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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

VEDA WOODARD, TERESA RIZZO-MARINO, and DIANE MORRISON, on behalf of themselves, all others similarly situated, and the general public,

Plaintiffs,

vs.

LEE LABRADA; LABRADA BODYBUILDING NUTRITION, INC.; LABRADA NUTRITIONAL SYSTEMS, INC.; DR. MEHMET C. OZ, M.D.; ENTERTAINMENT MEDIA VENTURES, INC. D/B/A OZ MEDIA; ZOCO PRODUCTIONS, LLC; HARPO PRODUCTIONS, INC; SONY PICTURES TELEVISION, INC; NATUREX, INC.; AND INTERHEALTH NUTRACEUTICALS, INC.,

Defendants.

) Case No. 5:16-cv-00189-JGB-SP

) CLASS ACTION

) **JOINT STIPULATION OF CLASS ACTION SETTLEMENT**

1 This Joint Stipulation of Settlement (“Agreement”, “Settlement Agreement”,
2 or “Stipulation”) is made and entered into by and between Plaintiffs Veda Woodard,
3 Teresa Rizzo-Marino, and Diane Morrison on behalf of themselves and the
4 Settlement Class Members defined below (hereafter collectively referred to as
5 “Plaintiffs” or the “Class”), and Defendant Naturex, Inc. (“Naturex,” and together
6 with Plaintiffs, the “Settling Parties”) and resolves in full the class action lawsuit
7 (the “Action”) as to Naturex. Subject to Court approval pursuant to the applicable
8 Federal Rules of Civil Procedure, and as provided herein, the Settling Parties hereby
9 stipulate and agree that, in consideration for the promises and covenants set forth in
10 this Settlement Agreement and upon the entry by the Court of a Final Judgment and
11 Order Approving Settlement and the occurrence of the Effective Date, the Action
12 shall be settled and compromised upon the terms and conditions contained herein
13 with respect to Naturex.

14 **RECITALS**

15 **I. PROCEDURAL BACKGROUND**

16 1.1. WHEREAS, on February 2, 2016, Plaintiff Veda Woodard filed a class
17 action complaint in the United States District Court for the Central District of
18 California, Case No. 5:16-cv-00189-JGB-SP against Defendants Lee Labrada,
19 Labrada Bodybuilding Nutrition, Inc., Labrada Nutritional Systems, Inc., Dr.
20 Mehmet C. Oz, M.D., Entertainment Media Ventures, Inc., Zoco Productions, LLC,
21 Harpo Productions, Inc., Sony Pictures Television, Inc., Naturex, Inc. and
22 Interhealth Nutraceuticals, Inc. alleging causes of action for (1.) fraud and deceit;
23 (2.) Negligent Misrepresentation; (3.) Quasi-Contract/ Unjust Enrichment; (4.)
24 Violations of California’s Unfair Competition Law, Cal. Bus. & Prof. Code
25 §§ 17200, et seq.; (5.) Violations of California’s Consumers Legal Remedies Act,
26 Cal. Civ. Code §§ 1750 et seq.; (6.) Violations of California’s False Advertising
27 Law, Cal. Bus. & Prof. Code §§ 17500 et seq.; (7.) Breach of Express Warranty, Cal.

1 Comm. Code § 2313; and, (8.) Breach of Implied Warranty of Merchantability, Cal.
2 Comm. Code § 2314.

3 1.2. WHEREAS, on April 18, 2016, Naturex filed a Motion to Dismiss
4 Plaintiff Woodard's class action complaint (ECF No. 53) and a Motion to Strike
5 portions of Plaintiff Woodard's class action complaint pursuant to Federal Rule of
6 Civil Procedure 12(f). (ECF No. 54).

7 1.3. WHEREAS, on May 12, 2016, the Court entered an Order Granting in
8 Part and Denying in Part a Motion to Dismiss Plaintiff Woodard's Complaint that
9 was filed by Defendants Dr. Mehmet C. Oz, M.D., Entertainment Media Ventures,
10 Inc., Zoco Productions, LLC, Harpo Productions, Inc., Sony Pictures Television,
11 Inc. (collectively, the "Media Defendants") and granted Plaintiff leave to file a First
12 Amended Complaint. (ECF No. 85).

13 1.4. WHEREAS, on June 2, 2016, Plaintiffs Veda Woodard, Teresa Rizzo-
14 Marino, and Diane Morrison filed a First Amended Complaint against Defendants
15 Lee Labrada, Labrada Bodybuilding Nutrition, Inc., Labrada Nutritional Systems,
16 Inc., Dr. Mehmet C. Oz, M.D., Entertainment Media Ventures, Inc., Zoco
17 Productions, LLC, Harpo Productions, Inc., Sony Pictures Television, Inc., Naturex,
18 Inc. and Interhealth Nutraceuticals, Inc. alleging causes of action for (1.) fraud,
19 deceit, and suppression of facts; (2.) [omitted]; (3.) Negligent Misrepresentation; (4.)
20 Violations of California's Unfair Competition Law, Cal. Bus. & Prof. Code §§
21 17200, *et seq.*; (5.) Violations of California's Consumers Legal Remedies Act, Cal.
22 Civ. Code §§ 1750 *et seq.*; (6.) Violations of California's False Advertising Law,
23 Cal. Bus. & Prof. Code §§ 17500 *et seq.*; (7. [misidentified as Count 4]) Breach of
24 Express Warranty, Cal. Comm. Code § 2313; (8. [misidentified as Count 5]) Breach
25 of Implied Warranty of Merchantability, Cal. Comm. Code § 2314; (9.
26 [misidentified as Count 6]) Breach of Express Warranty, N.Y. U.C.C. § 2-313; (10.
27 [misidentified as Count 8]) Breach of Implied Warranty of Merchantability, N.Y.
28 U.C.C. § 2-314; (11. [misidentified as Count 9]) Breach of Express Warranties to

1 Intended Third Party Beneficiaries; (12. [misidentified as Count 10]) Violations of
2 the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.*; (13. [misidentified
3 as Count 11]) Violations of New York’s Unfair Trade Practices Law, N.Y. Gen. Bus.
4 Law § 349; and (14. [misidentified as Count 12]) Violations of New York’s False
5 Advertising Law, N.Y. Gen. Bus. Law § 350.

6 1.5. WHEREAS, on July 15, 2016, Naturex filed a Motion to Dismiss
7 Plaintiffs’ First Amended Complaint (ECF No. 101) and a Motion to Strike portions
8 of Plaintiffs’ First Amended Complaint pursuant to Federal Rule of Civil Procedure
9 12(f) (ECF No. 102).

10 1.6. WHEREAS, on July 31, 2017, the Court issued an Order Denying
11 Naturex’s Motion to Dismiss the First Amended Complaint and Denying Naturex’s
12 Motion to Strike portions of Plaintiffs’ First Amended Complaint. (ECF No. 190).

13 1.7. WHEREAS, Naturex filed an Answer to Plaintiffs’ First Amended
14 Complaint on August 28, 2017. (ECF No. 213).

15 1.8. WHEREAS, Plaintiffs and Naturex attended two mediation sessions
16 before the Honorable Judge Leo S. Papas (Ret.), on September 26, 2017 and August
17 30, 2018. Judge Papas is a highly experienced and well-regarded mediator who
18 served as a Magistrate Judge for the U.S. District Court, Southern District of
19 California from 1991 to 2009, including a tenure as the Presiding Judge from 2002
20 to 2007. The Settling Parties submitted mediation statements, supplemental
21 statements and supporting documents in connection with the mediation. Judge
22 Papas’ guidance with the negotiations between Class Counsel and Naturex resulted
23 in an agreement in principle, which is now finalized as reflected in this Settlement
24 Agreement, which Plaintiffs and Class Counsel believe provides benefits to the
25 Settlement Class, is fair, reasonable and adequate, and is in the best interests of
26 Plaintiffs and the Settlement Class Members.

27 1.9. WHEREAS, this Settlement Agreement was reached after extensive
28 review of the underlying facts and after extensive arm’s-length negotiations between

1 Class Counsel and counsel for Naturex. During the litigation of this Action, the
2 parties have propounded and responded to several sets of written discovery and
3 produced several thousands of pages of documents and electronic records. In
4 addition, the Defendants have deposed each of the Class Representatives and Class
5 Counsel has deposed Naturex's Fed. R. Civ. P. 30(b)(6) designee. Plaintiff and
6 Naturex have also exchanged initial expert reports.

