

## **STIPULATED SETTLEMENT AGREEMENT AND RELEASE**

This **STIPULATED SETTLEMENT AGREEMENT AND RELEASE** (“Agreement”) is entered into by and between Plaintiffs Lien Scherr, Caryn Gorzo, Kasey Poe, Anna Dohnke, Jolene Lewis Volpe (formerly Barbara Lewis), Bobbie Joe Huling, Cynthia Whetsell, Martha Merle, Teresa Gattuso, Elissa Wagner, and Dixie Williams, individually, and in their representative capacity on behalf of all others similarly situated (collectively “Plaintiffs”), on the one hand, and Defendant Rodan & Fields, LLC (“R+F” or “Defendant”), on the other (collectively referred to as the “Parties” or singularly “Party”) to effect the settlement set forth herein, subject to Court approval.

### **RECITALS**

**A.** On May 1, 2018, Plaintiff Lien Scherr (“*Scherr* Plaintiffs”) filed an amended class action complaint against R+F on behalf of herself and a class of California consumers for: (1) violations of California Business and Professions Code section 17200; (2) violations of the California Business and Professions Code section 17500; and (3) violations of California’s Consumers Legal Remedies Act, Civil Code section 1750. *Scherr, et al. v. Rodan & Fields, LLC*, Case No. CIVDS-1723435 (Cal. Super. Ct., San Bernardino) (the “*Scherr* Action”).

**B.** On May 25, 2018, Plaintiffs Caryn Gorzo, Kasey Poe, and Anna Dohnke (“*Gorzo* Plaintiffs”) filed a first amended class action complaint against R+F on behalf of themselves and a class of California consumers for: (1) violations of California Business and Professions Code section 17200; (2) violations of the California Business and Professions Code section 17500; (3) violations of California’s Consumers Legal Remedies Act, Civil Code section 1750; (4) breach of express warranty; (5) common law fraud; and (6) unjust enrichment (the “*Gorzo* Action”). *Gorzo, et al. v. Rodan & Fields, LLC*, Case No. CGC-18-565628 (Cal. Super. Ct., San Francisco County). The *Gorzo* Action was coordinated with the *Scherr* Action as a Judicial Council Coordinated Proceeding (*Lash Boost Cases*, JCCP 4981) (the “*Gorzo-Scherr* Action”).

**C.** On August 14, 2018, Plaintiffs Jolene Lewis Volpe (formerly Barbara Lewis), Akemi Buckingham, Bobbie Joe Huling, Cynthia Whetsell, Martha Merle, Elaina Hufnagel, Teresa Gattuso, Elissa Wagner, and Dixie Williams (“*Lewis* Plaintiffs”) filed an amended consolidated class action complaint against R+F for: (1) violations of California’s Consumers Legal Remedies Act, Civil Code section 1750, on behalf of the California class; (2) violations of California Business and Professions Code section 17200, on behalf of the California class; (3) violations of the California Business and Professions Code section 17500, on behalf of the California class; (4) violations of the Florida Deceptive and Unfair Trade Practices Act on behalf of the Florida class; (5) violations of the Massachusetts General Law Chapter 93(A) on behalf of the Massachusetts class; (6) violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. 505/01 et seq. and 720 Ill. Comp. Stat. 295/1A, on behalf of the Illinois class; (7) violations of New York’s Consumer Protection from Deceptive Acts and Practices Law on behalf of the New York class; (8) violations of the Washington Consumer Protection Act on behalf of the Washington class; (9) fraudulent concealment on behalf of the California, New York, and Washington classes; (10) fraudulent concealment/misrepresentation on behalf of the Illinois class; (11) fraudulent misrepresentation on behalf of the Florida and Massachusetts classes; (12) negligent misrepresentation on behalf of the California, Florida, Illinois, Massachusetts, Washington classes; and (13) violation of the Racketeer Influenced and

Corrupt Organizations Act on behalf of the nationwide class, a claim that was subsequently dismissed by the federal court. (The “*Lewis* Action” and the *Gorzo-Scherr* Action are collectively, the “Actions.” The *Lewis* Plaintiffs, together with the *Scherr* Plaintiffs and *Gorzo* Plaintiffs, are collectively “Plaintiffs.”)

