

STIPULATION AND AGREEMENT OF SETTLEMENT

THIS SETTLEMENT AGREEMENT AND RELEASE and the exhibits appended hereto (collectively, "Settlement Agreement") is entered into as of the date below, and is submitted to the Court for the purpose of finally resolving *Wilson v. Airborne Health, Inc., et al*, Case No. RCV RS095262 (which was removed from the San Bernardino County Superior Court to the United States District Court for the Central District of California on June 23, 2007) (the "Action") by and between Plaintiff David Wilson, on behalf of himself and all others similarly situated ("Settlement Class Members"), and Defendants Airborne Health, Inc., Airborne, Inc., and Knight-McDowell Labs (collectively, the "Corporate Defendants"), and Victoria Knight-McDowell and Thomas "Rider" McDowell (collectively, the "Individual Defendants"), individually and by and through their respective authorized signatories.

WHEREAS, Defendant Airborne, Inc., was incorporated in California on April 21, 1999 and had a principal place of business in California until May 2005, and Airborne, Inc. ceased to exist, other than as a d/b/a in December 2005 when it merged with and into Airborne Health, Inc.;

WHEREAS, the products that are the subject of the Action are: Airborne Original (Zesty Orange); Airborne Lemon-Lime; Airborne Pink Grapefruit; Airborne, Jr.; Airborne On-the-Go; Airborne Power Pixies; Airborne Nighttime; Airborne Gummies; and Airborne Seasonal (known for a brief time as "Airborne Seasonal Relief");

WHEREAS, Defendant Airborne Health, Inc., was incorporated as a Delaware corporation on December 22, 2005, and has a principal place of business in Bonita Springs, Florida and an office in Carmel, California;

WHEREAS, Plaintiff filed the initial Complaint in the Action on or about May 17, 2006, in which he alleged, among other things, that Defendants falsely advertised the Products (defined below) as a means of preventing the common cold if taken immediately before entering into a crowded environment (such as an airplane, a classroom, or an office) and as a means of curing the common cold if taken after one develops;

WHEREAS, the Parties engaged in substantial discovery and law-and-motion efforts while attempting to negotiate a settlement of this action;

WHEREAS, Plaintiff filed and served a Second Amended Complaint on May 24, 2007 and, in that Second Amended Complaint, Plaintiff alleged a class that includes all purchasers of the Products throughout the United States;

WHEREAS, in the Second Amended Complaint, Plaintiff alleges that Defendants engaged in, among other things, consumer fraud, deceptive or unfair business practices, false or misleading advertising, concealment, omission, unfair competition by marketing and advertising the Products as a preventative or a cure for the common cold, and that such conduct violated California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200-17209; California's False Advertising Law, Cal. Bus. & Prof. Code §§ 17500-17536; California's Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750-1784; California's Sherman Food, Drug and Cosmetic Law, Cal. Health & Safety Code §§ 108975-111915; and resulted in Defendants' unjust enrichment;

WHEREAS, Plaintiff contends that he and the Settlement Class have suffered damages as a result of the Defendants' alleged conduct, and allege that they are

entitled to declaratory relief, compensatory and punitive damages, restitution, disgorgement of ill-gotten gains, and injunctive relief;

WHEREAS, Plaintiff contends that this Action is suitable for treatment as a class action, both for litigation and for settlement purposes, as each of the criteria established by California Civil Code section 1781, California Code of Civil Procedure 382, Federal Rule of Civil Procedure 23, and the case law in which those statutes and rules have been construed and applied could be met if the issue was presented in the context of a motion for class certification;

WHEREAS, Defendants have denied and continue to deny Plaintiff's contentions in all respects;

WHEREAS, Defendants removed the Action to the United States District Court for the Central District of California (the "Court") on June 22, 2007, pursuant to the Class Action Fairness Act of 2005;

WHEREAS, each Defendant has denied and vigorously continues to deny any wrongdoing whatsoever, and vigorously deny that he, she or it has violated any federal or state statute, principle of common law or equity, rule or regulation whatsoever, and further vigorously denies that the requirements for a class action are met in this action and contends that a class action should not be certified or maintained other than for purposes of settlement as provided in the Settlement Agreement;

WHEREAS, this Settlement Agreement was reached as a result of extensive bifurcated arms'-length settlement negotiations, which involved a monetary aspect, which is the subject of this Settlement Agreement, and an equitable aspect, which

was addressed in a letter from Class Counsel to Defendants' Counsel on or about March 14, 2007;

WHEREAS, during the course of negotiations, the Corporate Defendants advised Class Counsel that Airborne, Inc. is the subject of ongoing confidential investigations into the manner in which Defendants have marketed, advertised, and sold the Products;

WHEREAS the Corporate Defendants also advised Class Counsel that the Corporate Defendants desired to continue to negotiate a settlement of the Action notwithstanding the pendency of the confidential administrative investigations;

WHEREAS the Parties' negotiation efforts continued at arms' length for several months, and included mediation that took place under the auspices of retired Contra Costa County Superior Court Judge Richard L. Patsey on May 31, 2007;

WHEREAS, the parties reached an agreement that later was memorialized in a Memorandum of Understanding ("MOU") that the parties executed on June 26, 2007, a copy of which is attached hereto as Exhibit A;

WHEREAS, Plaintiff and the Settlement Class have agreed to a monetary settlement and to defer to the FTC and the AGs with respect to the equitable relief sought in the Second Amended Complaint;

WHEREAS, after substantial discovery and investigation of the facts and after carefully considering applicable law, the Parties and their counsel have concluded that it would be in the best interests of the parties and the Settlement Class to enter into this Settlement Agreement as a means of resolving the Action, thereby avoiding the uncertainties of litigation, particularly complex litigation such as this;

WHEREAS, Defendants have concluded that, despite their good-faith beliefs that they are not liable for any of the claims that were or could have been brought in this Action, including without limitation the Settled Claims, and have good defenses thereto, Defendants are entering into this Settlement Agreement to avoid the further expense, inconvenience, and burden of this litigation, the distraction and diversion of personnel and resources, and to obtain the conclusive and complete dismissal and/or release of this Action and all Settled Claims (described below);

WHEREAS, the performance of any act referenced in this Settlement Agreement, or any other circumstance regarding the Parties' agreement to settle the Action, shall not be considered an admission of liability or as an admission of any allegations made in any claim or litigation, including this Action; and

WHEREAS, the Parties hereto agree that this Settlement Agreement shall not be deemed or construed to be an admission or evidence of any violation of any federal or state statute, rule or regulation, or principle of common law or equity, or of any liability or wrongdoing whatever, by any of the Defendants, or of the truth of any of the Claims asserted in the Second Amended Complaint, any prior complaints in this action, or elsewhere;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the undersigned, on behalf of Plaintiff, the Settlement Class, and Defendants, that the Second Amended Complaint shall be dismissed on the merits and with prejudice as to all Defendants upon entry of the Final Judgment and Order of Dismissal, and this action in its entirety, and the Claims and all other Settled Claims shall be finally and fully

compromised, settled, and released, subject to the approval of the Court as required by Rule 23 of the Federal Rules of Civil Procedure, on the following terms and conditions:

1. Definitions.

For purposes of this Settlement Agreement only, the words and terms used in this Settlement Agreement that are expressly defined in this Section or elsewhere in this Settlement Agreement shall have the meaning ascribed to them in those definitions.