7 1.10. WHEREAS, based upon the discovery and investigation to date and
8 evaluation of the facts and law relating to the matters alleged in the pleadings,
9 Plaintiffs and Class Counsel have agreed to settle, subject to court approval, the
10 claims asserted in the Action against Naturex pursuant to the provisions of this
11 Settlement Agreement. In so doing, Plaintiffs and Class Counsel have considered
12 the terms of this Stipulation, the numerous risks of continued litigation and other
13 factors, including but not limited to the following:

- 14 a. The expense and length of time necessary to prosecute this Action
15 through trial;
- 16 b. The uncertain outcome at trial and the possibility of an appeal by either
17 side following the trial;
- 18 c. The possibility that a contested class might not be certified, and if
19 certified, the possibility that such certification would be reversed on
20 appeal;
- 21 d. The fact that Naturex would file a motion for summary judgment that, if
22 granted, would dispose of all or many of the claims in this Action;
- 23 e. The fact that Naturex could prevail at trial; and
- 24 f. The benefits being made available to Plaintiffs and the Settlement Class
25 Members under the terms of this Agreement.

26 1.11. WHEREAS, weighing the above factors, as well as all other risks and
27 uncertainties of continued litigation and all factors bearing on the merits of
28 settlement, Plaintiffs and Class Counsel are satisfied that the terms and conditions

1 of this settlement are fair, reasonable, adequate, and in the best interests of the
2 Plaintiffs and the Settlement Class Members.

3 1.12. WHEREAS, Naturex contends that its Ingredient (defined below) is
4 efficacious and that any statements made by Naturex regarding its Ingredient are
5 accurate. Naturex denies (a) any liability or any wrongdoing of any kind whatsoever;
6 (b) that it has violated any applicable laws; (c) that it owes any damages or
7 compensation to anyone with respect to the facts or claims asserted in the Action;
8 and (d) that class certification is proper. Nevertheless, without admitting or
9 conceding any liability, Naturex considers it desirable that the Action be resolved
10 upon the terms and conditions set forth in this Settlement Agreement in order to
11 avoid the expense, risk, uncertainty, and interference with ongoing business
12 operations inherent in any litigation, and to obtain the releases as described herein.
13 Any stipulations or statements by Naturex herein are made solely for settlement
14 purposes, and nothing in this Agreement, the documents referenced in this
15 Agreement, nor any action taken to carry out this Agreement is, or may be construed
16 as or may be used as, an admission by or against Naturex as to the merits or lack
17 thereof of the claims Plaintiffs have asserted. Nothing herein shall be deemed to
18 waive any of Naturex's objections and defenses to class certification or any other
19 issue relating to or arising from the allegations set forth in the Complaint.

20 1.13. WHEREAS, the Parties have engaged in long and hard-fought
21 settlement negotiations. The combined result of the extensive negotiations is
22 memorialized in the terms set forth in this Settlement Agreement.

23 1.14. **NOW, THEREFORE,** without any admission or concession
24 whatsoever on the part of Plaintiffs of the lack of merit of this Action, or any
25 admission or concession of liability or wrongdoing or the lack of merit of any
26 defense whatsoever by Naturex, it is hereby stipulated and agreed by the
27 undersigned, on behalf of Plaintiffs, the Settlement Class, and Naturex that the
28 Action and all claims of the Settlement Class be settled, compromised, and dismissed

1 on the merits and with prejudice, subject to Court approval as required by Federal
2 Rule of Civil Procedure 23, on the terms and conditions set forth herein and upon
3 the Effective Date (as defined below).

4 1.15. Each party to this Settlement Agreement affirms that the recitals above
5 as to such party are true and accurate as to such party and are hereby made a part of
6 this Settlement Agreement.

7 **II. TERMS AND CONDITIONS OF SETTLEMENT**

8 **Definitions**

9 2.1. As used in this Settlement Agreement and the annexed exhibits hereto,
10 the following terms and phrases have the following meanings, unless a section or
11 subsection of this Settlement Agreement or its exhibits provides otherwise. Unless
12 otherwise indicated, defined terms include the plural as well as the singular. Other
13 capitalized terms used in this Settlement Agreement but not defined above shall have
14 the meaning ascribed to them in this Settlement Agreement and the exhibits attached
15 hereto.

16 A. “Action” means the civil action filed in the United States District Court
17 for the Central District of California, styled *Veda Woodard et al., v. Lee Labrada, et*
18 *al.*, Case No. 5:16-cv-00189-JGB-SP.

19 B. “Authorized Claimant” means any Claimant who has timely and
20 completely submitted a Proof of Claim Form that has been reviewed and validated
21 by the Claims Administrator.

22 C. “Claim” means a request for relief pursuant to section 6.2 submitted on
23 a Proof of Claim Form by a Class Member to the Claims Administrator.

24 D. “Claims Deadline” means the date set by the Court in the Preliminary
25 Approval Order by which Settlement Class Members must submit a claim to obtain
26 the Class Benefits described in Section VI of this Settlement Agreement.

27 E. “Claim Form” or “Proof of Claim Form” means the documents to be
28 submitted by Claimants seeking payment pursuant to this Settlement Agreement that

1 will be available online at the Settlement Website, substantially in the form attached
2 hereto as Exhibit A.

3 F. “Claimant” means any Class Member who seeks a Settlement Payment
4 who submits a Claim Form pursuant to this Settlement Agreement.

5 G. “Claims Administration Expenses” means the fees and expenses
6 incurred by the Claims Administrator in completing the claims administration
7 process set forth in this Agreement.

8 H. “Claims Administrator” or “Settlement Administrator” means
9 Classaura LLC (“Classaura”), which will provide the Class Notice and administer
10 the claims process. Plaintiffs shall select a successor in the event one becomes
11 necessary, subject to approval by Naturex, which approval shall not be unreasonably
12 withheld.

13 I. “Class Counsel” means, subject to Court approval to represent the
14 Settlement Class, the Law Offices of Ronald A. Marron, APLC and the law firm of
15 Cohelan, Khoury, and Singer and any attorneys at those firms assisting in the
16 representation of the Class in this Action.

17 J. “Class Period” or “Settlement Class Period” shall mean and refer to the
18 time period beginning on February 2, 2012 and ending on the date the Notice is made
19 to the Settlement Class Members pursuant to Section 5.5 herein.

20 K. “Class Representatives” means named Plaintiffs Veda Woodard,
21 Teresa Rizzo-Marino, and Diane Morrison.

22 L. “Class Representative Enhancement” or “Incentive Award” means any
23 award sought by application to and approved by the Court that is payable to the Class
24 Representatives and named Plaintiffs from the Settlement Fund for their role as the
25 class representatives and for the responsibility and work attendant to those roles.

26 M. “Court” means the United States District Court for the Central District
27 of California.

28 N. “Defendant” or “Naturex” means Defendant Naturex, Inc.

1 O. “Defense Counsel” means the law firm of Orrick, Herrington and
2 Sutcliffe LLP and any attorneys at that firm assisting in the representation of Naturex
3 in the Action.

4 P. “Escrow Account” means the escrow account managed by the Escrow
5 Agent, which shall be the sole escrow account for compensation of Class Members
6 under the Settlement Agreement.

7 Q. “Escrow Agent” means the agreed-upon entity to address and hold for
8 distribution the funds identified in this Settlement Agreement. The Parties agree that
9 Classaura shall serve as the Escrow Agent and will place the Settlement Funds in an
10 interest-bearing account, subject to approval by the Court.

11 R. “Fee and Expense Award” means the amount of any attorneys’ fees and
12 reimbursement of litigation expenses awarded to Class Counsel under their Fee
13 Application based on their work prosecuting the Action and creating the benefits of
14 this Settlement Agreement.

15 S. “Final Judgment” means the “Final Judgment and Order of Dismissal”
16 to be entered by the Court, which, among other things, fully and finally approves the
17 Settlement and dismisses Naturex from the litigation with prejudice, and retains
18 continuing jurisdiction over the interpretation, implementation, and enforcement of
19 the settlement.

20 T. “Naturex Ingredient” or “Ingredient” means the green coffee bean extract
21 Svetol® made or sold by Naturex, whether or not it was sold under or using the
22 Svetol® trademark.

23 U. “Notice” or “Class Notice” means the Court approved “Notice of
24 Proposed Class Action Settlement” attached hereto as Exhibits “B” and “C”.

25 V. “Notice Date” or “Notice Deadline” means the date Notice is made to
26 the Settlement Class Members pursuant to Section 5.5 herein.