**D.** The Actions allege, and Plaintiffs contend, that R+F failed to disclose material information to them regarding Lash Boost, and that Lash Boost caused each of them to sustain physical injuries, and/or exposed them to the risk of physical injuries. The Actions allege, and Plaintiffs contend, that Lash Boost contains an ingredient, Isopropyl Cloprostenate (“ICP”), which is alleged to present undisclosed risks of physical injury. Plaintiffs allege that they used Lash Boost, which caused them accidental bodily injury. Based on their own alleged injuries and alleged economic damages, Plaintiffs contend that they have Article III standing and statutory standing, and that R+F was liable to them for, among other things, the sale of an unapproved drug, the sale of an adulterated and misbranded drug, and the failure to disclose material information about potential side effects allegedly presented by ICP. Plaintiffs further contend that R+F should have trained its R+F Independent Consultants to review and discuss product risks and benefits with their customers, and ensure that customers received from their R+F Independent Consultants sufficient information to make informed choices about the product, and to use the product safely.

**E.** R+F denies the allegations asserted in the Actions and denies any liability, or wrongdoing of any kind associated with the claims asserted by Plaintiffs in the Actions. R+F stands behind the safety of Lash Boost, as well as its regulatory status as a cosmetic. R+F denies that it has marketed the product for anything other than cosmetic uses, and maintains that it has never intended that the product affect the structure and/or function of the human body, as those terms are used at 21 U.S.C. § 321(g)(1)(C) and in Cal. Health & Safety Code § 109925(c). By entering into this Agreement, R+F further denies that the classes as defined in the Actions are appropriate for class treatment, but does not oppose certification of a Settlement Class for the sole purpose of settling these Actions.

**F.** Plaintiffs and R+F conducted a thorough investigation of the facts and analyzed the relevant legal issues in regard to the claims asserted in the Actions. Each Party has conducted extensive discovery, including multiple rounds of written discovery, the production of thousands of pages documents, and the depositions of Plaintiffs, R+F personnel, and third parties, including experts. The Parties also have fully briefed motions for class certification and submitted expert declarations in support of and in opposition to class certification in each of the Actions. The motions remain pending and have not been ruled on by either Court.

**G.** In light of the above and in order to avoid the expense, risks and uncertainty of continued litigation, Plaintiffs and R+F agreed to mediate the Actions and have engaged in several mediation sessions with the Hon. Jay C. Gandhi (Ret.) and Peter Rosen of JAMS serving as the independent, third-party mediators. As a result of the mediation sessions and extensive arms-length negotiations, the Parties have reached agreement to resolve the Actions and have agreed to the terms set forth in this Agreement.

## AGREEMENT

**NOW, THEREFORE**, in consideration of the mutual covenants, promises, warranties, representations, agreements and other consideration set forth in this Agreement, the value and sufficiency of which is hereby acknowledged, the Parties hereby agree, subject to Court approval, to the resolution of the Actions under the following terms and conditions:

**1. DEFINITIONS.** In addition to the definitions included in the Recitals above, and in later sections of this Agreement, the following shall be defined terms for purposes of this Agreement. Some of the definitions in this section use terms that are defined later in the section. All defined terms are capitalized and listed in alphabetical order:

**1.1** As used herein, the term “*Authorized Claimant*” means any Settlement Class Member who does not validly request exclusion from the Class and who timely submits a completed and valid Claim Form in accordance with the terms of this Agreement.

**1.2** As used herein, “*Cash Benefit*” means the cash payment that each Settlement Class Member who submits a valid and timely Claim for cash will receive from the Net Settlement Fund.

**1.3** As used herein, the term “*Cash Repeat Purchaser Benefit*” means the Cash Benefit that will be distributed to Settlement Class Members who bought more than one tube of Product and submitted a timely and valid Claim for cash with documentary proof of multiple purchases.

**1.4** As used herein, the term “*Cash Settlement Fund*” means the \$30,000,000 non-reversionary cash settlement fund.

**1.5** As used herein, the term “*Claim*” means a request made by a Settlement Class Member in order to receive a Settlement Benefit pursuant to the procedures stated in Section 5.3.

**1.6** As used herein, the term “*Claim Filing Deadline*” means the deadline by which Settlement Class Members must submit a Claim under the Agreement by filing a Claim Form no later than one-hundred eighty (180) days after entry of the Preliminary Approval Order, or any other date set by the Court.

**1.7** As used herein, the term “*Claim Form*” means the form Settlement Class Members must complete to submit a Claim under this Agreement. The Claim Form must be signed by the Settlement Class Member under penalty of perjury, and shall be substantially similar to the form attached hereto as **Exhibit E**.

**1.8** As used herein, the term “*Class Representative Service Payments*” means the amount awarded by the Court to the Named Plaintiffs serving as representatives of the Settlement Class.

**1.9** As used herein, the term “*Court*” means the California Superior Court, Judge Massullo presiding, in which the *Gorzo-Scherr* Action is pending, and to which presentation of this Agreement for judicial review and approval will be made.