- (a) “Action” means this action, *Wilson v. Airborne Health, Inc. et al.*, Case No. EDCV 07-770-VAP (OPx), which is currently pending in the United States District Court for the Central District of California, including, without limitation, any appeals or requests for leave to appeal any ruling or judgment entered in that case.
- (b) “Authorized Claimant” means a Settlement Class Member who has submitted a timely and valid Claim Form and is entitled to receive a payment from the Net Settlement Fund.
- (c) “CAFA” means the Class Action Fairness Act of 2005, Pub. L. No. 109-2, 119 Stat. 4 (2005), effective February 18, 2005.
- (d) “Claims Administrator” means the Person to be chosen by the Parties’ Counsel to administer claims. The Claims Administrator shall administer claims in accordance with the Parties’ agreement or as required by the Court. The Claims Administrator (and any successor[s] thereto) shall be unrelated to, and independent of, the Defendants within the meaning of Treasury Regulations §§ 1.468B-1(d) and 1.468B-3(c)(2)(A). The Parties

have agreed that Kinsella/Novak Communications has been retained as an expert on class notice to develop the Settlement Notice Plan, and that Rust Consulting will be retained as the Claims Administrator in this Action.

- (e) “Class Counsel” means Wasserman, Comden & Casselman LLP, Fazio | Micheletti LLP, and the Center for Science in the Public Interest.
- (f) “Class Member” means all Persons who purchased any flavor or formulation of any Product in the United States or any of its territories from May 1, 2001 through the date of the Preliminary Approval, and “Settlement Class Member” means any member of the Settlement Class.
- (g) “Class Settlement and Notice Plan” means the process of providing notice to the class and all costs associated with that process. The Parties contemplate that the “Class Settlement and Notice Plan” shall be the plan described in Section 11 below, and attached hereto as Exhibit B. However, the Parties contemplate that the plan set forth in Exhibit B may be modified by the Court, and the Parties further contemplate that the plan set forth in Exhibit B may be jointly modified by the Parties or by the Notice provider for any reason if such modifications are approved by the Court. In the event the plan set forth in Exhibit B is modified, the Defendants shall bear all related costs, if any.
- (h) The “Claim Period” means that period of time from beginning of dissemination of notice to the Class through Midnight of the 90th day after the date initially set for the Final Fairness Hearing.

- (i) “Corporate Defendants” means Airborne Health, Inc., Airborne, Inc., and Knight-McDowell Labs.
- (j) “Court” means the United States District Court for the Central District of California, Eastern Division, the Honorable Virginia A. Phillips, presiding.
- (k) “Defendants” means the Corporate Defendants and the Individual Defendants.
- (l) “Distributors” means all distributors, wholesalers, and retailers that are passive conduits in the marketing or chain of distribution of the Product.
- (m) “Effective Date of Settlement” means the date Final Settlement Approval occurs.
- (n) “Fairness Hearing” means the hearing at which the Court will consider the application(s) for final approval of the Settlement and for final judgment.
- (o) “Fee and Expense Award” has the meaning set forth in Section 10(a) hereof.
- (p) “Final Judgment and Order of Dismissal” means the entry by the Court of an order and final judgment that is consistent in all material respects with the terms of this Settlement Agreement.
- (q) “Final Settlement Approval” has the meaning set forth in Section 8 hereof.
- (r) “Gross Settlement Fund” means the aggregate amount of monetary consideration paid into the Settlement Fund pursuant to the terms of this Settlement Agreement, plus any interest earned thereon.
- (s) “Incentive Award” is any award sought by application to and approved by the Court, payable to Plaintiff David Wilson.

- (t) “Individual Defendants” means Victoria Knight-McDowell and Thomas Rider McDowell.
- (u) “Net Settlement Fund” means the amount remaining of the Gross Settlement Fund after the deduction of any Tax Payments, Fee and Expense Award and any Incentive Award approved by the Court.
- (v) “Parties” means the Plaintiff, who represents both himself and the proposed Settlement Class that is proposed to be certified solely for the purposes of settlement herein, and each of the Defendants. The Plaintiff and each of the Defendants is a “Party.”
- (w) “Parties’ Counsel” means Class Counsel and counsel for the Defendants, collectively.
- (x) “Persons” includes, without limitation, natural persons, firms, corporations, businesses, limited liability companies, partnerships, federal, state and other governments and their political subdivisions, agencies and instrumentalities, and all other entities.
- (y) “Plan of Administration and Distribution” means the entire claims administration process and all costs associated with that process. The “Plan of Administration and Distribution” is the plan described in Section 4 below, but the Parties contemplate that the plan set forth in Section 4 may be modified by the Court or by mutual agreement of the parties without the need for Court approval, provided that any such changes are consistent with the general intent of the other provisions of the Settlement Agreement.

In the event the plan set forth in Section 4 is modified, the Defendants shall bear all related costs, if any.

- (z)** “Preliminary Approval” and “Preliminary Approval Order” mean the entry by the Court of a preliminary approval order that is consistent in all material respects with the terms of this Settlement Agreement.
- (aa)** “Personal Injury Claims” has the definition set forth in Paragraph 13(d) of the MOU.
- (bb)** “Preserved Claims” has the definition set forth in Paragraph 13(a) of the MOU.
- (cc)** “Product” means the following: Airborne Effervescent Health Formula in Original (Zesty Orange), Lemon-Lime, and Pink Grapefruit Flavors; Airborne On-the-Go, Airborne Power Pixies; Airborne Nighttime, and Airborne Jr.; Airborne Gummi; and Airborne Seasonal (known for a brief period of time as Airborne Seasonal Relief).
- (dd)** “Released Parties” has the definition set forth in Paragraph 13 of the MOU. “Releases” means the Release of Claims in Paragraph 13 of the MOU.
- (ee)** “Releasers” means the Plaintiff and all other Settlement Class Members.
- (ff)** “Plaintiff” and “Representative Plaintiff” means named plaintiff David Wilson.
- (gg)** “Second Amended Complaint” means the Second Amended Complaint for Damages and Equitable Relief, filed on May 24, 2007, in the Superior Court of the State of California, San Bernardino County prior to the removal of this Action to federal court pursuant to CAFA (a copy of which

is attached hereto as Exhibit C), and is the operative complaint in the Action.

(hh) “Settled Claims” has the definition set forth in Paragraph 13(a) the MOU.

(ii) “Settlement Class” means all Persons who purchased any flavor or formulation of any Product in the United States or any of its territories from May 1, 2001 through the date of the Preliminary Approval Order except the following:

(1) the Corporate Defendants, their predecessors, successors, and their current and former directors, officers, employees, agents, attorneys, representatives, affiliates, associates, consultants, advisers, parents, and subsidiaries, as well as the Individual Defendants and their heirs, spouses, executors, administrators, agents, successors, attorneys, consultants, advisers, representatives or assigns;

(2) Persons who have settled with and validly released Defendants from separate, non-class legal actions against Defendants based on the conduct alleged in the Second Amended Complaint filed in the Action, if any; and

(3) Persons who have purchased the Product for resale.

(4) any Person who has validly elected to exclude themselves from the Settlement Class pursuant to Section 12 herein.

(5) the judge presiding over this matter.

(jj) “Signature Date” means the date on which this agreement was fully executed.

(kk) “Valid Claims” mean claims for reimbursement submitted by Settlement Class Members that satisfy all criteria to qualify for reimbursement. These

criteria shall be established with the advice and consent of the Parties' Counsel.