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1 W. “Objection” is a written communication that a Settlement Class
2 Member may file with the Court in order to object to this Agreement as provided for
3 in Section 4.5 of this Settlement Agreement.

4 X. “Objection/Exclusion Deadline” is the date by which an Objection or
5 Request for Exclusion by a Settlement Class Member must be postmarked, as
6 ordered by the Court in its Preliminary Approval Order referred to in Section 4.4 of
7 this Agreement.

8 Y. “Party” or “Settling Parties” means Plaintiffs and Naturex.

9 Z. “Plaintiffs” means the class representatives, Veda Woodard, Teresa
10 Rizzo-Marino, and Diane Morrison, on behalf of themselves and each of the
11 Settlement Class Members.

12 AA. “Person” means any individual, corporation or any other entity of any
13 nature whatsoever.

14 BB. “Preliminary Approval Date” means the date of entry of the Court’s
15 order granting preliminary approval of the Settlement Agreement.

16 CC. “Preliminary Approval Order” means the Court’s order to be entered
17 by the Court, substantially in the form of Exhibit D, preliminarily approving the
18 Settlement Agreement, certifying the Settlement Class, setting the due date of the
19 Final Approval Hearing, the Objection/Exclusion Deadline, and Notice Date, and
20 approving the Settlement Notice Plan and Claim Form.

21 DD. “Products,” “Class Products,” or “Green Coffee Bean Extract Products”
22 means any product containing the Naturex Ingredient, including but not limited to
23 the Labrada Fat Loss Optimizer with Svetol® Green Coffee Bean Extract.

24 EE. “Released Naturex Claims” or “Class Released Claims” means a
25 general release of all claims, known and unknown, against the Released Naturex
26 Parties (as defined below). The Released Naturex Claims and Class Released Claims
27 include any and all claims, demands, rights, suits, liabilities, and causes of action of
28 every nature and description whatsoever, known or unknown, matured or

1 unmatured, at law or in equity, existing under federal or state law, asserted in, arising
2 out of, or in connection with any Green Coffee Bean Extract Product or the Naturex
3 Ingredient or any of the matters alleged or that could have been alleged in the Action.
4 Naturex is not a manufacturer, marketer, distributor, or retailer of any Green Coffee
5 Bean Extract Product. This release specifically excludes all manufacturers,
6 marketers, distributors, and retailers of Green Coffee Bean Extract Products as well
7 as the non-settling defendants in the Action, including Interhealth Nutraceuticals,
8 Inc., Lee Labrada, Labrada Bodybuilding Nutrition, Inc., Labrada Nutritional
9 Systems, Inc., Dr. Mehmet C. Oz, M.D., Harpo Productions, Inc., Zoco Productions,
10 Inc., and Entertainment Media Ventures, Inc.

11 The Parties and each of them do hereby assume the above-mentioned risks
12 and agree that the terms of this Settlement Agreement shall apply to all unknown or
13 unanticipated results of the occurrences described above, as well as those known and
14 anticipated, and upon advice of counsel, each party does hereby knowingly waive
15 any and all rights and protections under California Civil Code Section 1542 and like
16 statutes from other states, which section has been duly explained to the Settling
17 Parties and states as follows:

18 “A general release does not extend to claims which the creditor does
19 not know or suspect to exist in his or her favor at the time of executing
20 the release, which if known by him or her must have materially affected
21 his or her settlement with the debtor.”

22 Additionally, Plaintiffs and all class members who do not timely opt out of
23 the defined class in the Settlement Agreement will covenant not to sue the Released
24 Parties.

25 FF. “Released Naturex Parties” means Naturex, Inc., and any of its
26 respective past, present, and future heirs, executors, administrators, predecessors,
27 successors, assigns, parent companies, owners, subsidiaries, divisions, joint
28 venturers, entities in which Naturex, Inc. has a controlling interest, holding

1 companies, employees, agents, consultants, marketing partners, resellers, lead
2 generators, telemarketers, independent contractors, insurers, reinsurers, directors,
3 officers, partners, principals, attorneys, accountants, financial advisors, investors,
4 investment bankers, underwriters, shareholders, auditors, legal representatives,
5 successors in interest, affiliates, trusts, and corporations; and each and all of the past,
6 present, and future officers, directors, principals, representatives, employees, agents,
7 shareholders, attorneys, successors, executors, and assigns of any of the foregoing
8 entities. None of the Naturex Released Parties are manufacturers, marketers,
9 distributors, or retailers of any Green Coffee Bean Extract Product. This release
10 specifically excludes all manufacturers, marketers, distributors, and retailers of
11 Green Coffee Bean Extract Products as well as the non-settling defendants in the
12 Action, including Interhealth Nutraceuticals, Inc., Lee Labrada, Labrada
13 Bodybuilding Nutrition, Inc., Labrada Nutritional Systems, Inc., Dr. Mehmet C. Oz,
14 M.D., Harpo Productions, Inc., Zoco Productions, Inc., and Entertainment Media
15 Ventures, Inc.

16 GG. “Request for Exclusion” means the written communication that must
17 be sent to the Settlement Administrator and postmarked on or before the
18 Objection/Exclusion Deadline by a Settlement Class Member who wishes to be
19 excluded from the Settlement Class.

20 HH. “Settlement Agreement,” “Agreement,” or “Settlement” means this
21 Joint Stipulation of Settlement, including all Exhibits thereto (which are
22 incorporated herein by reference), duly executed by Plaintiffs, Class Counsel,
23 Naturex, and Counsel for Naturex.

24 II. “Settlement Amount” means the amount of \$1,300,000.00 that Naturex
25 will cause to be deposited into the Settlement Fund (as defined below). Naturex will
26 cause the Settlement Amount to be deposited into the Settlement Fund in two
27 separate tranches pursuant to Section 6.2(3) below. Under no circumstances shall
28 Naturex be responsible for paying more than \$1,300,000.00 under this Settlement.

1 JJ. “Settlement Class Member(s)” or “Member(s) of the Settlement Class”
2 or “Class Members” means: All persons in the United States who purchased the
3 Naturex Ingredient or any Green Coffee Bean Extract Product for personal or
4 household use and not for resale, from February 2, 2012 until the date Notice is made
5 to the Settlement Class Members pursuant to Section 5.5 herein.. Excluded from the
6 Settlement Class are: (1) all judges and magistrates who have presided or are
7 presiding over this action (or the judge or Magistrate presiding over the action
8 through which this matter is presented for settlement); (2) the defendants,
9 defendants’ subsidiaries, parent companies, successors, predecessors, and any entity
10 in which the defendants or their parents have a controlling interest and their current
11 or former officers, directors, and employees; (3) persons who properly execute and
12 file a timely Request for Exclusion from the class; and (4) legal representatives,
13 successors or assigns of any such excluded person.

14 KK. “Settlement Fund” means the Escrow Account into which the Naturex
15 shall deposit the Settlement Amount, and from which the Claims Administrator shall
16 pay expenses associated with Settlement as approved by the Court including without
17 limitation, Class Notice, Settlement administration, Claims, the Settlement Payment,
18 the Class Representative Enhancement or Incentive awards, and Class Counsel legal
19 expenses and attorneys’ fees, as described in Section VI.

20 LL. “Settlement Hearing” or “Fairness Hearing” means the hearing(s), to be
21 held after notice has been provided to the Settlement Class in accordance with this
22 Settlement Agreement (1) to determine whether to grant final approval to (a) the
23 certification of the Settlement Class, (b) the designation of Class Representatives as
24 the representatives of the Settlement Class, (c) the designation of Class Counsel as
25 counsel for the Settlement Class, and (d) the Settlement Agreement; (2) to consider
26 whether to enter the Final Approval Order; and (3) to rule on Class Counsel’s Fee
27 and Expense Award application. The Parties shall ask the Court to schedule a date
28 for the Settlement Hearing 150 days after the date of the Class Notice.

1 MM. “Settlement Notice and Other Administrative Costs” means all fees,
2 costs and expenses actually incurred by the Settlement Administrator in the creation
3 and dissemination of Class Notice, establishment of the Settlement Website, and the
4 processing, handling, reviewing, and paying of claims made by Claimants.

5 NN. “Settlement Payment” means the amount to be paid to Authorized
6 Claimants as described in Section VI.

7 OO. “Settlement Website” means the website to be created and maintained
8 by the Claims Administrator to provide the Settlement Class with information
9 relating to the Settlement, including relevant documents and electronic and printable
10 forms relating thereto, including the Claim Form which can be submitted online
11 through an Internet-based form or printed and mailed.

