) sending the Class Notice and related documents, including a Claim Form, via electronic mail or regular mail, to any potential Settlement Class Member who so requests and sending such Class Notice and documents to the list of direct consumers provided by Defendant;

(vi) responding to requests from Class Counsel and Defendant's Counsel; and

(vii) otherwise implementing and assisting with the dissemination of the Notice of the Settlement.

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**(b) Class Action Fairness Act Notice Duties to State and Federal Officials.**

No later than ten (10) calendar days after this Agreement is filed with the Court, the Settlement Administrator, with assistance from the Parties as needed, shall mail or cause the items specified in 28 U.S.C. § 1715(b) to be mailed to each State and Federal official, as specified in 28 U.S.C. § 1715(a).

**(c) Claims Process Duties.** The Settlement Administrator shall be

responsible for implementing the claims process described in Sections 4.2, 4.3, 4.4, and 4.5 (“Claims Process”), as well as related administrative activities, including communications with Settlement Class Members concerning the Settlement, Claims Process, and the options they have. Claims Process duties include, but are not limited to:

- (i) executing any mailings required under the terms of this Agreement;
- (ii) establishing a toll-free voice response unit to which Settlement Class Members may refer for information about the Action and the Settlement;
- (iii) establishing a post office box for the receipt of Claim Forms, exclusion requests, and any correspondence;
- (iv) receiving and maintaining on behalf of the Court all correspondence from any Settlement Class Member regarding the Settlement, and forwarding inquiries from Settlement Class Members to Class Counsel or their designee for a response, if warranted; and
- (v) receiving and maintaining on behalf of the Court any Settlement Class Member correspondence regarding any opt-out requests, exclusion forms, or other requests to exclude himself or herself from the Settlement, and providing to Class Counsel and

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Defendant's Counsel a copy within five (5) calendar days of receipt. If the Settlement Administrator receives any such forms or requests after the deadline for the submission of such forms and requests, the Settlement Administrator shall promptly provide Class Counsel and Defendant's Counsel with copies.

(d) **Claims Review Duties.** The Settlement Administrator shall be responsible for reviewing and approving Claim Forms in accordance with this Agreement.

Claims Review duties include, but are not limited to:

(i) reviewing each Claim Form submitted to determine whether each Claim Form meets the requirements set forth in this Agreement and whether it should be allowed, including determining whether a Claim by any Settlement Class Member is timely, complete, and valid;

(ii) working with Settlement Class Members who submit timely claims to try to cure any Claim Form deficiencies;

(iii) using all reasonable efforts and means to identify and reject duplicate and/or fraudulent claims, including, without limitation, maintaining a database of all Claims Form submissions;

(iv) keeping an accurate and updated accounting via a database of the number of Claim Forms received, the amount claimed on each Claim Form, the name and address of the Settlement Class Members who made the claim, the type of claim made, whether the claim has any deficiencies, and whether the claim has been approved as timely and valid; and

(v) otherwise implementing and assisting with the Claim review process and payment of the Claims, pursuant to the terms and conditions of this Agreement.

**EXECUTION VERSION**

(e) **Periodic Updates.** The Settlement Administrator shall provide periodic updates to Class Counsel and Defendant's Counsel regarding Claim Form submissions beginning within seven (7) business days after the commencement of the dissemination of the Class Notice or the Summary Settlement Notice and continuing on a monthly basis thereafter and shall provide such an update within seven (7) days before the Final Approval Hearing. The Settlement Administrator shall also provide such updates to Class Counsel or Defendant's Counsel upon request, within a reasonable amount of time. The Settlement Administrator shall also provide the Final Tally in accordance with Section 2.36 of this Agreement.

(f) **Claims Payment Duties.** The Settlement Administrator shall be responsible for sending payments to all eligible Settlement Class Members with valid, timely, and approved Claims pursuant to the terms and conditions of this Agreement. Claim Payment duties include, but are not limited to:

(i) Within seven (7) days of the Effective Date, provide a report to Class Counsel and Defendant's Counsel calculating the amount and number of valid and timely Claims;

(ii) Per Sections 4.3, 4.4, and 4.5, sending the appropriate payment amount by check to each Settlement Claim Member who submitted timely, valid, and approved Claim Forms;

(iii) Once the Settlement Class Administrator has begun issuing payments pursuant to the terms and conditions of this Agreement, the Settlement Administrator shall provide regular (and no less often than weekly) reports to Class Counsel and Defendant's Counsel, setting forth the accounting of the number and amount of claims paid, received but not

**EXECUTION VERSION**

paid, all other payments in and out of the Qualified Settlement Fund, and current balance information.