**1.10** As used herein, the term “*Credit Benefit*” means the credit amount that will be distributed to each Settlement Class Member who submits a valid and timely Claim for credit from the Credit Settlement Fund.

**1.11** As used herein, the term “*Credit Repeat Purchaser Benefit*” means the Credit Benefit that will be distributed to Settlement Class Members who bought more than one tube of

Product and submitted a timely and valid Claim for credit with documentary proof of multiple purchases.

**1.12** As used herein, the term “*Credit Settlement Fund*” means the \$8,000,000 non-reversionary credit settlement fund.

**1.13** As used herein, the term “*Defendant*” and “*R+F*” means the named Defendant Rodan & Fields, LLC in the Actions.

**1.14** As used herein, the terms “*Defendant’s Counsel*” and “*R+F’s Counsel*” means the law firm of Steptoe & Johnson LLP.

**1.15** As used herein, the term “*Email Notice*” means the legal notice summarizing the proposed terms of this Agreement, as approved by Plaintiffs’ Counsel, R+F’s Counsel, and the Court, to be provided to Settlement Class Members under Section 5.2(b) of this Agreement via electronic mail. The Email Notice shall be substantially similar to the form attached as **Exhibit C**.

**1.16** As used herein, the term “*Escrow Account*” means an interest-bearing escrow account selected by R+F.

**1.17** As used herein, the term “*Escrow Agent*” means the financial services company, designated by R+F, that maintains the Escrow Account.

**1.18** As used herein the term “*Exclusion Deadline*” means the date that is one-hundred and twenty five (125) days after entry of the Preliminary Approval Order, or any other date set by the Court, by which Class Members must file any request for exclusion from the Settlement, in accordance with the procedures set forth herein and/or in any order of the Court.

**1.19** As used herein, the term “*Fairness Hearing*” means the hearings to be held by the Court to consider and determine whether the Agreement should be approved as fair, reasonable, and adequate, and whether the Final Order and Judgment approving the Agreement should be entered.

**1.20** As used herein, the terms “*Final Order and Judgment*” means the Court’s entry of a final Order approving the Agreement and awarding Class Representative Service Payments and Plaintiffs’ Counsel’s Fees and Expenses, and Judgment following the Fairness Hearing. The proposed Final Order and Judgment that Plaintiffs submit to the Court for its approval shall be substantially similar to the form attached as **Exhibit G**.

**1.21** As used herein, the term “*Full Notice*” means the full legal notice summarizing the proposed terms of this Agreement, as approved by Plaintiffs’ Counsel, R+F’s Counsel, and the Court, to be provided to Settlement Class Members under Section 5.2(a) of this Agreement. The Full Notice shall be substantially similar to the form attached as **Exhibit B**.

**1.22** As used herein, the term “*Injunctive Relief*” means the injunctive relief set forth in **Exhibit F**.

**1.23** As used herein, the term “*Named Plaintiffs*” means the named Plaintiffs active in the Actions as of May 11, 2021.

**1.24** As used herein, the term “*Net Settlement Fund*” means the amount distributed to Settlement Class Members who submit valid and timely Claims for the Cash Benefit and is the

amount of the Cash Settlement Fund less all Settlement Administrator Costs, Taxes, Class Representative Service Payments, and Plaintiffs' Counsel's Fees and Expenses.

**1.25** As used herein, the term "***Objection Deadline***" means the date that is one-hundred and twenty five (125) days after entry of the Preliminary Approval Order, or any other date set by the Court, by which Settlement Class Members must file any objections to the Agreement, in accordance with the procedures set forth herein and/or in any order of the Court.

**1.26** As used herein, the terms "***Plaintiffs' Counsel***" and "***Class Counsel***" mean the law firms of Keller Rohrback LLP, Tycko & Zavareei LLP, Glancy Prongay & Murray LLP, Gibbs Law Group LLP, Beshada Farnese LLP, Levi & Korsinsky LLP, and Willett & Willett LLP.

**1.27** As used herein, the terms "***Plaintiffs' Counsel's Fees and Expenses***" mean the amount awarded by the Court to Plaintiffs' Counsel as reasonable attorneys' fees and expenses reasonably incurred in the Actions.

**1.28** As used herein, the term "***Postcard Notice***" means the legal notice summarizing the proposed terms of this Agreement, as approved by Class Counsel, R+F's Counsel and the Court, to be provided to Settlement Class Members under Section 5.2(c) of this Agreement via regular postal mail in the event Settlement Class Members cannot be notified via Email Notice. The Postcard Notice shall be substantially similar to the form attached as **Exhibit D**.