12 2.2. Other capitalized terms used in this Stipulation but not defined above
13 shall have the meaning ascribed to them in this Stipulation and the exhibits attached
14 hereto.

15 **III. CERTIFICATION OF A SETTLEMENT CLASS FOR**
16 **SETTLEMENT PURPOSES ONLY**

17 3.1 Naturex hereby consents, solely for purposes of the settlement set forth
18 herein, to the certification of a nationwide Settlement Class pursuant to Federal
19 Rules of Civil Procedure 23(b)(3), to the appointment of Class Counsel as counsel
20 for the Settlement Class, and to the conditional approval of Plaintiffs as suitable
21 representatives of the Class; provided, however, that if this Settlement Agreement
22 fails to receive Court approval or otherwise fails to be consummated, including, but
23 not limited to, the Judgment not becoming final as provided in Section IX of this
24 Stipulation, then Naturex retains all rights it had immediately preceding the
25 execution of this Settlement Agreement to object to or oppose the maintenance of
26 this Action as a class action, and in that event, nothing in this Settlement Agreement
27 or other papers or proceedings related thereto shall be used as evidence or argument
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1 by any Party concerning whether any aspect of the Action including whether it
2 alleges meritorious claims or may properly be maintained as a class action.

3 **IV. APPROVAL PROCEDURES AND RELATED PROVISIONS**

4 **Dismissal of Naturex**

5 4.1. Plaintiffs shall request dismissal of Naturex with prejudice from the
6 Action, and will request such dismissal in their motion for final approval and at the
7 hearing seeking final approval of this Settlement Agreement.

8 **Public Statements**

9 4.2 After the Effective Date of the Settlement, Class Counsel may state the
10 following about the Action: “Our firm represented plaintiffs who purchased products
11 which contained Naturex, Inc.’s green coffee bean extract Svetol®. These plaintiffs
12 claimed that the products did not accurately represent their weight or fat loss
13 benefits. The case was venued in the United States District Court for the Central
14 District of California. A District Court later approved a settlement in the matter,
15 without any admission of liability by Naturex, Inc., which resulted in \$[insert
16 amount of \$ actually paid out to participating class members] being distributed to
17 participating class members and \$[insert Class Counsel fees and costs approved by
18 the District Court] being awarded by the District Court for Class Counsel fees and
19 costs.” Plaintiffs and Class Counsel are prohibited from issuing any other public
20 statement regarding the underlying action or settlement agreement without prior
21 approval from Naturex.

22 **Motion for Preliminary Approval and Good Faith Determination**

23 4.3. Upon the execution of this Settlement Agreement, the Settling Parties
24 shall prepare and file (1) a motion seeking a determination of good faith settlement
25 from the Court on Naturex’s motion pursuant to Cal. Civ. P. section 877.6, and (2)
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- 1 a motion seeking Preliminary Approval of this Settlement, including all Exhibits,
2 and shall jointly move the Court for entry of an order, which by its terms shall:
- 3 (a) Determine preliminarily that this Settlement Agreement falls within the range
4 of reasonableness meriting possible final approval and dissemination of Class Notice
5 to the Settlement Class;
- 6 (b) Determine preliminarily that the Class Representatives are members of the
7 Settlement Class and that, for purposes of the Settlement Agreement, they satisfy the
8 requirements of Rule 23 and that they adequately represent the interests of the
9 Settlement Class Members, and appoint them as the Class Representatives of the
10 Settlement Class;
- 11 (c) Conditionally certify the Settlement Class for purposes of the Settlement
12 Agreement under Rule 23(b)(3) for settlement purposes only;
- 13 (d) Appoint the Law Offices of Ronald A. Marron, APLC and the law firm of
14 Cohelan Khoury & Singer as Class Counsel pursuant to Rule 23(g);
- 15 (e) Schedule the Final Approval Hearing to: (i) determine finally whether the
16 Settlement Class satisfies the applicable requirements of Rule 23 and should be
17 finally certified for settlement purposes only; (ii) review objections, if any, regarding
18 the Settlement Agreement; (iii) consider the fairness, reasonableness and adequacy
19 of the Settlement Agreement; (iv) consider Class Counsel's application for an award
20 of Attorneys' Fees and Expenses; (v) determine the validity of Requests for
21 Exclusion and exclude from the Settlement Class those persons who validly and
22 timely opt out; and (vi) consider whether the Court shall issue the Final Judgment
23 and Order Approving Settlement and dismissing the Actions with prejudice;
- 24 (f) Set a briefing schedule for the Final Approval Hearing;
- 25 (g) Approve the proposed Class Notices and Notice Program;
- 26 (h) Approve the designation of Classaura as the Settlement Administrator;

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- 1 (i) Direct the Settlement Administrator to cause the Class Notices to be
2 disseminated in the manner set forth in the Notice Program on or before the Notice
3 Dates;
- 4 (j) Determine that the Class Notices and the Notice Program: (i) meet the
5 requirements of Rule 23(c)(3) and due process; (ii) are the best practicable notice
6 under the circumstances; (iii) are reasonably calculated, under the circumstances, to
7 apprise Settlement Class Members of the pendency of the Action, their right to object
8 to the proposed Settlement, opt out of the Settlement Class, or participate within the
9 timeframe provided herein; and (iv) are reasonable and constitute due, adequate and
10 sufficient notice to all those entitled to receive notice;
- 11 (k) Require each Settlement Class Member who wishes to opt out of the
12 Settlement Class to submit a timely written Request for Exclusion, on or before the
13 Objection/Exclusion Deadline, to the Claims Administrator, to Class Counsel, and
14 to Defendants' Counsel, as specified in Section IV of this Settlement Agreement;
- 15 (l) Rule that any Settlement Class Member who does not submit a timely written
16 Request for Exclusion will be bound by all proceedings, orders and judgments in the
17 Action;
- 18 (m) Require any Settlement Class Member who wishes to object to the fairness,
19 reasonableness or adequacy of the Settlement Agreement, to the award of Attorneys'
20 Fees and Expenses, or to the Incentive Awards, to submit to the Settlement
21 Administrator and deliver to Class Counsel and Defendant's Counsel, by the
22 Objection/Exclusion Deadline, a statement of his or her Objection, as well as the
23 specific reason for each objection, including any legal support the Settlement Class
24 Member wishes to bring to the Court's attention and any evidence the Settlement
25 Class Member wishes to introduce in support of his or her Objection; and
- 26 (n) Establish the following:
- 27 (i) The date and time of the Final Approval Hearing;
- 28

1 (ii) The Notice Dates: The Parties propose that the Class Settlement
2 Notice Date be within forty-five (45) days after the entry of the Preliminary
3 Approval Order and that the Settlement Fund distribution be no more than sixty (60)
4 days after the Effective Date of the Settlement;

5 (iii) The Objection/Exclusion Deadline: The Parties propose that the
6 Objection/Exclusion Deadline be the date that is thirty (30) days prior to the Final
7 Approval Hearing;

8 (iv) Claims Deadlines: The Parties propose that the Claims Deadline
9 for submission of Claims be one-hundred and twenty (120) days after the date of
10 Class Notice.

11 4.4. Requests for Exclusion

12 a. Any Settlement Class Member who does not wish to participate in this
13 Settlement Agreement must submit a Request for Exclusion to the Claims
14 Administrator stating an intention to be “excluded” from this Settlement. The request
15 for exclusion must contain the Settlement Class Member’s name, current address,
16 and telephone number. The Request for Exclusion must be either (i) personally
17 signed by the Settlement Class Member, dated and mailed to the Claims
18 Administrator and postmarked on or before the Objection/Exclusion Deadline, or
19 (ii) electronically signed by the Settlement Class Member, and submitted to the
20 Claims Administrator through the Settlement Website on or before the
21 Objection/Exclusion Deadline. So-called “mass” or “class” opt-outs shall not be
22 allowed. The date of the postmark on the return mailing envelope or the date of
23 online submission through the Settlement Website shall be the exclusive means used
24 to determine whether a Request for Exclusion has been timely submitted. Any
25 Settlement Class Member whose request to be excluded from the Settlement Class
26 is approved by the Court will not be bound by this Settlement Agreement and will
27 or have no right to object, appeal, or comment thereon.

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1 b. Any Settlement Class Member who does not timely submit a Request
2 for Exclusion as provided in the preceding paragraph shall be bound by all
3 subsequent proceedings, orders, and the Final Judgment, even if he or she has
4 pending, or subsequently initiates litigation, arbitration, or any other proceeding
5 against Naturex relating to the Class Released Claims.