(g) **Reporting to Court.** Not later than ten (10) calendar days before the date of the Fairness Hearing, the Settlement Administrator and Notice Administrator shall file a declaration or affidavit with the Court that: (i) includes a list of those persons who have opted out or excluded themselves from the Settlement; and (ii) describes the scope, methods, and results of the notice program.

(h) **Duty of Confidentiality.** The Settlement Administrator shall treat any and all documents, communications, and other information and materials received in connection with the administration of the Settlement as confidential and shall not disclose any or all such documents, communications, or other information to any person or entity, except to the Parties or as provided for in this Agreement or by order of the Court.

(i) **Right to Inspect.** Class Counsel and Defendant's Counsel shall have the right to inspect the Claim Forms and supporting documentation received by the Settlement Administrator at any time upon reasonable notice.

(j) **Failure to Perform.** If the Settlement Administrator misappropriates any funds from Qualified Settlement Fund or otherwise in the course of carrying out its duties under this Agreement, or makes a material or fraudulent misrepresentation to, or conceals requested material information from, Class Counsel, Henkel, or Defendant's Counsel, then the Party who discovers the misappropriation or concealment or to whom the misrepresentation is made shall, in addition to any other appropriate relief, have the right to demand that the Settlement Administrator immediately be replaced. If the Settlement Administrator fails to perform adequately on behalf of the Parties, the Parties may agree to remove the Settlement

**EXECUTION VERSION**

Administrator. Neither Party shall unreasonably withhold consent to remove the Settlement Administrator. The Parties will attempt to resolve any disputes regarding the retention or dismissal of the Settlement Administrator in good faith. If unable to so resolve a dispute, the Parties will refer the matter to the Court for resolution.

**VI. OBJECTIONS AND REQUESTS FOR EXCLUSION**

6.1. A Settlement Class Member may either object to this Agreement pursuant to Section 6.2 or request exclusion from this Agreement pursuant to Section 6.3.

6.2. Settlement Class Members shall have the right to object to this Settlement and to appear and show cause, if they have any reason why the terms of this Agreement should not be given Final Approval, pursuant to this paragraph:

(a) A Settlement Class Member may object to this Agreement either on his or her own without an attorney, or through an attorney hired at his or her own expense.

(b) Any objection to this Agreement must be in writing, signed by the Settlement Class Member (and his or her attorney, if individually represented), filed with the Court, with a copy delivered to Class Counsel and Defense Counsel at the addresses set forth in the Class Notice, no later than 30 days before the Fairness Hearing.

(c) Any objection regarding or related to this Agreement shall contain a caption or title that identifies it as “Objection to Class Settlement in *Luib v. Henkel Consumer Goods, Inc.* (E.D.N.Y. Case No. 1:17-cv-03021-BMC).”

(d) Any objection regarding or related to this Agreement shall contain information sufficient to identify and contact the objecting Settlement Class Member (or his or her individually-hired attorney, if any), as well as a clear and concise statement of the Settlement Class Member’s objection, the facts supporting the objection, and the legal grounds on which the objection is based.

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(e) Any objection shall include documents sufficient to establish the basis for the objector's standing as a Settlement Class Member, such as (i) a declaration signed by the objector under penalty of perjury, with language similar to that included in the Claim Form attached hereto as Exhibit A, that the Settlement Class Member purchased at least one Product during the Class Period of May 19, 2013 to the date of Preliminary Approval; or (ii) receipt(s) reflecting such purchase(s).

(f) Class Counsel shall have the right, and Henkel shall reserve its right, to respond to any objection no later than seven (7) days prior to the Fairness Hearing. The Party so responding shall file a copy of the response with the Court, and shall serve a copy, by regular mail, hand or overnight delivery, to the objecting Settlement Class Member or to the individually-hired attorney for the objecting Settlement Class Member; to all Class Counsel; and to Defendant's Counsel.

(g) If an objecting Settlement Class Member chooses to appear at the hearing, no later than Fifteen (15) days before the Fairness Hearing, a Notice of Intention to Appear, either In Person or Through an Attorney, must be filed with the Court and list the name, address and telephone number of the attorney, if any, who will appear.

6.3. **Requests for Exclusion.** Settlement Class Members shall have the right to elect to exclude themselves, or "opt out," of the monetary portion of this Agreement, relinquishing their rights to cash compensation under this Agreement and preserving their claims for damages that accrued during the Class Period, pursuant to this paragraph:

(a) A Settlement Class Member wishing to opt out of this Agreement must send to the Class Action Settlement Administrator by U.S. mail a personally-signed letter



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including his or her name and address, and providing a clear statement communicating that he or she elects to be excluded from the Settlement Class.