**1.29** As used herein, the term "***Preliminary Approval Order***" means the order provisionally certifying the Settlement Class for settlement purposes only, approving and directing notice, and setting the Fairness Hearing. The proposed Preliminary Approval Order that Plaintiffs submit to the Court for approval shall be substantially similar to the form attached as **Exhibit A**.

**1.30** As used herein, "***Product***" or "***Lash Boost***" means R+F's ENHANCEMENTS Lash Boost.

**1.31** As used herein, the term "***Released Defendant Parties***" means Defendant R+F and its predecessors, successors, parents, subsidiaries, members, suppliers, indemnitors, insurers, reinsurers, and affiliates, as well as their respective present and former officers, directors, members, shareholders, managers, employees, consultants, attorneys, agents and other representatives.

**1.32** As used herein, the term "***Settlement***" means the settlement of the Actions and related claims effectuated by this Agreement.

**1.33** As used herein, the term "***Settlement Administrator***" means the settlement administrator chosen in accordance with Section 5.1 of this Agreement, subject to approval of the Court, who will provide notice and claims administration for the Settlement.

**1.34** As used herein, the term "***Settlement Administration Costs***" means the amount paid to the Settlement Administrator for administering the Settlement.

**1.35** As used herein, the term "***Settlement Benefit***" means the Cash Benefit, Cash Repeat Purchaser Benefit, Credit Benefit, and Credit Repeat Purchaser Benefit distributed to Settlement Class Members who submit timely and valid Claim Forms in accordance with the terms of this Agreement.

**1.36** As used herein, the term "***Settlement Class***" means, for settlement purposes only, all current and former consumers in the United States or its territories who purchased Lash Boost for

personal, family, or household purposes between October 1, 2016 and the date of the entry of an order granting preliminary approval to the Settlement Agreement, (the “Settlement Class Period”) excluding (a) any individuals who have pending litigation against R+F; (b) any Settlement Class Members who file a timely request for exclusion; (c) any officers, directors, or employees, or immediate family members of the officers, directors, or employees, of R+F or any entity in which R+F has a controlling interest; (d) any person who has acted as an Independent Consultant of R+F; (e) any legal counsel or employee of legal counsel for R+F; (f) any federal, state, or local government entities; (g) any person who has previously released the claims encompassed herein; (h) any person who returned the Product and received a refund; and (i) any judicial officers presiding over the Actions and the members of their immediate family and judicial staff.

**1.37** As used herein, the term “*Settlement Class Member*” means each member of the Settlement Class who does not file a timely request to be excluded from the Settlement.

**1.38** As used herein, the term “*Settlement Date*” means the date on which this Agreement will become effective and on which all of the following have occurred: (a) execution of the Settlement Agreement by all Parties, counsel for the Plaintiffs, and counsel for R+F; (b) certification of the proposed Settlement Class for settlement purposes only; (c) entry of a final order and judgment (“Judgment”) by the Court approving this settlement; and (d) finality of the Judgment by virtue of it having become final and non-appealable through (i) the expiration of all allowable periods for appeal or discretionary appellate review without an appeal or request for discretionary appellate review having been filed, or (ii) final affirmance of the Judgment on appeal or remand, or final dismissal or denial of all such appeals and requests for discretionary review.

**1.39** As used herein, the term “*Settlement Website*” means the website that shall be created for settlement administration purposes and administered by the Settlement Administrator.

**1.40** As used herein, the term “*Taxes*” means: (i) all federal, state, and/or local taxes of any kind (including any interest or penalties thereon) on any income earned by the Cash Settlement Fund; (ii) the expenses and costs incurred in connection with determining the amount of, and paying, any taxes owed by the Cash Settlement Fund (including, without limitation, expenses of tax attorneys and accountants); and (iii) all taxes imposed on payments by the Cash Settlement Fund, including withholding taxes.

**1.41** As used herein, the term, “*Total Settlement Amount*” means the total amount of \$38,000,000, comprised of a Cash Settlement Fund of \$30,000,000 and a Credit Settlement Fund of \$8,000,000, that R+F has agreed to pay under the terms of this Agreement.

## **2. AGREEMENT TERMS.**

**2.1 Cash Settlement Fund.** R+F will establish a non-reversionary Cash Settlement Fund of THIRTY MILLION DOLLARS AND ZERO CENTS (\$30,000,000.00). The Cash Settlement Fund shall be used to pay all Cash Benefits, Settlement Administration Costs, Class Representative Service Payments, and Plaintiffs’ Counsel’s Fees and Expenses and will be deposited into the Escrow Account as set forth in Section 2.4.