6 4.5. Objections to the Settlement

7 a. Any Settlement Class Member, on his or her own, or through an
8 attorney hired at his or her own expense, may object to the terms of the Settlement
9 or Class Counsel's application for an Award of Attorneys' Fees and Expenses, or
10 the Incentive Awards. Any Objection must be in writing and include the contents
11 described in Paragraph (b) below, and must be filed with the Court and sent to
12 counsel for the Parties as set forth below via U.S. Mail and e-mail, on or before the
13 Objection/Exclusion Deadline or as the Court otherwise directs. Any Objections not
14 raised properly and timely are will be waived. Objections must be sent to each of the
15 following persons:

16 Ronald A. Marron
17 **LAW OFFICES OF RONALD A. MARRON**
18 651 Arroyo Drive
19 San Diego, CA 92103
20 Telephone: (619) 696-9006
21 Email: *ron@consumersadvocates.com*

22 Stacy Weinstein Harrison
23 **ORRICK, HERRINGTON AND SUTCLIFFE LLP**
24 777 South Figueroa Street, Suite 3200
25 Los Angeles, CA 90017
26 Telephone: 213-612-2020
27 Facsimile: 213- 612-2499
28 Email: *swharrison@orrick.com*

29 b. To be effective, any Objection must be in writing and must be
30 accompanied by any documentary or other evidence and any factual or legal
31 arguments that the objecting Class Member intends to rely upon in making the
32 objection. All objections must (1) clearly identify the case name and number, (2) be
33 mailed to the Settlement Administrator, and (3) be postmarked on or before the
34 Objection/Exclusion Deadline.

1 c. Any Settlement Class Member who fails to file and serve timely a
2 written Objection containing all of the information listed above in the previous
3 paragraphs shall not be permitted to object to the Settlement and shall be foreclosed
4 from seeking any review of the Settlement Agreement or the terms of the Settlement
5 Agreement by any means, including but not limited to an appeal.

6 d. Naturex has the right, at its sole option, to terminate the Settlement
7 Agreement if the Requests for Exclusion exceed 1,000 or more Class Members.
8 Further, Naturex has the right, at its sole option, to terminate the Settlement
9 Agreement if (1) there is a change to the scope of the Class Released Claims, as
10 defined herein; (2) there is a change to the scope of the Class Members, as defined
11 herein; (3) the Court does not dismiss Naturex from the Action with prejudice; or
12 (4) the Court does not approve a class action settlement between Plaintiffs and
13 Naturex which includes the terms contained in this Agreement or any other agreed-
14 upon terms between the Parties. If Naturex terminates pursuant to this provision, the
15 full Settlement Amount (to the extent it has been deposited in the Settlement Fund)
16 shall be promptly returned to Naturex.

17 **Cooperation**

18 4.6. The Settling Parties and their counsel agree to cooperate fully with one
19 another and to use their best efforts to effectuate the Settlement, including without
20 limitation, in seeking Preliminary Approval and Final Approval of the Settlement
21 Agreement and the settlement embodied herein, carrying out the terms of this
22 Settlement Agreement, and promptly agreeing upon and executing all such other
23 documentation as may be reasonably required to obtain final approval by the Court
24 of the Settlement Agreement. The Parties shall cooperate in good faith and undertake
25 all reasonable actions and steps in order to accomplish the events described in this
26 Settlement Agreement.

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V. CLASS NOTICE OF SETTLEMENT

General Terms

- 5.1. The Class Notice shall:
 - a. inform Settlement Class Members that, if they do not exclude themselves from the Class, they may be eligible to receive the relief under the proposed settlement;
 - b. contain a short, plain statement of the background of the Action, the Class certification and the proposed settlement;
 - c. describe the proposed settlement relief outlined in this Agreement;
 - d. explain the impact of the proposed settlement on any existing litigation, arbitration or other proceeding;
 - e. state that any relief to Settlement Class Members is contingent on the Court’s final approval of the proposed settlement; and
 - f. state that Plaintiffs’ counsel will seek an award of attorneys’ fees and expenses from the Settlement Funds.

5.2. Following Preliminary Approval, all activity in the Action with respect to Naturex shall be stayed except to the extent necessary to effectuate this Agreement unless and until this Settlement Agreement is terminated pursuant to its terms and conditions.

5.4. Notice to State and Federal Officials. In compliance with the attorney general notification provision of the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. §1715, within ten (10) days after the motion for Preliminary Approval is filed, the Claims Administrator shall cause notice of this proposed Settlement Agreement to be served on the Attorney General of the United States, and the attorneys general of each state or territory in which a Settlement Class Member resides. The Claims Administrator shall file with the Court a certification stating the date(s) on which the CAFA notices were sent. The Claims Administrator will

1 provide Class Counsel with any substantive responses received in response to any
2 CAFA notice served by it.

3 5.5 Notice to the Settlement Class Members. Within 45 days after the entry
4 of the Preliminary Approval Order, or on the date established by the Court in the
5 Preliminary Approval Order, the Claims Administrator shall cause the Settlement
6 Notice to be made as follows and as set forth below:

7 a. Print Publication Notice. On or before the Notice Deadline, the Claims
8 Administrator will cause Notice, in the form approved by the Court, to be published
9 based on its Notice Plan with publication strategy, which is attached hereto as
10 Exhibit E.

11 b. Settlement Website. On or before the Notice Deadline, the Settlement
12 Administrator shall establish the Settlement Website, from which Settlement Class
13 Members may download or print the Class Notice, a complete copy of this
14 Agreement and the Preliminary Approval Order and submit a Claim Form. The
15 Settlement Website shall include the deadlines for filing Claims, Requests for
16 Exclusion from the Settlement Class, Objections, and the Final Approval Date and
17 other information pertaining to the Settlement, a voice-recorded IVR with FAQs,
18 and an interactive function that permits Settlement Class Members to download a
19 Claim Form online or to file a Claim Form via the website or by mail and post-
20 marked by the Claims Deadline. The Claims Administrator shall establish the
21 Settlement Website using a website name to be mutually agreed upon by the Parties.
22 The website shall be operative no later than the Notice Date and shall be accessible
23 for a period of not fewer than sixty days (60) days following the Effective Date.

24 c. Toll-Free Interactive Voice Response (“IVR”). On or before the Notice
25 Deadline, the Settlement Administrator shall establish a Toll-Free IVR phone
26 number with script recordings of information about this Settlement, including
27 information about the Claim Form, utilizing the relevant portions of the language
28 contained in the Notice and Claim Form. The phone number shall remain open and

1 accessible through the Claim Deadline. The Settlement Administrator shall make
2 reasonable provision for Class Counsel to be promptly advised of recorded messages
3 left on the phone number by potential Settlement Class Members concerning the
4 Action or this Settlement Agreement, so that Class Counsel may timely and
5 accurately respond to such inquiries; provided however, the Settlement
6 Administrator shall review the recorded messages before providing them to Class
7 Counsel, and if one or more of the messages requests a blank Claim Form or other
8 similar administrative assistance only, then the Settlement Administrator shall
9 handle such administrative request(s), but the Settlement Administrator shall
10 provide all other messages to Class Counsel for any further response to the
11 Settlement Class Member.

12 5.6 Retention of Class Action Settlement Administrator. Subject to Court
13 Approval, Classaura shall be retained as the Class Action Settlement Administrator
14 to help implement the terms of the proposed Settlement Agreement.

15 5.7 Responsibilities of Settlement Administrator. The Settlement
16 Administrator will help implement the terms of this Agreement and the Preliminary
17 Approval Order. The Settlement Administrator shall be responsible for
18 administrative tasks, including, without limitation, (a) arranging, as set forth in this
19 Section and in the Preliminary Approval Order, for distribution of Class Notice (in
20 the form approved by the Court) and Claims Forms (in the form approved by the
21 Court) to Settlement Class Members, (b) answering inquiries from Settlement Class
22 Members or forwarding such written inquiries to Class Counsel or their designee,
23 (c) receiving and maintaining on behalf of the Court and the Parties any Settlement
24 Class Member correspondence regarding Requests for Exclusion from the
25 Settlement Agreement, (d) posting notices on the Settlement Website, Claim Forms,
26 and other related documents, (e) receiving and processing claims and distributing
27 Settlement Payments, and (f) answering inquiries and providing information
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1 reasonably requested by Naturex and (g) otherwise assisting with implementation
2 and administration of the Settlement Agreement terms.