(b) Any request for exclusion or opt-out must be postmarked on or before the opt-out deadline date specified in the Preliminary Approval Order. The date of the postmark on the return-mailing envelope shall be the exclusive means used to determine whether a request for exclusion has been timely submitted.

(c) The Class Action Settlement Administrator shall forward copies of any written requests for exclusion to Class Counsel and Defendant's Counsel, and shall file a list reflecting all requests for exclusion with the Court no later than ten (10) calendar days before the Settlement Hearing.

(d) The Request for Exclusion must be personally signed by the Settlement Class Member.

6.4. Any Settlement Class Member who does not file a timely written request for exclusion as provided in the preceding Section 6.3 shall be bound by all subsequent proceedings, orders, and judgments, including, but not limited to, the Released Claims and the Releases in Article VII of this Agreement, even if he or she has litigation pending or subsequently initiates litigation against Defendant relating to the claims and transactions released in this Action.

6.5. Any Settlement Class Member who does not request exclusion from the Settlement has the right to object to the Settlement. Settlement Class Members may not both object and opt out of the Settlement. Any Settlement Class Member who wishes to object must timely submit an objection as set forth in Section 6.2 above. If a Settlement Class Member submits both an objection and a written request for exclusion, he or she shall be deemed to have complied with the terms of the procedure for requesting exclusion as set forth in Section 6.3 and

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shall not be bound by the Agreement if approved by the Court and the objection will not be considered by the Court.

**VII. RELEASES**

7.1. Upon the Effective Date of this Class Settlement Agreement, Plaintiff and each member of the Settlement Class, and each of their successors, assigns, heirs, and personal representatives (collectively, the “Releasors”), shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Persons. The Released Claims shall be construed as broadly as possible to ensure complete finality over this Action involving the advertising, labeling, and marketing of the Products as set forth herein.

7.2. The Releasors expressly understand and acknowledge that certain principles of law, including, but not limited to, Section 1542 of the Civil Code of the State of California, provide that: **“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”** To the extent that anyone might argue that these principles of law are applicable, the Releasors hereby agree that the provisions of all such principles of law or similar federal or state laws, rights, rules, or legal principles, to the extent they are found to be applicable herein, are hereby knowingly and voluntarily waived, relinquished, and released by the Releasors. The Releasors further agree that compliance with the injunctive relief provisions of Section 4.6 and 4.7 alleviates each and every alleged deficiency with regard to the labeling, packaging, advertising, and marketing of the

**EXECUTION VERSION**

Products and their ingredients (and similar deficiencies, if any, with regard to other or future Henkel products) set forth in or related to the Complaint, Related Actions, or otherwise.

7.3. Plaintiff fully understands that the facts upon which this Class Settlement Agreement is executed may hereafter be other than or different from the facts now believed by Plaintiff and Class Counsel to be true and nevertheless agree that this Class Settlement Agreement and the Released Claims shall remain effective notwithstanding any such difference in facts.

7.4. To the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of or contrary to this Agreement, including but not limited to any Related Actions.

**VIII. ATTORNEYS' FEES AND EXPENSES AND CLASS REPRESENTATIVE INCENTIVE AWARDS**

8.1. Class Counsel agrees to make, and Henkel agrees not to oppose, an application for an award of Attorneys' Fees in the Action that will not exceed an amount equal to Thirty-Three percent (33%) of the Settlement Funds in addition to reimbursement for costs incurred by Class Counsel. This shall be paid from the Qualified Settlement Fund and shall be the sole aggregate compensation paid by Henkel for Class Counsel representing the Class. The ultimate award of Attorneys' Fees and Expenses will be determined by the Court.

8.2. Class Counsel, in their sole discretion, shall allocate and distribute the Court's award of fees and expenses. Class Counsel shall indemnify Henkel and its attorneys against any third-party action relating to attorneys' fees and expenses.

8.3. Class Counsel agrees that any award of Attorneys' Fees and Expenses will be sought solely and exclusively in the Action.

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8.4. Within seven (7) days after the Effective Date, the Qualified Settlement Fund shall pay an Incentive Award of Seven Thousand Five Hundred Dollars and No Cents (\$7,500.00) to the named Plaintiff Tony Luib.