2. The Settlement Fund.

- (a) Within ten (10) calendar days after entry of the Final Judgment and Order of Dismissal, Defendants shall deposit \$23,250,000 plus the amount of the Court-approved Incentive Award to the Representative Plaintiff, by wire transfer, into a segregated, interest-bearing account to which the Parties mutually agree be established for receipt of the Defendants' payment (the "Settlement Fund"). Promptly upon entry of the Final Judgment and Order of Dismissal, the Claims Administrator shall provide Defendants with payment instructions, which shall be consistent with the terms of the Settlement Agreement.
- (b) In the event that, at the end of the Claims Period, the aggregate amount of Valid Claims made by Settlement Class Members and Class Counsels' award of fees and litigation expenses (without considering the amount of accrued interest) exceeds \$23.25 million (\$23,250,000), Defendants will deposit an additional amount necessary to pay Valid Claims, up to a maximum additional amount of \$250,000 (two hundred fifty thousand dollars).
- (c) Within five (5) calendar days after these funds have been received, the Claims Administrator will send Defendants notice (by facsimile or electronic mail) notifying Defendants that the Settlement Fund has timely

received all of the monetary settlement consideration and Incentive Award from Defendants (“Payment Confirmation Notice”).

- (d) The Settlement Fund (including the Gross Settlement Fund and the Net Settlement Fund) shall be established and administered under the Court’s continuing supervision and control pursuant to an escrow agreement.
- (e) Within ten (10) calendar days after the end of the Claims Period, the Claims Administrator shall notify the Parties’ Counsel in writing by facsimile transmittal (with an overnight mail copy) of the aggregate amount of Valid Claims made by Settlement Class Members. If the aggregate amount of Valid Claims and Class Counsels’ award of fees and litigation costs (without considering the amount of accrued interest) exceeds \$23.25 million, then, within ten (10) days receipt of the notification by the Claims Administrator, Defendants shall deposit into the Settlement Fund an additional amount to pay Valid Claims up to an additional \$250,000. Conversely, if the aggregate amount of disbursements is less than \$23.25 million, then the balance of the Net Settlement Fund shall be distributed *cy pres* to non-profit organizations in accordance with the provisions set forth in Section 4(j), below.

3. Approved Uses of the Settlement Fund.

- (a) The Settlement Fund will be used to pay Settlement Class Members’ claims for reimbursement of the amount they have spent on the Product (less applicable sales taxes), subject to the limits described in this Section, as well as Class Counsels’ fees and litigation expenses as described in

Paragraph 10 of the MOU, that are approved by the Court and taxes on the fund's earnings (if any). As more fully described in Paragraph 9 of the MOU, Defendants also will deposit into the Settlement Fund, in addition to the \$23.25 million, an amount not to exceed \$10,000 as approved by the Court for an incentive payment to Mr. Wilson. Settlement Class Members who make a Valid Claim will be entitled to reimbursement of the full amount they spent on the Product (less applicable sales taxes), subject to the limits described in this paragraph, upon proof of purchase (e.g., receipts showing the amount they paid for the Product), or, if no proof of purchase is available, not more than the equivalent of the average retail price of \$10.50 per box of Seasonal, \$2.75 per box of Gummi, and \$6.99 per box for the remaining Product per Settlement Class member, up to a maximum number of six packages per Class Member. If the aggregate value of disbursements exceeds the full amount deposited into the Settlement Fund, the Net Settlement Fund shall be distributed to Settlement Class Members on a *pro rata* basis.

- (b) The Settlement Fund shall be available, as applicable, for the payment of taxes on earnings from or otherwise in respect of the Settlement Fund (collectively, the "Tax Payments"). Tax Payments shall be paid when due and may be made prior to the Final Settlement Approval if required by law.
- (c) Until Final Settlement Approval, or unless otherwise provided for herein, no distribution or payment from the Gross Settlement Fund or the Net Settlement Fund for any purpose other than Tax Payments shall be made

without the express written consent of the Parties and express prior approval of the Court. For avoidance of doubt, under no circumstances shall payments from the Settlement Fund be made to satisfy Valid Claims submitted by Settlement Class Members, any Fee and Expense Award approved by the Court, any Incentive Award, or (if a balance remains after all disbursements are made), distribution to *cy pres* recipients approved by the Court until the conditions and events for Final Settlement Approval occurs.

- (d) In the event that the Settlement Agreement is terminated for a valid reason under the terms herein (including without limitation that Final Settlement Approval does not occur), the entire amount in the Gross Settlement Fund, including the principal and accrued interest (less all funds necessary to make Tax Payments) shall be paid, by wire transfer, into an account designated by the Corporate Defendants not later than ten (10) calendar days after the termination of the Settlement Agreement.

4. **Plan of Administration and Distribution**

- (a) Not later than ten (10) calendar days after Final Settlement Approval, all principal and interest accrued between that date and the date that funds were paid into the Settlement Fund shall be made available for distribution, with the interest attributable to the Fee and Expense Award specified in Section 10 below, the Incentive Award Specified in Section 10 below being paid to the respective recipients of those portions of the Settlement Fund.

- (b) Settlement Class Members will be able to obtain Claim Forms by requesting one either by calling the toll-free number established for purposes of this Settlement or requesting one by mail to the address established by the Claims Administrator or by downloading a Claim Form from the website established by the Claims Administrator. (Settlement Class Members who receive direct notice pursuant to Section 11 below will receive a Claim Form with the Notice they receive.) The Claim Form shall include instructions for the claim submission process. Claims will not be deemed Valid Claims unless they satisfy the criteria developed by the Parties' Counsel. Settlement Class Members may submit claims online or by mailing completed Claim Forms (together with all supporting material, if any) to the address provided by the Claims Administrator. If a Settlement Class Member submits a Claim Form online, the Class Member may either attach any supporting material to that online submission or mail any supporting material to the Claims Administrator at the address provided.
- (c) Claim Forms must be postmarked or, if submitted online, received by the Claims Administrator by no later than Midnight of the last date of the Claims Period. For clarity, once the hearing date for the Final Fairness Hearing is set, the Notice will include a date certain.
- (d) The Claims Administrator shall administer and calculate the claims submitted by Settlement Class Members in accordance with objective criteria for determining whether a claim is a Valid Claim (as set forth in

this Section). After Final Settlement Approval and entry by the Court of an order approving disbursement of the Net Settlement Fund to Authorized Claimants according to the terms and conditions of said Plan, Class Counsel may oversee distribution of the Net Settlement Fund to Authorized Claimants.

- (e) The Parties' Counsel shall, with input from the Claims Administrator, develop criteria by which the validity of claims may be determined and a procedure by which claim submissions that do not satisfy the criteria for validity can be evaluated. Settlement Class Members who submit claims that only partially satisfy the criteria developed by the Parties' Counsel shall, as a general rule, be given notice of the deficiency and the opportunity to correct errors and omissions. In some cases, however, pursuant to guidelines to be mutually established by the Parties' Counsel, a claim that only partially satisfies the criteria developed by the Parties' Counsel may be paid without the need for the Settlement Class Member to cure the defect in his or her submission. Conversely, in limited cases, the Parties contemplate that there may be situations in which a claim is deemed incurable. In such cases, the Settlement Class Member will not be given the opportunity to resubmit his or her claim. The Parties must mutually agree upon the criteria for determining whether a claim can be deemed incurable. The Claims Administrator will be paid by the Defendants and will be responsible for deciding whether to honor claims submitted by

Settlement Class Members, in accordance with the criteria established by the Parties' Counsel.