3 5.8 General Claims Administration and Review of Claims. The Claims
4 Administrator shall be responsible for reviewing and administering all Claims to
5 determine their validity. The Claims Administrator shall reject any Claim that does
6 not comply in any material respect with the instructions on the Claim Form or the
7 terms of this Agreement, or is submitted after the Claim Period Close Date.

8 5.9 Claims Process. The Claims Administrator shall retain copies of all
9 Claims submitted and all documentation of claims approved or denied and all
10 Settlement Payments made. The Claims Administrator agrees to be subject to the
11 direction and authority of the Court with respect to the administration of the
12 Settlement and the payment of refunds for accepted claims pursuant to the terms of
13 this Agreement. Upon determining that a Claim submitted pursuant to this
14 Agreement is valid and the amount of Settlement Payment, the Claims Administrator
15 shall notify Naturex and Class Counsel of that determination. Naturex shall have 30
16 days following this notice to challenge the claim. Naturex shall be permitted to
17 submit to the Claims Administrator, with a copy to Class Counsel, any information
18 demonstrating that the submitted Claim is not valid. The Claims Administrator may
19 then contact the Settlement Class Member who submitted the Claim to request any
20 further information. The Claims Administrator shall then make a final determination
21 that is not challengeable by any Party.

22 5.10 The contract with the Class Action Settlement Administrator shall
23 obligate the Class Action Settlement Administrator to abide by the following
24 performance standards:

25 i. the Class Action Settlement Administrator shall accurately and
26 neutrally describe, and shall train and instruct its employees and agents to accurately
27 and objectively describe, the provisions of this Settlement Agreement in
28 communications with Settlement Class Members;

1 ii. the Class Action Settlement Administrator shall provide prompt,
2 accurate, and objective responses to inquiries from Class Counsel, Naturex, or
3 Naturex’s Counsel.

4 5.11. Disputes. All disputes relating to the Settlement Administrator’s ability
5 and need to perform its duties shall be referred to the Court, if necessary, which will
6 have continuing jurisdiction over the terms and conditions of this Agreement, until
7 all payments and obligations contemplated by the Settlement Agreement have been
8 fully carried out.

9 5.12. Declaration of Compliance. Within five (5) calendar days of the Claims
10 Deadline, the Settlement Administrator shall provide the Parties with a declaration
11 attesting to completion of the notice process set forth in this section.

12 **VI. SETTLEMENT CONSIDERATION**

13 6.1. Class Benefits. Class Counsel and Class Representatives believe the
14 Settlement Agreement confers substantial benefits upon the Class, as identified
15 below, particularly as weighed against the risk associated with the inherent uncertain
16 nature of a litigated outcome; the complex nature of the Action in which Class
17 Counsel have reviewed internal and confidential documents; the difficulty and
18 complexity of calculating actual economic harm attributable to allegedly false
19 representations related to Naturex; and the length and expense of continued
20 proceedings through additional fact depositions, expert depositions, third party
21 document productions and depositions, summary judgment briefing, trial, and
22 appeals. Based on their evaluation of such factors, Class Counsel and Class
23 Representatives have determined that the Settlement Agreement, based on the
24 following terms, is in the best interests of the Class.

25 The Settlement Amount also accounts for the fact that (a) the Naturex
26 Ingredient is efficacious (i.e., Naturex denies liability), or at a minimum the efficacy
27 of the Naturex Ingredient will be subject to an expensive and uncertain “battle of the
28 experts” in the Action; (b) Naturex is not responsible and therefore not liable for any

1 other representations on any Product labels or otherwise; and (c) there are many
2 manufacturers, distributors and retailers from whom to seek contribution and who
3 contributed to the labeling on the Products. In addition, Naturex’s sales of the
4 Naturex Ingredient at issue in this Action totaled only \$90,250.

5 6.2 The Settlement includes cash payments or monetary relief and non-
6 monetary relief as set forth below.

7 **1. Monetary Relief**

8 a. With Proof of Purchase. For Class Members who submit a claim with
9 receipt(s) that show a purchase of a Class Product, Naturex will provide \$30.00 cash
10 for each Product purchased to be paid from the Settlement Fund, subject to 6.2.1.e
11 below.

12 b. Without Proof of Purchase. For Class Members who submit a claim
13 without a receipt for purchase of Class Product, Naturex will provide \$30.00 cash
14 for each Product purchased to be paid from the Settlement Fund, with a limit of
15 \$60.00 per household, subject to 6.2.1.e below.

16 c. In the event the Court approves a class action settlement with any or all
17 of Dr. Mehmet C. Oz, M.D., Entertainment Media Ventures, Inc., Zoco Productions,
18 LLC, Harpo Productions, Inc., Sony Pictures Television, Inc. (collectively, the
19 “Media Defendants”) prior to Final Approval of this Settlement Agreement with
20 Naturex and a Class Member receives a payment under the Media Defendants’
21 settlement, that Class Member shall only be entitled to one \$15 payment under this
22 Settlement; provided, however, the claims of Class Members who received a
23 payment under the Media Defendants’ settlement and who submit additional
24 proof(s) of purchase than were submitted in the Media Defendants’ settlement shall
25 be paid pursuant to Section 6.2.1.a herein. The claims of Class Members who did
26 not participate in the Media Defendants’ settlement shall be paid pursuant to Section
27 6.2.1 herein.

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1 d. Claimants may seek reimbursement by submitting a Claim Form either
2 by mail or electronically. The actual amount paid to individual Claimants will
3 depend upon the number of valid claims made. Adequate and customary procedures
4 and standards will be used by the Class Action Settlement Administrator to prevent
5 the payment of fraudulent claims and to pay only legitimate claims.

6 e. Insufficient or Excess Funds. If the total amount of eligible claims
7 exceeds the Settlement Fund, then each claim's award shall be proportionately
8 reduced. In the event that there is any remaining cash amount in the Settlement Fund
9 after payment of Notice and Claim Administration Expenses, Attorneys' Fees, any
10 necessary taxes, tax expenses, and any Court-approved service award to Plaintiffs as
11 well as the tallied amount of all Authorized Claims, the Settlement Administrator
12 shall divide the remaining cash amount equally by the number of Authorized
13 Claimants and shall pay each such Authorized Claimant his or her share of the
14 remaining cash amount. If after all valid claims (plus other authorized fees, costs and
15 expenses) are paid and money remains in the settlement fund after *pro rata*
16 distribution to Authorized Claimants, any remaining settlement funds thereafter will
17 be awarded *cy pres* to the Consumers Union, subject to Court approval.

18 **2. Non-Monetary Relief**

19 Naturex agrees to the following representations:

20 a. Naturex does not and will not represent that Svetol® will help users
21 lose weight without diet and exercise.

22 b. Naturex does not and will not represent that Svetol® has weight loss
23 benefits that are not supported by clinical studies.

24 c. Naturex does not have control over the representations of third parties
25 (for example, distributors, manufacturers, or retailers) regarding Svetol®; however,
26 in its communications with third parties, Naturex will not inform any third party that
27 Svetol® will help users lose weight without diet and exercise or that Svetol® has
28 weight loss benefits that are not supported by clinical studies.

1 **3. Settlement Fund**

2 a. Naturex shall cause to deposit \$100,000.00 of the Settlement Amount
3 into the Settlement Fund no later than thirty (30) business days following the entry
4 of the Preliminary Approval Order. Naturex shall cause to deposit the remainder of
5 the Settlement Amount into the Settlement Fund no later than fifteen (15) business
6 days following the Effective Date.

7 b. The Settlement Fund shall be applied to pay in full and in order: (i) any
8 necessary taxes and tax expenses; (ii) all costs associated with the Class Action
9 Settlement Administration, including costs of providing notice to the Class Members
10 and processing claims and all costs relating to providing the necessary notices in
11 accordance with the Class Action Fairness Act of 2005, 28 U.S.C. section 1715; (iii)
12 any Fee and Expense Award made by the Court to Class Counsel under Section VIII
13 of this Agreement; (iv) any class representative Incentive Award made by the Court
14 to the Class Representatives under Section VIII of this Agreement; and (v) payments
15 to Authorized Claimants and any others as allowed by this Agreement and to be
16 approved by the Court. The Settlement Fund represents the limit and extent of the
17 Naturex’s (and any Released Naturex Parties’) monetary obligations under this
18 Settlement Agreement.