**IX. NO ADMISSION OF LIABILITY**

9.1. Henkel has denied and continues to deny that the labeling, advertising, or marketing of its Products is in any way false, deceptive, or misleading to consumers or violates any legal requirement, including but not limited to the allegations that Defendant engaged in unfair, unlawful, fraudulent, or deceptive trade practices, breached an express warranty, or was unjustly enriched, or that the Products or the ingredients in the Products caused any damage to anyone. Henkel is entering into this Agreement solely because it will eliminate the uncertainty, distraction, burden, and expense of further litigation. The provisions contained in this Agreement and the manner or amount of relief provided to Settlement Class Members herein shall not be deemed a presumption, concession, or admission by Henkel of any fault, liability, or wrongdoing as to any facts or claims that have been or might be alleged or asserted in the Action, or in any other action or proceeding that has been, will be, or could be brought, and shall not be interpreted, construed, deemed, invoked, offered, or received into evidence or otherwise used by any person in any action or proceeding, whether civil, criminal, or administrative, for any purpose other than as provided expressly herein.

9.2. In the event that the Court does not approve this Agreement substantially in the form submitted (or in a modified form mutually acceptable to the Parties), or this Agreement is terminated or fails to become effective or final in accordance with its terms, the Parties shall be restored to their respective positions in the Action as of the date hereof. In addition, if more than one hundred (100) Settlement Class Members opt out of the Class Settlement Agreement pursuant to Section 6.3, each Party shall have the right to terminate the Agreement by giving

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written notice to the other Party. In the event that this Agreement is terminated for any of these reasons, the terms and provisions of this Agreement shall have no further force and effect and shall not be used in the Action or in any other proceeding or for any purpose, and the Parties will jointly make an application requesting that any Judgment entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

9.3. The Parties agree that if the Court does not approve this Agreement substantially in the form submitted (or in a modified form mutually acceptable to the Parties) or if this Agreement is terminated or fails to become effective or final in accordance with its terms, the Action shall proceed as if no Party had ever agreed to this Settlement, without prejudice to the right of any Party to take any and all action of any kind in the Action. Plaintiff and Class Counsel acknowledge and agree that, in such instance, Henkel has reserved all its rights to oppose certification of any class in this Action, and Plaintiff and Class Counsel are barred from arguing that this Agreement bars Henkel from raising such opposition.

**X. ADDITIONAL PROVISIONS**

10.1. Plaintiff and Class Counsel warrant and represent to Henkel that they have no intention of initiating any other claims or proceedings against Henkel, or any of its affiliates, or any entity that manufactures, distributes, or sells the Products. Except for the Released Claims hereby settled, Plaintiff and Class Counsel warrant and represent to Henkel that they have no present knowledge and are not presently aware of any factual or legal basis for any claims or proceedings against Henkel, other than claims or proceedings that may already be pending against Henkel.

10.2. The Parties agree that information and documents exchanged in negotiating this Settlement Agreement were done so pursuant to Fed. R. Evid. 408, and no such confidential

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information exchanged or produced by either side may be revealed for any other purpose than this Settlement. This does not apply to publicly-available information or documents.

10.3. The Parties agree to return or dispose of confidential documents and information exchanged in negotiating this Agreement within fifteen (15) days of the Effective Date. This does not apply to publicly-available information or documents. Nothing in this Agreement shall affect or limit the Parties' obligations under Section 19 of the Stipulated Protective Order entered in this Action on October 6, 2017 (Dkt. No. 26).

10.4. The Parties agree that the terms of the Agreement were negotiated at arm's length and in good faith by the Parties and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel.

10.5. The Parties and their respective counsel agree to use their best efforts and to cooperate fully with one another (i) in seeking preliminary and final Court approval of this settlement; and (ii) in effectuating the full consummation of the settlement provided for herein.

10.6. Each counsel or other person executing this Agreement on behalf of any Party hereto warrants that such person has the authority to do so.

10.7. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. Executed counterparts shall be deemed valid if delivered by mail, courier, electronically, or by facsimile.

10.8. This Agreement shall be binding upon and inure to the benefit of the settling Parties (including all Settlement Class Members), their respective agents, attorneys, insurers, employees, representatives, officers, directors, partners, divisions, subsidiaries, affiliates, associates, assigns, heirs, successors in interest, and shareholders, and any trustee or other officer

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appointed in the event of a bankruptcy, as well as to all Released Persons as defined herein. The waiver by any Party of a breach of this Agreement by any other Party shall not be deemed a waiver of any other breach of this Agreement.

10.9. This Agreement and any exhibits attached to it constitute the entire agreement between the Parties hereto and supersede any prior agreements or understandings, whether oral, written, express, or implied between the Parties with respect to the settlement.