**2.2 Net Settlement Fund.** The Net Settlement Fund will consist of at least \$14,000,000 of the Cash Settlement Fund. The Net Settlement Fund will first be allocated pro rata in an amount up to \$175.00 to each Authorized Claimant who submits a Claim for the Cash Benefit. Any remaining funds in the Net Settlement Fund will be allocated pro rata to Authorized Claimants who bought more than one tube of Lash Boost, up to another \$175.00 for one additional unit

purchased, with submission of documentary proof of multiple purchases of Lash Boost. Proof of purchase shall include, but is not limited to, receipts, cancelled checks, or credit card statements showing payment(s) to R+F for purchases of Lash Boost. If there are any funds in the Net Settlement Fund that remain unclaimed after allocation of the Cash Benefits and Cash Repeat Purchaser Benefits, the Parties agree to meet and confer on a plan of distribution within thirty (30) days after allocation of all Cash Benefits and Cash Repeat Purchaser Benefits and submit a plan of distribution to the Court for approval. The Cash Benefit and Cash Repeat Purchaser Benefits will not be distributed to Settlement Class Members until after the Settlement Date.

**2.3 Credit Settlement Fund.** R+F will establish a non-reversionary Credit Settlement Fund of EIGHT MILLION DOLLARS AND ZERO CENTS (\$8,000,000.00). The Credit Settlement Fund will first be allocated pro rata in an amount up to \$250.00 to each Authorized Claimant who submits a Claim for the Credit Benefit. Any remaining funds in the Credit Settlement Fund will be allocated pro rata to Authorized Claimants who purchased more than one tube of Lash Boost, up to another \$250.00 for one additional purchase, with submission of documentary proof of multiple purchases of Lash Boost. Proof of purchase shall include, but is not limited to, receipts, cancelled checks, or credit card statements showing payment(s) to R+F for purchases of Lash Boost. If there are any funds in the Credit Benefit Fund that remain unclaimed after allocation of Credit Benefits and Credit Repeat Purchaser Benefits, the Parties will meet and confer on a plan of distribution within thirty (30) days after allocation of all Credit Benefits and Credit Repeat Purchaser Benefits and submit a plan for distribution to the Court for approval. The Cash Benefit and Cash Repeat Purchaser Benefits will not be distributed to Settlement Class Members until after the Settlement Date.

**2.4 Escrow Account.** The Cash Settlement Fund shall be placed in the Escrow Account as follows:

(a) within seven (7) days of preliminary approval of the Settlement, R+F will deposit an amount equal to the estimated Settlement Administration Costs into the Escrow Account;

(b) within seven (7) days of entry of the Final Order and Judgment, R+F will deposit fifty percent (50%) of Plaintiffs' Counsel's Fees and Expenses, as awarded by the Court, into the Escrow Account upon R+F's receipt of the bond or letter of credit as set forth in Section 2.9. R+F has no obligation to deposit any portion of Plaintiffs' Counsel's Fees and Expenses into the Escrow Account in accordance with this Section 2.4(b) unless and until it receives the bond or letter of credit described in Section 2.9; and

(c) within seven (7) days of the Settlement Date, R+F will deposit the remaining outstanding balance of the Cash Settlement Fund into the Escrow Account, which shall be used to pay Plaintiffs' Counsel's Fees awarded by the Court, the Cash Benefits, the Class Representative Service Payments, the Cash Repeat Purchaser Benefits and any remaining Settlement Administration Costs.

**2.5 Injunctive Relief.** The Parties agree to the Injunctive Relief set forth in Exhibit F. No later than 60 days after the Settlement Date, the label changes reflected in Exhibit F will be added to the Product in production, and changes to the website and training contemplated by Exhibit F will be implemented. Any Product that is already packaged at the time the new labels are added to the production line will not be changed. The Parties agree that R+F may sell through its inventory of Product with the existing labels, provided that the other changes are timely implemented. Where good cause exists, such as changes of circumstance or law, the order of

Injunctive Relief may be modified upon R+F's application to the Court consistent with section 6.21, and after providing notice to Plaintiffs' Counsel pursuant to section 6.26. The Parties further agree that if R+F makes some or all of the label, website or training changes before the Settlement Date, these changes will not be construed as party admissions should the Settlement not result in a final, non-appealable judgment.

## **2.6 Award of Settlement Benefits to the Settlement Class.**

(a) **Cash Benefit Awards.** To each Authorized Claimant who selects a Cash Benefit and submits a valid Claim Form, the Settlement Administrator will issue payment for an amount not to exceed \$175.00. Payments may be issued in the form of a check or an electronic fund transfer or cash debit account made payable to the Authorized Claimant listed on the Claim Form. Checks will be sent via U.S. Mail to the address on the Claim Form or a forwarding address provided by the Authorized Claimant or United States Postal Service. Checks expire six months after the date on the check. Electronic payments will be sent in accordance with the instructions provided by the Authorized Claimant.