19 **4. Delivery of Payments to Settlement Class Members**

20 a. The Class Action Administrator shall send a correspondence to any
21 applicable Settlement Class Member explaining the rejection of any Claim no later
22 than fifteen (15) days after the Effective Date. Settlement Class Members’ time to
23 appeal any such rejection shall expire forty-five (45) days after the Effective Date.

24 b. The Class Action Settlement Administrator will send payment directly
25 to the eligible Settlement Class Member within sixty (60) calendar days after the
26 Effective Date. The Settlement Administrator will process direct credit or payment
27 via physical check, PayPal, Venmo, Amazon, or electronic Automated Clearing
28 House (“ACH”) transactions.

1 **5. Claim Form Availability**

2 a. The Claim Form may be completed and submitted online at the
3 Settlement Website. The Claim Form may also be requested by calling the toll-free
4 number provided by the Class Action Settlement Administrator or by writing to the
5 Class Action Settlement Administrator.

6 **6. Eligibility for Monetary Relief**

7 a. To be eligible for Monetary Relief under Section VI, 6.2(1) of this
8 Agreement, the Settlement Class Member must timely submit a signed and
9 completed Claim Form containing his or her name, mailing address and email
10 address.

11 b. To be eligible, Claim Forms must be postmarked or submitted online
12 no later than 120 days after the date of Class Notice.

13 **VII. RELEASES**

14 7.1 As of the Effective Date, and except as to such rights or claims created
15 by the Settlement Agreement, each Settlement Class Member, and each of their heirs
16 spouses, guardians, executors, administrators, representatives, agents, attorneys,
17 insurers, partners, successors, predecessors-in-interest, and assigns, shall be deemed
18 to have, and by operation of the Final Judgment shall have, fully, finally, and forever
19 released, relinquished, and discharged all Class Released Claims against the
20 Released Naturex Parties.

21 7.2 In connection with the Class Released Claims, each Settlement Class
22 Member shall be deemed to have forever waived any and all provisions, rights, and
23 benefits conferred by § 1542 of the California Civil Code and any statute, rule, and
24 legal doctrine similar, comparable, or equivalent to California Civil Code § 1542,
25 which provides as follows:

26 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
27 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
28 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING

1 THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST
2 HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT
3 WITH THE DEBTOR.

4 The Class Representatives for themselves and the Settlement Class Members
5 understand and acknowledge the significance of these waivers of § 1542 of the
6 California Civil Code and any similar, comparable or equivalent statute, rule or
7 doctrine. In connection with the release and waivers herein, the Class
8 Representatives and the Settlement Class Members acknowledge that they are aware
9 they may hereafter discover facts in addition to, or different from, those facts that
10 they now know or believe to be true with respect to the subject matter of the
11 Settlement, but that it is their intention to release fully, finally and forever, all Class
12 Released Claims with respect to the Released Naturex Parties, and in furtherance of
13 such intention, the releases of the Class Released Claims will remain in effect
14 notwithstanding the discovery or existence of any such additional or different facts.

15 7.3 The Final Judgment shall further provide for and effect the release of
16 all actions, causes of action, claims, administrative claims, demands, debts,
17 damages, costs, attorneys' fees, obligations, judgments, expenses, compensation, or
18 liabilities, in law or in equity, whether now known or unknown, contingent or
19 absolute, that Naturex now has against Plaintiffs, Settlement Class Members, or
20 Class Counsel by reason of any act, omission, harm, matter, cause or event
21 whatsoever arising out of the initiation, prosecution, or settlement of the Action or
22 the claims and defenses asserted in the Action.

23 7.4 Notwithstanding the above, the Court shall retain continuing
24 jurisdiction over the Parties and the Settlement Agreement with respect to the future
25 performance of the terms of the Settlement Agreement, and to assure that all
26 payments and other actions required of any of the Parties by the Settlement are
27 properly made or taken. All Parties hereto submit to the jurisdiction of the Court for
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1 purposes of implementing and enforcing the terms embodied in this Settlement
2 Agreement.

3 **VIII. CLASS COUNSEL’S ATTORNEYS’ FEES, COSTS, EXPENSES,**
4 **AND CLASS REPRESENTATIVE INCENTIVE AWARDS**

5 8.1 The award of Attorneys’ Fees and Expenses shall be made from the
6 Settlement Fund to Plaintiffs and the Settlement Class Members as set forth above.
7 Class Counsel shall make, and Naturex agrees not to oppose, an application for an
8 award of Attorneys’ Fees and Expenses in the Action not to exceed 33.33% of the
9 Settlement Fund. Class Counsel, in their sole discretion, shall be responsible for
10 allocating and distributing the Attorneys’ Fees and Expenses award to Class
11 Counsel. Subject to the terms and conditions of this Stipulation and any order of the
12 Court, the Fee and Expense Award awarded by the Court to Class Counsel shall be
13 paid out of the Settlement Fund within thirty (30) days after the date of the Court’s
14 Order granting final approval, subject to Class Counsel providing an undertaking for
15 repayment in the event the District Court order approving the settlement and fee
16 award does not become final following an appeal, if any. Such payment will be in
17 lieu of any statutory fees that Plaintiffs or their attorneys might otherwise have been
18 entitled to recover from Naturex.

19 8.2 Class Counsel shall have the sole and absolute discretion to allocate and
20 distribute the Court’s Fee and Expense Award among Plaintiffs’ Counsel and any
21 other attorneys for Plaintiffs.

22 8.3 Class Counsel may ask the Court for the award of an Incentive Award
23 from the Settlement Fund to each of the Class Representatives as follows: \$5,000.00
24 to Plaintiff Veda Woodard, \$7,500.00 to Plaintiff Teresa Rizzo-Marino, and
25 \$5,000.00 to Plaintiff Diane Morrison. Any Incentive Awards approved by the Court
26 shall be paid from the Settlement Fund within ten (10) days after the Effective Date.
27
28

1 **IX. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL,**
2 **CANCELLATION, OR TERMINATION**

3 9.1 The Effective Date of this Settlement Agreement shall be three business
4 days after which all of the following events and conditions have been met or have
5 occurred:

6 (A) The Court grants Final Approval of the Settlement consistent with the
7 Parties' terms herein;

8 (B) The time for any Objection or appeal to any aspect of the Settlement has
9 expired;

10 (C) The Court determines that the Settlement Agreement was entered into in
11 good faith pursuant to Cal. Civ. P. section 877.6; and

12 (D) The Court has entered the Final Judgment.

13 (E) Unless the Parties otherwise agree in writing to waive all or any portion
14 of the following provision, there has occurred: (i) in the event there is a properly and
15 timely filed Objection to entry of the Final Judgment, the expiration (without the
16 filing or noticing of an appeal) of the time to appeal from the Final Judgment; (ii)
17 the final dismissal of all appeals from the Final Judgment; (iii) affirmance on appeal
18 of the Final Judgment in substantial form; (iv) if a ruling or decision is entered by
19 an appellate court with respect to affirmance of the Final Judgment, the time to
20 petition for rehearing or re-argument, petitions for rehearing en banc and petitions
21 for certiorari or any other form of review with respect to such ruling or decision has
22 expired; or (v) if a petition for rehearing or re-argument, petitions for rehearing en
23 banc and petitions for certiorari or any other form of review with respect to the Final
24 Judgment is filed, the petition has been denied or dismissed or, if granted, has
25 resulted in affirmance of the Final Judgment in substantial form.

26 9.2 If all of the conditions specified in Section IX of this Settlement
27 Agreement are not met, then this Settlement Agreement shall be canceled and
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1 terminated unless Class Counsel and Defendants mutually agree in writing to
2 proceed with this Settlement Agreement.

3 9.3 In the event that this Settlement Agreement is not approved by the
4 Court or the Settlement set forth in herein is terminated or fails to become effective
5 in accordance with its terms, the Parties shall be restored to their respective pre-
6 settlement positions in the Action, including with regard to any agreements
7 concerning tolling and similar agreements, and this entire Settlement Agreement
8 shall become null and void. The entire Settlement Amount (to the extent it was
9 deposited) shall be promptly returned to Naturex.

10 **X. MISCELLANEOUS PROVISIONS**

11 10.1 The Parties hereto and their undersigned counsel agree to undertake
12 their best efforts and mutually cooperate to promptly effectuate this Settlement
13 Agreement and the terms of the Settlement set forth herein, including taking all steps
14 and efforts contemplated by this Settlement Agreement and any other steps and
15 efforts which may become necessary by order of the Court or otherwise.