- (f) Settlement Class Members will be entitled to seek full reimbursement of the retail price (less applicable sales taxes) for each Product purchased if proof of purchase (*e.g.* receipts showing the amount they paid for the Product) is submitted with a Claim Form. Proof of purchase means copy of the original paid receipt that identifies the Product and the amount paid for the Product or, if the original paid receipt is not available, alternative proof sufficient to demonstrate that a Settlement Class Member actually paid for the Product and the amount therefore (*e.g.* records of sales transactions Settlement Class Members entered into via the www.airbornehealth.com website).
- (g) Alternatively, if no proof of purchase is available, Settlement Class Members are entitled to reimbursement for not more than the equivalent of the average retail price of \$10.50 per box of Seasonal, \$2.75 per box for Gummi, and \$6.99 per box for other types of Product, up to a maximum number of 6 items of Product per Settlement Class Member. If a Settlement Class Member does not have proof of purchase, to submit a Valid Claim, he or she must submit a claim form together with an affirmation that he or she purchased the Product, and other information requested relating to the purchase of the Product that are sufficient to satisfy the reasonable requests of the Claims Administrator for the purpose of determining whether the Settlement Class Member has made a valid

claim, such as, by way of example only, where the purchase(s) took place, the approximate date on which the purchase(s) took place, and the approximate amount he or she paid for the Product at the time of each purchase. The criteria for ascertaining the validity of a claim for reimbursement shall be decided mutually by the parties. In no event shall the claims administration process place an undue burden on the ability of Settlement Class Members to seek reimbursement.

- (h) In no event will Defendants be responsible for paying more than \$23.51 million (\$23,510,000) into the Settlement Fund. For the avoidance of doubt, depending upon the aggregate amount of disbursements from the Settlement Fund, it is contemplated by this Settlement Agreement that Defendants could pay some amount greater than \$23.25 million, but not more than \$23.51 million.
- (i) If the aggregate value of Valid Claims made by Settlement Class Members exceeds the amount of the Net Settlement Fund, the Net Settlement Fund shall be distributed to Settlement Class Members on a *pro rata* basis.
- (j) If the aggregate value of Valid Claims by Settlement Class Members is less than the amount of the Net Settlement Fund, the balance of the Net Settlement Fund, after payment of all Valid Claims of Settlement Class Members, shall be distributed *cy pres* to non-profit organizations. Class Counsel shall nominate the non-profit organization(s) that will be recipients of any *cy pres* funds, which shall then be subject to the consent of Defendants (which Defendants shall not unreasonably withhold) and

approval by the Court. For purposes of this paragraph, Defendants agree that in order to validly withhold consent, Defendants must demonstrate that including a non-profit organization as a recipient would substantially undermine Defendants' legitimate business interest or is otherwise improper, and that Defendants' refusal to consent is not philosophically or politically motivated. Plaintiff agrees that the Center for Science in the Public Interest will not be a recipient of *cy pres* funds.

- (k) Valid Claims shall be paid within thirty (30) days after the end of the Claims Period or within thirty (30) days after the Effective Date of the Settlement, whichever is later.
- (l) The Parties shall have no liability whatsoever with regard to the maintenance, preservation, investment, use, allocation, adjustment, distribution, and/or disbursement of any amount in the Gross Settlement Fund or the Net Settlement Fund, or any dispute by any Claimant or putative claimant concerning the handling or resolution of his, her, or its claim with respect to the Net Settlement Fund. With the exception of Tax Payments, which shall be made out of the Settlement Fund, the Defendants shall bear all costs associated with the Gross Settlement Fund and the Net Settlement Fund, including but not limited to the costs of administering, maintaining, and making distributions from those funds. Moreover, in no event shall this or any other provision of this Settlement Agreement absolve the Parties for a breach of the Settlement Agreement, nor shall any

provision of this Settlement Agreement prevent an aggrieved Party from enforcing its rights hereunder.

5. **Equitable Relief and Future Conduct by Defendants.**

- (a) Additionally, each Settlement Class Member who does not exclude himself or herself from the Settlement Class agrees to accept as adequate any equitable relief obtained by the Federal Trade Commission as to the Products and releases any claim for equitable relief for the Products, provided however that if the consent decree or other order into which the Corporate Defendants enter with the Federal Trade Commission does not include injunctive relief applicable to Airborne's claims, express or implied, regarding Seasonal's effect on histamine levels, then the release by Class Members of claims against the Defendants does not release equitable claims as to Seasonal (although in that event the Class Members still release all monetary claims as to Seasonal that fall within the definition of Settled Claims). In addition, and for purposes of clarity, if a consent decree regarding Seasonal's effect on histamine levels is entered into by the Corporate Defendants, then the release by Class Members releases all Defendants.

6. **Motion for Certification of Settlement Class and Preliminary Approval of Settlement**

- (a) On or before August 28, 2007, the Parties' Counsel shall submit to the Court a joint motion for Preliminary Approval of this Settlement Agreement, and the settlement contemplated hereby, including, *inter alia*,

conditional certification for settlement purposes only of the Settlement Class. At the same time as the Parties file their joint motion, Defendants will file a Memorandum of Law in Support of Preliminary Approval, which shall support the preliminary injunction described in the MOU and this Settlement Agreement and provides support for the Defendants' request that the Court find that their proposed notice under CAFA satisfies the statute. Defendants may subsequently file materials demonstrating their compliance with CAFA notice provisions.

- (b) A copy of the proposed form of order certifying the Settlement Class and granting Preliminary Approval of this Settlement Agreement and the settlement contemplated hereby ("Preliminary Approval Order") is attached hereto as Exhibit D.
- (c) The Parties agree to recommend and use their best efforts to obtain approval of this Settlement Agreement and the settlement contemplated hereby, including, without limitation, certification of the Settlement Class and entry of a Preliminary Approval Order, *provided, however*, that nothing in this Settlement Agreement shall be construed to require counsel for any Party to do anything that is inconsistent with their ethical, legal, or fiduciary duties.
- (d) The Parties agree that the Court's entry of a preliminary approval order that is consistent in all material respects with the terms of this Settlement Agreement is a material term of this Settlement Agreement, and that this Settlement Agreement shall terminate if the Court does not enter such order

for any reason other than a finding that the Class Settlement and Notice Plan is insufficient to comport with due process. In the event that the Court does not enter the order solely because it finds that the Class Settlement and Notice Plan set forth in Sections 11 and 12 is insufficient to comport with due process, the Parties shall work together to amend the Class Settlement and Notice Plan so that it comports with due process, and again seek approval from the Court.

7. **Motion for Entry of Final Judgment**

- (a) If the Court enters a Preliminary Approval Order and the Settlement Agreement has not otherwise been terminated, then, after notice to the Settlement Class (as described below in Section 11), and after the expiration of the time for members of the Settlement Class to timely and properly opt out from the Settlement Class, the Parties' Counsel shall each submit to the Court a motion for entry of an order and final judgment.
- (b) The Parties agree that the Court's entry of a final judgment and approval order that that is consistent in all material respects with the terms of this Settlement Agreement is a material term of this Settlement Agreement, and that this Settlement Agreement shall terminate if the Court does not enter such order for any reason other than a finding that the Class Settlement and Notice Plan set forth in Sections 11 and 12 is insufficient to comport with due process. In the event that the Court does not enter the order solely because it finds that the Class Settlement and Notice Plan is insufficient to comport with due process, the Parties shall work together to amend the

Class Settlement and Notice Plan set forth in Sections 11 and 12 so that it comports with due process, and again seek approval from the Court.

- (c) The Parties agree to recommend and use their best efforts to obtain entry of the Final Judgment and Order of Dismissal, *provided, however*, that nothing in this Settlement Agreement shall be construed to require counsel for any Party to do anything that is inconsistent with their ethical, legal, or fiduciary duties.
- (d) Defendants have advised Plaintiffs' Counsel that, as part of their CAFA notice, they intend to provide to the Court a copy of the final judgment and order of dismissal that the Defendants anticipate asking the Court to enter if final approval of the settlement is granted. Nothing herein shall preclude Plaintiff from submitting his own form of proposed order to the Court at a later date.