(b) **Credit Benefit Awards.** To each Authorized Claimant who submits a valid Claim Form for credit, the Settlement Administrator will issue a Credit Benefit in the form of one (1) voucher with a credit amount not to exceed \$250.00 ("Voucher"). The Voucher will be sent via email to the email address provided by the Authorized Claimant on the Claim Form. Any Voucher that cannot be sent via email, will be sent via U.S. Mail to the Authorized Claimant at the address listed on the Claim Form or a forwarding address provided by the Authorized Claimant or United States Postal Service. The Voucher is fully transferable but shall have no cash value and shall not be redeemable for cash in any amount, including without limitation for any unused portion of the Voucher. The Voucher may be used toward any R+F product available on R+F's website or through any Independent Consultant of R+F, with no minimum purchase required. The Voucher shall have no expiration date. The Parties acknowledge that, where applicable, unused Vouchers shall be subject to federal escheat laws or state escheat laws. All other rights and limitations to the Vouchers as set forth in state and federal law are applicable. The Vouchers are not gift cards and the Parties do not intend for any gift card laws to apply to the Voucher. R+F is not responsible for any lost or stolen Vouchers.

(c) **Awards to Authorized Claimants With Multiple Purchases.** Subject to the pro rata distribution set forth in Sections 2.2 and 2.3 above, and subject to the availability of funds, for each Authorized Claimant who submits a valid Claim Form with documentary proof of multiple purchases of Product, the Settlement Administrator will issue: (1) a Cash Repeat Purchaser Benefit to each Authorized Claimant who requested a Cash Benefit; and (2) a Credit Repeat Purchaser Benefit to each Authorized Claimant who requested a Credit Benefit. The Cash Repeat Purchaser Benefit and Credit Repeat Purchaser Benefit will be issued in the same manner as the Cash Benefit and Credit Benefit set forth in 2.6(a) and (b).

**2.7 Distribution of Settlement Benefit.** Within sixty (60) calendar days of the Settlement Date, the Settlement Administrator will distribute the Settlement Benefit to the Authorized Claimants as set forth in Section 2.6(a)-(c) above.

**2.8 Class Representative Service Payments.** The Parties acknowledge that Named Plaintiffs will apply to the Court for approval of the Class Representative Service Payments in the amount of \$15,000 per Named Plaintiff in recognition of their efforts and activities in furtherance



of both the litigation and this Agreement. Class Representative Service Payments shall be paid from the Cash Settlement Fund and will not be distributed to Plaintiffs until after the Settlement Date. The Parties further agree that R+F will not be obligated to pay any Class Representative Service Payment in excess of \$15,000 for each Named Plaintiff. If the Court approves the Agreement and the Class Representative Service Payments to Named Plaintiffs, the Class Representative Service Payments approved by the Court will be paid by the Settlement Administrator within ten (10) calendar days after the funds are deposited into the Escrow Account as set forth in Section 2.4(c). The Parties represent that their negotiation of, and agreement to, the compensation paid to the Named Plaintiffs did not occur until after the substantive terms of the Agreement had been negotiated and agreed to in principle with the assistance of Hon. Jay C. Gandhi (Ret.). No interest shall be paid on the Class Representative Service Payments.

**2.9 Plaintiffs' Counsel's Fees and Expenses.** The Parties acknowledge that Plaintiffs shall move the Court for approval of an award of Plaintiffs' Counsel's Fees and Expenses to Plaintiffs' Counsel. If the Court approves the Agreement and an award of attorneys' fees and expenses to Plaintiffs' Counsel, Plaintiff's Counsel's Fees and Expenses shall be paid in accordance with Section 2.4(b) and (c), notwithstanding the existence of any timely filed objections thereto, potential for appeal therefrom, or collateral attack on the settlement or any part thereof, subject to Plaintiffs' Counsel's obligation to provide a bond or letter of credit guaranteeing repayment of the amount of Plaintiffs' Counsel's Fees and Expenses awarded by the Court and to make appropriate refunds or repayments to the Cash Settlement Fund (including the net interest that would have been earned if the amounts paid had remained in the Escrow Account) if the Settlement is terminated pursuant to the terms of this Agreement or if, as a result of any appeal or further proceedings on remand, the award of attorneys' fees and/or expenses is reduced or reversed. Until the Settlement Date, Plaintiffs' Counsel's Fees and Expenses may not be paid from the Escrow Account unless and until R+F receives the bond or letter of credit described in this Section 2.9. Except as otherwise provided herein, Plaintiffs' Counsel and R+F's counsel shall bear their own respective fees, costs, and expenses. No interest shall be paid on any portion of Plaintiffs' Counsel's Fees and Expenses.