10.10. No amendment, change, or modification of this Agreement or any part thereof shall be valid unless in writing, signed by all Parties and their counsel, and approved by the Court. None of the Parties has relied on any written or oral representation not contained in this Agreement in deciding to enter this Agreement.

10.11. The Parties to this Agreement each represent to the other that they have received independent legal advice from attorneys of their own choosing with respect to the advisability of making the settlement provided for in this Agreement, and with respect to the advisability of executing this Agreement, that they have read this Agreement in its entirety and fully understand its contents, and that each is executing this Agreement as a free and voluntary act.

10.12. Except as otherwise provided herein, all notices, requests, demands, and other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be delivered personally, by facsimile, by e-mail, or by overnight mail, to the undersigned counsel for the Parties at their respective addresses.

10.13. The titles and captions contained in this Agreement are inserted only as a matter of convenience and for reference, and shall in no way be construed to define, limit, or extend the scope of this Agreement or the intent of any of its provisions. This Agreement shall be construed

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without regard to its drafter, and shall be construed as though the Parties participated equally in the drafting of this Agreement.

10.14. The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of the Agreement, including but not limited to any action by any of the Released Persons to enforce the releases in Section VII against any person or entity by means of injunctive relief. Nothing in this Agreement shall subject the Parties to personal jurisdiction in New York for any other purpose.

10.15. To the extent either Party, its counsel, or the Settlement Administrator wishes to issue any general or public communication about the Settlement (other than the Class Notice, Short-Form Notice, and Settlement Website), any such public statement shall be limited to publicly-available information and documents filed in this action, and shall be in a form mutually agreed upon by Class Counsel and Defendant's Counsel. Notwithstanding any of the above, on or after the Effective Date, the Parties and the Settlement Administrator are authorized to issue the press release attached at Exhibit E to this Agreement.




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**IN WITNESS WHEREOF**, Henkel and Tony Luib, on behalf of himself and all others similarly situated, intending to be legally bound hereby, have duly executed this Class Settlement Agreement as of the date set forth below, along with their counsel.


**PLAINTIFF TONY LUIB**

Dated: February 27, 2019


By:   
Tony Luib

**DEFENDANT HENKEL CONSUMER GOODS INC.**

Dated: 2-27-2019


By:   
Name: ROBERT C. MCNAMEE  
Title: VP + Associate General Counsel

Dated: 2-27-2019

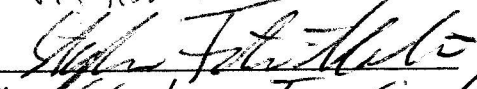
By:   
Name: Stephen Fresti-Molnar  
Title: President Henkel Consumer Goods

**HENKEL CORPORATION**

Dated: 2-27-2019


By:   
Name: ROBERT C. MCNAMEE  
Title: VP + Associate General Counsel

Dated: 2-27-2019

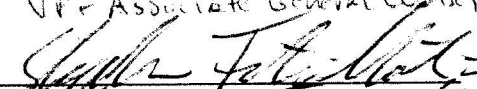
By:   
Name: Stephen Fresti-Molnar  
Title: President Henkel Consumer Goods


**HENKEL U.S. OPERATIONS CORP.**

Dated: 2-27-2019

By:   
Name: ROBERT C. MCNAMEE  
Title: VP + Associate General Counsel

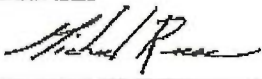
Dated: 2-27-2019

By:   
Name: Stephen Fresti-Molnar  
Title: Henkel Consumer Goods

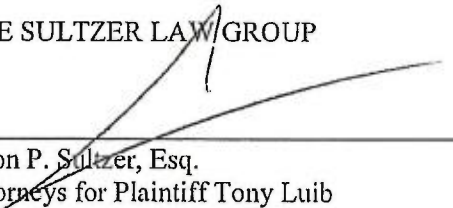
Approved as to Form  
  
Henkel NA Law Dept  
ROBERT C. MCNAMEE

EXECUTION VERSION


Dated: February 27, 2019

REESE LLP  
By:   
Michael R. Reese, Esq.  
Reese LLP  
Attorneys for Plaintiff Tony Luib


Dated: February 27, 2019

THE SULTZER LAW GROUP  
By:   
Jason P. Sultzer, Esq.  
Attorneys for Plaintiff Tony Luib

Dated: February 28, 2019

HALUNEN LAW  
By:   
Christopher Moreland, Esq.  
Attorneys for Plaintiff Tony Luib

Dated: February 28, 2019

VENABLE LLP  
By:   
Edward P. Boyle  
Attorneys for Defendant Henkel Consumer  
Goods Inc.