8. Final Settlement Approval

- (a) This Settlement shall become final upon the occurrence of all of the following events without the prior termination of this Settlement Agreement ("Final Settlement Approval"):
 - (i) final approval of this Settlement Agreement, and the settlement contemplated hereby, in all respects by the Court;
 - (ii) entry of a final judgment and order of dismissal consistent with all material terms of the Settlement Agreement;
 - (iii) the expiration of the time for further judicial review of the Court's approval of this Settlement Agreement; and
 - (iv) if an appeal is filed, the final judgment and entry of order has been affirmed in its entirety by the court of last resort.
 - (v) Final Settlement Approval may, however, occur if the only matters challenged or appealed are the award of attorneys' fees and

expenses and the request for an incentive award to Plaintiff.

- (b) The provisions of Rule 60 of the Federal Rules of Civil Procedure shall not be taken into account in determining any of the times stated in Section 8(a)(iii) above.
- (c) For avoidance of doubt, no Party shall have any right to terminate this Settlement Agreement after Final Settlement Approval.

9. Best Efforts to Effectuate This Settlement

The Parties agree to undertake their best efforts, including all steps and efforts contemplated by this Settlement Agreement and any other steps and efforts that may be necessary or appropriate, by order of the Court or otherwise, to obtain approval of this Settlement Agreement and the settlement contemplated hereby, *provided, however*, that nothing in this Settlement Agreement shall be construed to require counsel for any Party to do anything that is inconsistent with their ethical, legal, or fiduciary duties.

10. Attorneys' Fees and Expenses and Incentive Award

- (a) At the time set by the Court in the Preliminary Approval Order, Class Counsel may apply for approval by the Court of an award of attorneys' fees, expenses, and costs (the "Fee and Expense Award"). Settlement Class Counsel intend to apply for a Fee and Expense Award, which will include a request for fees and expenses not to exceed 25% of the Gross Settlement Fund (after deduction of Tax Payments) plus a *pro rata* share of all interest, dividends, and other distributions and payments accrued by the Gross Settlement Fund. Defendants shall not oppose such Fee and Expense Award application, provided it comports with this paragraph.

- (b) At the time set by the Court in the Preliminary Approval Order, Settlement Counsel shall apply for approval by the Court of an award to the Representative Plaintiff. Any such Incentive Award sought shall not exceed \$10,000 plus a *pro rata* share of all interest, dividends and other distributions and payments accrued by the Gross Settlement Fund. Provided that the application for such an Incentive Award complies with these provisions, Defendants shall not oppose such Incentive Award.
- (c) Any order relating solely to the Fee and Expense Award or an Incentive Award, or any request for further judicial review from any order(s) relating solely thereto or reversal or modification thereof, shall not operate to terminate the Settlement Agreement or affect or delay Final Settlement Approval.
- (d) If Final Settlement Approval has occurred, and a Fee and Expense Award has been approved by the Court but remains the subject of pending or potential appeals or further judicial review, Settlement Class Counsel may at their discretion seek authority from the Court to pay all or part of such approved Fee and Expense Award from the Gross Settlement Fund notwithstanding such pending or potential appeals or further judicial review regarding the Fee and Expense Award. Defendants will take no position regarding any such request.

11. Class Settlement and Notice Plan

- (a) In connection with the motion described in Section 6 above, the Parties shall submit to the Court for its approval under Rule 23 of the Federal

Rules of Civil Procedure the Class and Settlement Notice Plan, a copy of which is attached hereto as Exhibit B (which includes, *inter alia*, a Notice of Pendency and Settlement of Class Action [attached as Exhibit 1 thereto], a Publication Notice [attached as Exhibit 2 thereto], and a Claim Form [attached as Exhibit E to this Settlement Agreement]), and the Declaration of Katherine Kinsella supporting a finding that the proposed Notice Plan fully satisfies Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process. The Parties anticipate making further changes to the claim form attached hereto following additional discussions with the Claims Administrator.

- (b)** The Parties agree that providing clear and explicit information about the nature and scope of the release of Settled Claims is an important aspect of the notice to Settlement Class Members. Accordingly, the Parties will mutually agree on the content of the notice to Settlement Class members before it may be distributed.
- (c)** Notice of this settlement shall be given to the members of the Settlement Class within one hundred twenty (120) days of entry of the Court's Preliminary Approval Order, or as soon thereafter as practicable. There will be two forms of the Notices of Pendency and Settlement of Class Action, a Summary Notice and a Long Form Notice. The Summary Notice shall be published in each of the publications listed in the Class Settlement and Notice Plan. The Long Form Notice shall be posted on a website established for purposes of this Settlement Agreement, sent via electronic-

mail, or if no electronic-mail address is available or if the Claims Administrator is notified that transmission to such electronic mail address has failed, by first-class mail to each Settlement Class Member for whom Defendants have contact information and mailed to any Settlement Class Member who requests a copy. The website address shall be published in the Summary Notice, along with a toll-free telephone number that will provide information to the Class Members about the nature of the settlement.

- (d) All costs, fees, or expenses associated with providing notice to the Settlement Class and with claims administration, other than tax payments, shall be paid by Defendants. For the avoidance of doubt, the Settlement Notice and Administration Costs include all of the costs, fees, and expenses associated with: the preparation, handling, mailing, printing, publication and any other aspects of the dissemination of notice to the Settlement Class; the maintenance of and all fees and expenses associated with the interest-bearing account; and all aspects of claims administration, including, without limitation, the costs, fees, and expenses incurred and charged by the Claims Administrator. In no event shall costs associated with or relating to providing notice to Settlement Class Members or the cost of administering the settlement be charged to or borne by the Gross or Net Settlement Fund, Settlement Class Members or Class Counsel. No less frequently than once a quarter, the Claims Administrator shall file with the Court a written report detailing the nature, amount and recipients of all

amounts expended, paid or incurred, together with supporting documentation.

12. Exclusion From the Settlement Class

- (a) Any member of the Settlement Class shall have the right to opt out of the Settlement Class by sending a written request for exclusion from the Settlement Class to the addresses listed in the Notices, postmarked no later than a deadline to be set by the Court, which deadline shall be set forth in the Notices.
- (i) Exclusion requests must: (A) be signed by that member of the Settlement Class; (B) include that Person's full name and current address; and (C) include a statement that says something similar to the following statement: "I request to be excluded from the Settlement Class in *Wilson v. Airborne Inc., et al.*, Case No. EDCV07-770 VAP (OPx)."
- (ii) No request for exclusion will be valid unless all of the information described above is included. If a timely and valid request for exclusion is made by a member of the Settlement Class, then no payment shall be made with respect to such Person. The Parties and the Parties' Counsel shall use such opt out information only for purposes of determining and/or establishing whether a Person has timely and properly opted out of the Settlement Class. All Settlement Class Members (whether or not a Claimant or Authorized Claimant) shall be bound by all determinations and

judgments concerning the Settlement Agreement and the settlement contemplated hereby.

- (b) Within twenty (20) business days after the Court-ordered deadline for timely and properly opting out from the Settlement Class, the Claims Administrator shall provide to the Parties' Counsel the names and applicable addresses of the members of the Settlement Class who or which have timely and properly opted out of the Settlement Class, as well as the total number of such Persons. The Parties shall attach information relating to the Class Members who timely and validly excluded themselves from the Settlement Class in connection with entry of the Final Judgment and Order of Dismissal.
- (c) Settlement Class Members shall have the right to object to the Settlement, or any portion thereof. The procedure for objecting shall be set forth in the Notice of Pendency and Settlement of Class Action (attached hereto as Exhibit B-1).