**2.10 Reduction in Plaintiffs' Awards or Class Counsel's Attorneys' Fees.** A reduction by the Court or by an appellate court of the Class Representative Service Payments or Plaintiffs' Counsel's Fees and Expenses sought by Plaintiffs and Plaintiffs' Counsel shall not affect any of the Parties' other rights and obligations under the Agreement.

**2.11 No Tax Liability.** No provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor will be construed or relied upon as, tax advice. Each Party has relied exclusively upon his, her or its own independent legal and tax advisers for advice (including tax advice) in connection with this Agreement. Settlement Class Members and/or Plaintiffs' Counsel shall be solely responsible for any Taxes on any recovery, Settlement Benefit or award under this Agreement.

### **3. RELEASE AND WAIVER.**

**3.1 Release by Plaintiffs and Settlement Class.** Effective immediately upon the Settlement Date, Plaintiffs and each Settlement Class Member who does not timely opt-out of the Settlement shall fully, completely and forever release and discharge the Released Defendant

Parties from any and all past, present, or future claims, liabilities, actions, allegations, complaints, demands, obligations, causes of action, suits, rights, damages, debts, guarantees, orders, controversies, penalties, promises, covenants, losses, costs, expenses, or attorneys' fees of every kind, nature and source whether legal, equitable or otherwise, whether based on contract (express, implied, or otherwise), tort, common law, any state or federal law, statute or regulation or any other theory of recovery, whether brought under the laws of any state, federal or other government, whether known or unknown, asserted or unasserted, accrued or unaccrued, fixed or contingent, suspected or unsuspected, and whether seeking compensatory, exemplary, punitive, restitution, disgorgement, statutory, or injunctive relief or damages of any kind or multiplier thereof, that Plaintiffs and each Settlement Class Member now have or may hereafter accrue or otherwise be acquired, arising out of or related to the subject matter of the Actions involving Lash Boost, including, but not limited to, the sale, purchase, marketing, advertising, distribution, design, formulation, manufacture, the rendering of advice by R+F Independent Consultants, the failure to train R+F Independent Consultants, and the labelling of the Product during the Settlement Class Period ("Released Plaintiffs' Claims"). Specifically excluded from the release are individual personal injury or disease claims, including existing claims, as well as latent or unknown individual personal injury or disease claims, held by Settlement Class Members.

**3.2 Release by Defendant.** "R+F's Released Claims" means all claims, including "Unknown Claims" as defined in Section 3.3, that any of the Released Defendant Parties may have against Plaintiffs, Settlement Class Members that did not timely request exclusion from the Settlement Class, or Class Counsel relating to the institution, prosecution or settlement of the Actions or the Released Plaintiffs' Claims, except for claims to enforce any of the terms of this Agreement. Effective immediately upon the Settlement Date, each of the Released Defendant Parties: (i) shall be deemed to have, and by operation of the Final Order and Judgment shall have, fully, finally, and forever released and discharged Plaintiffs, Class Counsel, and Settlement Class Members that did not timely request exclusion from the Settlement Class, from each and every one of the R+F's Released Claims; (ii) shall forever be enjoined from prosecuting any one of R+F's Released Claims; and (iii) agree and covenant not to sue on the basis of any of R+F's Released Claims or to assist any third-party in commencing or maintaining any such suit related to any of R+F's Released Claims.

**3.3 Release of Unknown Claims.** It is the clear and unequivocal intention of the Parties, that this Settlement shall be effective as a full and final accord and satisfaction, release, and discharge of each and every released claim specifically or generally referred to in this Settlement, with the sole exception being any personal injury or disease claims held by Settlement Class Members which are specifically excluded from the release in Section 3.1 above. In furtherance of this intention, each Plaintiff and each Settlement Class Member that did not timely request exclusion from the Settlement Class, and each of the Released Defendant Parties acknowledges and agrees that s/he or it understands Section 1542 of the Civil Code of the State of California, which provides as follows:

**"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."**

Plaintiffs and each Settlement Class Member who did not timely request exclusion from the Settlement Class waives and relinquishes any and all rights and benefits which s/he has or may have under Section 1542 of the Civil Code of the State of California, and under any similar or comparable provision, whether statutory or common law, of any other state or territory of the United States to the full extent that s/he may lawfully so waive all such rights and benefits pertaining to the subject matter of the release set forth in Section 3.1 of this Agreement.