16 10.2 The undersigned counsel represent that they are fully authorized to
17 execute and enter into the terms and conditions of this Settlement Agreement on
18 behalf of their respective clients.

19 10.3 This Settlement Agreement contains the entire agreement among the
20 Parties hereto and supersedes any prior agreements or understandings between them.
21 All terms of this Settlement Agreement are contractual and not mere recitals and
22 shall be construed as if drafted by all Parties. The presumption found in California
23 Civil Code section 1654 (and equivalent, comparable or analogous provisions of the
24 laws of the United States of America or any state or territory thereof, or of the
25 common law or civil law) that uncertainties in a contract are interpreted against the
26 party causing an uncertainty to exist hereby is waived by all Parties.

27 10.4 The terms of this Settlement Agreement are and shall be binding upon
28 each of the Parties, their agents, attorneys, employees, successors and assigns, and

1 upon all other Persons claiming any interest in the subject matter through any of the
2 Parties, including any Settlement Class Member.

3 10.5 Whenever this Settlement Agreement requires or contemplates that one
4 Party shall or may give notice to the other, notice shall be provided by email, or next
5 day (excluding Sunday) express delivery service as follows:

6 If to Plaintiffs, then to:

7 Ronald A. Marron
8 **LAW OFFICES OF RONALD A. MARRON**
9 651 Arroyo Drive
10 San Diego, CA 92103
11 Telephone: (619) 696-9006
12 Email: ron@consumersadvocates.com

13 If to Naturex, then to:

14 Stacy Weinstein Harrison
15 **ORRICK HERRINGTON AND SUTCLIFFE LLP**
16 777 South Figueroa Street Suite 3200
17 Los Angeles, CA 90017
18 Telephone: 213-612-2020
19 Facsimile: 213- 612-2499
20 Email: *swharrison@orrick.com*

21 10.6 The time periods and dates described in this Settlement Agreement with
22 respect to the giving of notices and hearings are subject to approval and change by
23 the Court or by the written agreement of Class Counsel and Naturex's Counsel,
24 without notice to Settlement Class Members. The Parties reserve the right, by
25 agreement and subject to the Court's approval, to grant any reasonable extension of
26 time that might be needed to carry out any of the provisions of this Settlement
27 Agreement.

28 10.7 All time periods set forth herein shall be computed in calendar days
unless otherwise expressly provided. In computing any period of time prescribed or
allowed by this Settlement Agreement or by order of the Court, the day of the act,
event or default from which the designated period of time begins to run shall not be
included. The last day of the period so computed shall be included, unless it is a

1 Saturday, a Sunday or a legal holiday, or, when the act to be done is the filing of a
2 paper in Court, a day in which weather or other conditions have made the Office of
3 the Clerk or the Court inaccessible, in which event the period shall run until the end
4 of the next day as not one of the aforementioned days. As used in this subsection,
5 “legal holiday” includes New Year’s Day, Martin Luther King, Jr.’s Birthday,
6 Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Columbus
7 Day, Veterans’ Day, Thanksgiving Day, Christmas Day and any other day appointed
8 as a holiday by the President or the Congress of the United States.

9 10.8 The Parties, their successors and assigns, and their attorneys undertake
10 to implement the terms of this Settlement Agreement in good faith and to use good
11 faith in resolving any disputes that may arise in the implementation of the terms of
12 this Stipulation.

13 10.9 This Settlement Agreement may be amended or modified only by a
14 written instrument signed by Class Counsel and any of Naturex’s Counsel.
15 Amendments and modifications may be made without additional notice to the
16 Settlement Class Members unless such notice is required by the Court.

17 10.10 Neither this Settlement Agreement nor any act performed or document
18 executed pursuant to or in furtherance of this Settlement Agreement: (i) is or may be
19 deemed to be or may be used as an admission of, or evidence of, the validity of any
20 Class Released Claim, or of any wrongdoing or liability of Naturex, or of the
21 propriety of Class Counsel maintaining the Litigation as a class action; or (ii) is or
22 may be deemed to be or may be used as an admission of, or evidence of, any fault
23 or omission of Naturex in any civil, criminal, or administrative proceeding in any
24 court, administrative agency, or other tribunal, except that Naturex may file this
25 Stipulation or the Judgment in any action that may be brought against any Released
26 Person in order to support a defense or counterclaim based on principles of res
27 judicata, collateral estoppel, release, good faith settlement, judgment bar, or
28

1 reduction or any other theory of claim preclusion or issue preclusion or similar
2 defense or counterclaim.

3 10.11 The Court shall retain jurisdiction with respect to the implementation
4 and enforcement of the terms of this Settlement Agreement, and all Parties hereto
5 submit to the jurisdiction of the Court for purposes of implementing and enforcing
6 the settlement embodied in this Settlement Agreement.

7 10.12 This Settlement Agreement shall be deemed to have been executed
8 upon the last date of execution by the undersigned.

9 10.13 This Settlement Agreement may be executed in counterparts, each of
10 which shall constitute an original.

11 **IN WITNESS THEREOF**, the Parties hereto have caused this Settlement
12 Agreement to be executed by their duly authorized representatives.

13

14 **UNDERSTOOD AND AGREED:**

15

16 Dated: 1/15/19

**LAW OFFICES OF RONALD A.
MARRON**

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By: Ronald A. Marron

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Ronald A. Marron
651 Arroyo Drive
San Diego, California 92103
Telephone: (619) 696-9006
Facsimile: (619) 564-6665
Email: ron@consumersadvocates.com
Counsel for Plaintiffs and the Class

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Dated: 1/15/19

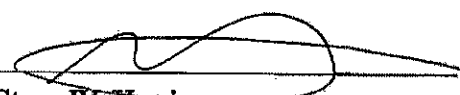
COHELAN, KHOURY, AND SINGER

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Counsel for Plaintiffs and the Class

Dated: 1/9/19

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By: 

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Facsimile: 213-612-2499
Email: *swharrison@orrick.com*
Counsel for Defendant Naturex, Inc.

Dated: 01/09/2019

By: 

Representative of Naturex, Inc.
T. PINCHOW

Dated: _____

By: _____

Veda Woodard
Plaintiff

Dated: _____

By: _____

Teresa Rizzo-Marino
Plaintiff

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Email: *Ikhoury@ckslaw.com*
Counsel for Plaintiffs and the Class

Dated: _____

**ORRICK, HERRINGTON AND
SUTCLIFFE LLP**

By: _____

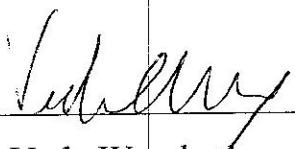
Stacy W. Harrison
777 South Figueroa Street Suite 3200
Los Angeles, CA 90017
Telephone: 213-612-2020
Facsimile: 213- 612-2499
Email: *swharrison@orrick.com*
Counsel for Defendant Naturex, Inc.

Dated: _____

By: _____

Representative of Naturex, Inc.

Dated: 1/8/2019

By: 

Veda Woodard
Plaintiff

Dated: _____

By: _____

Teressa Rizzo-Marino
Plaintiff

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Dated: _____

COHELAN, KHOURY, AND SINGER

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Isam C. Khoury
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Email: *ikhoury@ckslaw.com*
Counsel for Plaintiffs and the Class

Dated: _____

**ORRICK, HERRINGTON AND
SUTCLIFFE LLP**

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Stacy W. Harrison
777 South Figueroa Street Suite 3200
Los Angeles, CA 90017
Telephone: 213-612-2020
Facsimile: 213- 612-2499
Email: *swharrison@orrick.com*
Counsel for Defendant Naturex, Inc.

Dated: _____

By: _____

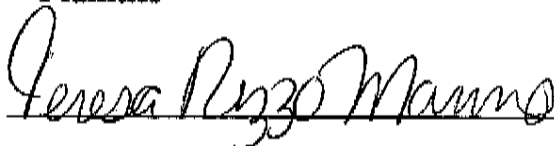
Representative of Naturex, Inc.

Dated: _____

By: _____

Veda Woodard
Plaintiff

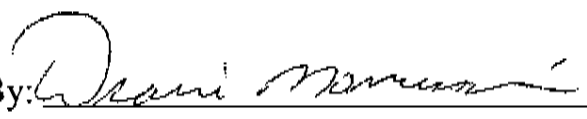
Dated: 1/9/19

By: 

Teresa Rizzo-Marino
Plaintiff

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Dated: 1-10-19

By: 

Diane Morrison
Plaintiff