13. Releases.

- (a) Upon Final Settlement Approval, Plaintiff, on behalf of himself and the proposed class, hereby agrees that, if the settlement contemplated hereby is approved, the Court shall enter judgment releasing the Defendants, their predecessors, successors, and their current and former directors, officers, employees, agents, attorneys, representatives, affiliates, associates, consultants, advisers, parents and subsidiaries, and all distributors, wholesalers, and retailers that are passive conduits in the marketing chain

of distribution of the Product (collectively, “Distributors”), as well as Victoria Knight-McDowell and Rider McDowell, and their heirs, spouses, executors, administrators, agents, successors, attorneys, consultants, advisers, representatives or assigns (collectively, the “Released Parties”) from all Settled Claims by Plaintiff and the Settlement Class Members.

- (b) It is the intention of the Parties in executing this Settlement Agreement that this release shall be construed as broadly as permitted by applicable law, and shall be effective as a full and final accord and satisfaction and mutual release of and from all liabilities, disputes, claims and matters relating to the Settled Claims.

14. Injunction.

The Parties agree that they shall seek as part of the Preliminary Approval Order a preliminary injunction barring and enjoining the institution or prosecution by a Settlement Class Member who has not been validly excluded from the class against a Released Party of any of the Settled Claims in this or any other forum. The order sought by the Parties shall provide that all Class Members, and any Person acting or purporting to act on behalf of any Class Member(s) are stayed and enjoined from commencing, initiating, pursuing, maintaining, prosecuting, or enforcing any Settled Claim against a Released Party (including, without limitation, in any individual, class or putative class, or other representative basis, or other action or proceeding) in any judicial, administrative, arbitral, or other forum until Final Settlement Approval or termination of the Settlement Agreement, whichever occurs earlier. The Parties agree that they shall seek the same stay and injunctive relief as part of the Final Judgment and Order of Dismissal as a permanent

injunction. The stays and injunctions contemplated hereby shall not apply to individual claims of any member of the Settlement Class who has timely and properly opted out from the Settlement Class as permitted by the Court. For the avoidance of doubt, nothing in this Settlement Agreement shall prevent any Class member or Person actually or purportedly acting on behalf of any Class Member(s) from taking any action to stay and/or dismiss any other action pertaining to a Settled Claim(s) against a Released Party. The Parties agree that the validity of this Settlement Agreement shall not be contingent on the Court granting the aforescribed motion for a preliminary injunction; however, the Parties further agree that, if the Court does not enter the preliminary injunction, such ruling shall not operate to preclude any of the Defendants from seeking a stay or injunction of any other pending cases in which a plaintiff is seeking to assert any Settled Claims in any court where such case is pending, and Plaintiff and its counsel agree that they will not oppose any such applications. The Parties believe that this preliminary injunction is necessary to protect and effectuate the Settlement Agreement, the settlement contemplated hereby, the Preliminary Approval Order, the Court's flexibility and authority to effectuate the Settlement Agreement and enter the Final Judgment and Order of Dismissal when appropriate, and to aid the Court's jurisdiction to protect its judgments, including the Final Judgment and Order of Dismissal. In no event, however, shall the Court's ruling on the motion for an injunction be deemed a valid basis for terminating this Settlement Agreement, nor shall Plaintiff, Settlement Class Members, or Class Counsel be responsible in any way for any bond or other security that may be required in connection with the injunctive relief described in this Section 14 (although

this Section 14 shall not be construed to eliminate the requirement of an appealing party to obtain a supercedeas or other bond pertaining solely to an appeal).

15. Waiver of Rights and General Release of Claims.

- (a) Upon Final Settlement Approval, each of the Releasors hereby expressly acknowledges that they have been informed of the provisions of Section 1542 of the California Civil Code, and that they do hereby expressly waive and relinquish all rights and benefits they have or may ever have had under Section 1542 of the California Civil Code. Section 1542 of the California Civil Code provides as follows:

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

Having been apprised of Section 1542, each Releasor waives and relinquishes any right or benefit that they may have under Section 1542 of the Civil Code of the State of California. In connection with such waiver and relinquishment, each Releasor acknowledges that they may hereafter discover facts in addition to or different from those that they now know or believe to exist with respect to the Settled Claims, but that it is their intention hereby fully, finally, and forever to settle and release all of the Settled Claims, including all of the matters, disputes and differences, known or unknown, suspected or unsuspected, contingent or noncontingent, which now

exist, may exist, or heretofore have existed, between Releasors and the Released Parties arising out of or relating to any matter, transaction, and/or action alleged in the Second Amended Complaint. In furtherance of this intention, the release herein shall be and remain in effect as a full and complete general release of the Settled Claims, notwithstanding the discovery or existence of any such additional or different claims or facts.

- (b)** Notwithstanding any other provision of this release, the Settled Claims do not include, and Plaintiff and members of the Settlement Class expressly reserve, any claims, causes of action, lawsuits, actions, administrative proceedings, and/or demands they may have for personal injury, including any available remedies (“Personal Injury Claims”). For the avoidance of doubt, the Released Parties agree that: (1) any person participating in the Settlement as a Settlement Class Member has not released any Personal Injury Claim or any right to pursue any Personal Injury Claim in a separate litigation; (2) the release of Settled Claims may not be interpreted as a bar to any separate litigation by a Settlement Class Member for any Personal Injury Claim; (3) in no event shall the release of Settled Claims be used for the purpose of defeating a Settlement Class Member's Personal Injury Claim; and (4) in no event shall a Personal Injury Claim be deemed to be barred by the doctrines of res judicata, collateral estoppel, and/or any bar against splitting of claims. With respect to Settlement Class Members, in no event shall anything herein, including but not limited to the release, the

settlement of this Action, the reference to section 1542 of the California Civil Code, and/or anything pertaining to the settlement of this Action be used, in any forum, judicial or otherwise, to bar, mitigate, reduce the potential recovery of, or affect in any way, a Personal Injury Claim, whether the Personal Injury Claim and/or injuries related thereto are known or unknown, knowable or unknowable, and/or whether they arose, in whole or in part, during the class period, before the class period, after the class period, before the settlement, and/or after the settlement, and regardless of whether the Personal Injury Claim involves allegations pertaining to the issues raised in this case. The foregoing notwithstanding, Plaintiff agrees that the settlement contemplated hereby constitutes full accord and satisfaction for all Settled Claims (which do not include the Preserved Claims).

16. Preservation of Discovery Materials.

- (a) The Parties and the Parties' Counsel shall continue to abide by the terms of the Protective Order entered by the Superior Court of the State of California, San Bernardino County in June 2007 (the "Parties' Protective Order"). Within thirty (30) days of Final Settlement Approval, Class Counsel shall take all steps appropriate to return or destroy the discovery materials produced in this Action and designated "Confidential" or "Highly Confidential" by the Corporate Defendants, and all hard and electronic copies thereof, and shall advise in writing Corporate Defendants' Counsel that they have done so. In no event, however, shall anything in this

Settlement Agreement be construed to require Plaintiff or Plaintiffs' Counsel to return or destroy materials that are not marked "Confidential" or "Highly Confidential" pursuant to the terms of the Protective Order.

17. Confidentiality Protection.

Class Counsel and Representative Plaintiff shall continue to abide by the terms of the Parties' Protective Order. Accordingly, in the event the Action or this Settlement is discussed with members of the public, including Settlement Class Members, members of the public generally, and members of the media, Class Counsel and Representative Plaintiff shall not use or disclose materials (or information derived from materials) that are marked or otherwise identified as "Confidential" or "Highly Confidential." In no event shall anything in this Settlement Agreement prohibit the disclosure of the identities of the state and federal agencies that have initiated investigations of Airborne's advertising, marketing and/or sale of the Products.

The Claims Administrator and any other Person(s) involved in notice or claims administration (except for Settlement Class Counsel, the Defendants, and counsel for the Defendants) shall agree in writing to comply with the terms of the Protective Order and the security provisions set forth in the Plan of Administration and Distribution before receiving any notice or claims materials or information, and shall agree in writing to be subject to the jurisdiction of the Court for any violation of such Order or agreement. The Claims Administrator, Settlement Class Counsel, and any other Person(s) involved in claims administration may, upon proper request by any Settlement Class Member, provide to that Settlement Class Member information relating to his, her, or its particular Claim Form.

18. **Termination or Disapproval.**

- (a) Except as provided in Section 19 below, if the Settlement Agreement terminates, or the Court for any reason does not approve the Settlement Agreement on either a preliminary or final basis in a manner consistent with the terms herein, or if such approval is modified, reversed, or set aside on further judicial review, or if the Court enters the Final Judgment and Order of Dismissal and judicial review is sought and, on such review, such Final Judgment and Order of Dismissal is not affirmed such that there is no Final Settlement Approval, then this Settlement Agreement terminates and becomes null and void and shall be without prejudice to the *status quo ante* rights, positions and privileges of the Parties, except as otherwise expressly provided herein. In such case, the Parties shall immediately and jointly move the Court to vacate the Preliminary Approval Order and the Final Judgment and Order of Dismissal to the extent either is then in effect, and no class shall be certified. If for any reason the Settlement Agreement terminates before Final Settlement Approval (including, without limitation, the exhaustion of any judicial review, or requests for judicial review from this Final Judgment and Order of Dismissal), then the certification of the Settlement Class shall be deemed vacated, and the operative complaint in the Action shall be the Second Amended Complaint filed on May 24, 2007. The certification of the Settlement Class solely for settlement purposes shall not be considered as a factor in connection with any subsequent class certification issues. In that event, the Parties shall

return to the *status quo ante* in the Action to their respective positions as of May 31, 2007, without prejudice to the right of any Defendant, Plaintiff, or Class Counsel to assert any right or position that they could have asserted if the Settlement Agreement had never been reached or proposed to the Court. For the avoidance of doubt, if there is no Final Settlement Approval or this Settlement Agreement terminates prior to Final Settlement Approval and the parties return to the *status quo ante* in this Action to their respective positions as of May 31, 2007, nothing herein, including, but not limited to the stipulated certification of the Settlement Class, shall result in the waiver of any right of any Defendant, Plaintiff, or Class Counsel to assert any right or position that it could have asserted if this Settlement Agreement had never been reached or proposed to the Court.

- (b) If the Court rules that class notice does not comport with due process, the Court's ruling shall not constitute a valid basis for terminating this Settlement Agreement. Instead, in that instance, the Parties will work together to develop a notice plan that comports with due process. Defendants shall bear all costs associated with any revised notice plan.

19. **This Settlement Is Not an Admission.**

- (a) Except as expressly provided for in this Settlement Agreement (including, without limitation, its exhibits), the Parties hereto agree that this Settlement Agreement (including, without limitation, its exhibits) shall be without prejudice to the rights, positions, or privileges of any Party. This provision

is applicable whether or not there shall be a Final Settlement Approval, and shall not be deemed or construed to be an admission or evidence of any violation of any statute, law, rule, regulation, or principle of common law or equity, or of any liability or wrongdoing, by any of the Defendants, or of the truth of any of the Claims, and evidence of this Settlement Agreement and any and all negotiations and discussions associated with it shall not be discoverable or used, directly or indirectly, in any way, whether in this action or in any other action or proceeding, except for purposes of demonstrating, describing, implementing, or enforcing the terms and conditions of this Settlement Agreement. In no event, however, shall this Settlement Agreement be construed to preclude Plaintiff or Class Counsel from seeking settlement-related materials in discovery or from seeking to use such material in subsequent litigation. Settlement-related materials include all documents and communications pertaining to investigations by any government or administrative agency (such as the FTC and the various state AGs). Defendants expressly retain the right to assert all objections to such discovery, including but not limited to the Defendants' argument that such information is precluded from discovery by Federal Rule of Evidence 408, or other similar applicable rules. Plaintiff and Class Counsel retain the right to oppose any such arguments.

- (b)** In the event that the Settlement Agreement is terminated, all terms and statements made in furtherance of this Settlement Agreement shall be null and void and shall be inadmissible against any Party hereto.

- (c) The provisions of this Section 19 shall survive the execution of this Settlement Agreement indefinitely, and shall survive any termination hereof.

20. Binding Effect.

This Settlement Agreement shall be binding upon, and inure to the benefit of, the Defendants, the Representative Plaintiff, and all Settlement Class Members, and their respective successors and assigns.

21. Integrated Agreement

This Settlement Agreement (including its exhibits) contains an entire, complete, and integrated statement of each and every term and condition agreed to by and among the Parties and, unless stated otherwise herein, is not subject to any term or condition not provided for herein. This Settlement Agreement supersedes the MOU, except to the extent that provisions thereof are expressly incorporated herein. To the extent this Settlement Agreement is inconsistent with any provision of the MOU, the terms of this Settlement Agreement govern. This Settlement Agreement shall not be modified in any respect except by a writing executed by duly authorized representatives of all the Parties hereto. In entering into this Settlement Agreement, no Party has made or relied on any warranty or representation not specifically set forth herein. There shall be no waiver of any term or condition absent an express writing to that effect by the Party to be charged with that waiver (including, for non-natural Persons, by an authorized representative thereof). No waiver of any term or condition in this Settlement Agreement by any Party shall be construed as a waiver of a subsequent breach or failure of the same term or condition, or waiver of any other term or condition of this Settlement Agreement.

22. Headings.

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

23. No Party Is the Drafter.

No Party hereto shall be considered the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that might cause any provision to be construed against the drafter.

24. Choice of Law.

This Settlement Agreement is made in the State of California, and all terms of this Settlement Agreement and the exhibits hereto shall be governed by and interpreted according to the substantive laws of the State of California without regard to its choice of law or conflict of laws principles; provided, however, that any exhibit hereto that expressly states that it is to be governed by the law of another jurisdiction shall be governed by the law so identified in that exhibit.

25. Authorization to Enter Settlement Agreement.

Each of the undersigned representatives of each of the Part(y/ies) represents that he/she is fully authorized to enter into, and to execute, this Settlement Agreement on behalf of th(at/ose) Part(y/ies). Each of the Parties agrees that, in return for the agreements herein, he/she/it is receiving good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged.

26. Signature.

The Parties may sign this Settlement Agreement hereto, in counterparts, and the signature of counterparts shall have the same effect as if the same instrument had been signed. Signatures sent by facsimile or by other electronic means (*e.g.*, electronic mail) shall be considered as valid signatures as of the Signature Date, although the original signature pages shall thereafter be appended to this Settlement Agreement. This Settlement Agreement shall not be deemed signed until it has been signed by Plaintiff, Class Counsel (*i.e.*, authorized representatives of Wasserman Comden & Casselman LLP, Fazio | Micheletti LLP, and Center for Science in the Public Interest), Counsel for the Individual Defendants and the Corporate Defendants, and an authorized representative of each of the Corporate Defendants and the Individual Defendants have been signed by or on behalf of all of the parties to each of them.

27. Resolution of Disputes; Jurisdiction.

Any dispute between the Defendants and their attorneys and Settlement Class Members and their attorneys concerning the matters contained in this Settlement Agreement, the Preliminary Approval Order or the Final Judgment and Order of Dismissal shall, if they cannot be resolved by negotiation and agreement, be submitted to the Court. The Court shall retain personal and subject matter jurisdiction over the implementation and enforcement of this Settlement Agreement, the Preliminary Approval Order, and the Final Judgment and Order of Dismissal, including, but not limited to, any disputes between the Defendants and their attorneys and Settlement Class Members and their attorneys relating to or arising out of the Releases, the Waiver of Rights, the timeliness and/or validity of any opt out, and/or any Claim Form submitted for payment

from the Net Settlement Fund. In no event, however, shall this Settlement Agreement be construed to require that any claim that was not resolved by this Settlement Agreement be litigated in the Central District of California, provided, however, that this Section of the Settlement Agreement also shall not be construed to preclude any claim that was not resolved by this Settlement Agreement from being litigated in the Central District of California.

28. Publicity.

- (a) Class Counsel, Representative Plaintiff, Defendants, and counsel for Defendants shall not file in any court the full text or substantially all of any copy of this Settlement Agreement during the period from the Signature Date to the date the Motion for Preliminary Approval of this Settlement Agreement is filed.
- (b) Class Counsel and Representative Plaintiff shall continue to abide by the terms of the Parties' Protective Order. Accordingly, in the event the Action or this Settlement is discussed with members of the public, including Settlement Class Members, members of the public generally, and members of the media, Class Counsel and Representative Plaintiff shall not use or disclose materials (or information derived from materials) that are marked or otherwise identified as "Confidential" or "Highly Confidential." In no event shall anything in this Settlement Agreement prohibit the disclosure of the identities of the state and federal agencies that have initiated investigations of Airborne's advertising, marketing and/or sale of the Products.

29. Provision of Notice

All notices under this Settlement Agreement shall be in writing. Except as otherwise specifically provided herein, each such notice shall be given by (i) hand delivery, (ii) facsimile, or (iii) Federal Express or similar overnight courier, addressed to the applicable address set forth on the signature pages hereof, or to such other address or Person as the applicable Person may designate by giving notice in the manner described in this Section.

IN WITNESS WHEREOF, each of the signatories has read and understood this Settlement Agreement, has executed it, and represents that he/she is authorized to execute this Settlement Agreement on behalf of the Part(y/ies) he/she represents, who or which has/have agreed to be bound by its terms upon the Effective Date and has/have entered into this Settlement Agreement.

Dated: August 28, 2007

AGREED AS TO FORM AND SUBSTANCE:



David Wilson

Elise Donahue,
on behalf of Airborne Health, Inc.
Airborne, Inc. and Knight-McDowell
Labs

Victoria Knight-McDowell

Thomas Rider McDowell

Melissa M. Harnett
WASSERMAN, COMDEN &
CASSELMAN LLP
Melissa M. Harnett (SBN 164309)
(mharnett@wcclaw.com)
5567 Reseda Boulevard, Suite 330
Post Office Box 7033
Tarzana, CA 91357-7033
Telephone: 818-705-6800
Telecopier: 818-705-8927

FAZIO | MICHELETTI LLP
Jeffrey L. Fazio (SBN 146043)
(jlf@fazmiclaw.com)
Dina E. Micheletti (SBN 184141)
(dem@fazmiclaw.com)
2140 Camino Ramon, Suite 315
San Ramon, CA 94583
Telephone: 925-543-2555
Telecopier: 925-369-0344

CENTER FOR SCIENCE
IN THE PUBLIC INTEREST
Stephen Gardner (*pro hac vice*)
(sgardner@cspinet.org)
The Meadows Building
5646 Milton Street, Suite 211
Dallas, Texas 75206

Attorneys for Plaintiff
David Wilson, on behalf of himself
and all others similarly situated

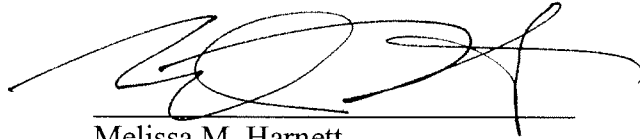
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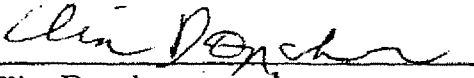
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Jeffrey L. Fazio (SBN 146043)
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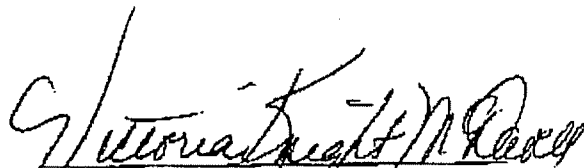
Attorneys for Plaintiff
David Wilson, on behalf of himself
and all others similarly situated

AGREED AS TO FORM AND SUBSTANCE:

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WASSERMAN, COMDEN &
CASSELMAN LLP
Melissa M. Harnett (SBN 164309)
(mharnett@wclaw.com)
5567 Reseda Boulevard, Suite 330
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(jlf@fazmiclaw.com)
Dina E. Micheletti (SBN 184141)
(dem@fazmiclaw.com)
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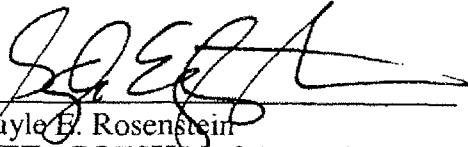


Thomas Rider McDowell

CENTER FOR SCIENCE
IN THE PUBLIC INTEREST
Stephen Gardner (*pro hac vice*)
(sgardner@cspinet.org)
The Meadows Building
5646 Milton Street, Suite 211
Dallas, Texas 75206

Attorneys for Plaintiff
David Wilson, on behalf of himself
and all others similarly situated

APPROVED AS TO FORM:



Gayle E. Rosenstein
WEIL, GOTSHAL & MANGES LLP
Gayle E. Rosenstein (SBN 237975)
(gayle.rosenstein@weil.com)
201 Redwood Shores Parkway
Redwood Shores, CA 94065
Telephone: (650) 802-3000
Telecopier: (650) 802-3100

Attorneys for Defendants Airborne, Inc.,
Airborne Health, Inc., and Knight-McDowell Labs

Gary W. Nevers

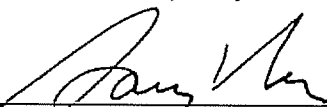
NEVERS, PALAZZO, MADDUX &
PACKARD, PLC
Gary W. Nevers, (SBN 82512)
(gwnevers@npmp.com)
31248 Oak Crest Dr., Suite 100
Westlake Village, CA 91361
Telephone: (818)879-9700
Facsimile: (818)879-9680

Attorneys for Thomas Rider McDowell
and Victoria Knight-McDowell

APPROVED AS TO FORM:

Gayle E. Rosenstein
WEIL, GOTSHAL & MANGES LLP
Gayle E. Rosenstein (SBN 237975)
(gayle.rosenstein@weil.com)
201 Redwood Shores Parkway
Redwood Shores, CA 94065
Telephone: (650) 802-3000
Telecopier: (650) 802-3100

Attorneys for Defendants Airborne, Inc.,
Airborne Health, Inc., and Knight-McDowell Labs



Gary W. Nevers

NEVERS, PALAZZO, MADDUX &
PACKARD, PLC
Gary W. Nevers, (SBN 82512)
(gwnevers@npmp.com)
31248 Oak Crest Dr., Suite 100
Westlake Village, CA 91361
Telephone: (818)879-9700
Facsimile: (818)879-9680

Attorneys for Thomas Rider McDowell
and Victoria Knight-McDowell