**3.4 No Admission of Liability or Wrongdoing.** The Parties have resolved the Actions on a mutually agreeable basis after extensive arms-length negotiations, with no concession, acknowledgment or admission whatsoever of liability or wrongdoing of any kind by R+F. Nothing in the fact or principal terms of settlement, the settlement proceedings, the settlement negotiations, this Agreement or any stipulation to or certification of the Settlement Class Member shall constitute or be used as an admission of any act or omission, liability or wrongdoing of any kind by R+F, or be used or offered in any action or proceeding or received in evidence against R+F as an admission, concession, presumption, or inference in any way, in any matter or otherwise, including as an admission of the propriety or feasibility of certifying a class. R+F expressly denies any and all claims of wrongdoing and denies any and all liability to Plaintiffs and the Settlement Class. Any and all discussions, statements, and/or communications of any type between the Parties and their counsel in the course of settlement negotiations shall remain confidential subject to the mediation privilege and subject to California Evidence Code sections 1152 and 1154 and Federal Rule of Evidence 408.

#### **4. AMENDED CONSOLIDATED COMPLAINT AND COURT APPROVAL PROVISIONS.**

**4.1 California Superior Court.** The Parties will seek approval of the Settlement before Judge Massullo in the Superior Court, County of San Francisco, where the *Gorzo-Scherr* Action is pending. Concurrently with seeking preliminary approval of the Settlement, Plaintiffs will file a motion for leave to amend with a proposed amended complaint to be deemed filed at preliminary approval in the *Gorzo-Scherr* Action adding the *Lewis* Plaintiffs as parties to the *Gorzo-Scherr* Action and nationwide allegations. Subject to Court approval, the Parties agree that the due date for R+F to respond to the amended complaint is stayed pending final approval of the Settlement. In the event that the Settlement does not receive final approval, the terms of Sections 4.5 and 4.6 shall apply, and the Amended Complaint shall be deemed withdrawn in favor of the current operative complaint in the *Gorzo* action.

**4.2 Preliminary Approval and Provisional Class Certification.** Plaintiffs shall file their motion for preliminary approval as soon as feasibly possible. The motion for preliminary approval shall request that the Court:

- (a) preliminarily approve this Agreement as fair, adequate, and reasonable;
- (b) preliminarily approve the form, manner, and content of the Full Notice, Email Notice, Postcard Notice and Claim Form described in Section 5.2 of this Agreement, and attached as **Exhibits B–E**;
- (c) direct notice to be made to Settlement Class Members as described in this Agreement;

(d) set a deadline for the filing of objections, exclusions, Claim Form submission, the filing of the fee, cost, and award motion, the final approval motion; and schedule the date of the Fairness Hearing;

(e) provisionally certify the Settlement Class under CAL. R. CT. 3.769(d) for settlement purposes only;

(f) stay all proceedings in the *Gorzo-Scherr* Action until the Court renders a final decision on approval of the Agreement;

(g) conditionally appoint Named Plaintiffs as the Class Representatives for settlement purposes only; and

(h) conditionally appoint the law firms identified in Section 1.26 as Class Counsel for settlement purposes only.

The proposed Preliminary Approval Order shall be substantially similar to the form attached as **Exhibit A**. R+F shall be permitted, but not required, to file its own brief or statement as may be necessary to state its positions and defend its interests in response to Plaintiffs' motion for preliminary approval of the Settlement. Plaintiffs agree to permit R+F to review Plaintiffs' motion for preliminary approval of the Settlement at least one (1) calendar day before filing. R+F will not oppose certification of the Settlement Class.

**4.3 Final Court Approval of the Settlement.** At least fourteen (14) calendar days before the final Fairness Hearing set by the Court, Plaintiffs will file a motion for final approval of the Settlement and proposed Final Order and Judgment:

(a) Approving the Agreement as fair, reasonable and adequate and directing completion of the terms and provisions of this Agreement;

(b) Adjudicating that the releases contained in Section 3.1, 3.2 and 3.3 of this Agreement bind each Settlement Class Member who does not timely opt out of the Settlement;

(c) Certifying the Settlement Class under CAL. R. CT. 3.769(d) for settlement purposes only;

(d) Approving Class Representative Service Payments for each Named Plaintiff as compensation for their services as the class representatives;

(e) Approving an award of Plaintiffs' Counsel's Fees and Expenses as reasonable attorneys' fees and costs;

(f) Entering judgment in the *Gorzo-Scherr* Action; and

(g) Retaining the Court's jurisdiction over the enforcement of this Settlement.

The proposed Final Order and Judgment shall be substantially similar to the form attached as **Exhibit G**. R+F shall be permitted, but not required, to file its own brief or statement as may

be necessary to state its positions and defend its interests in response to Plaintiffs' motion for final approval of the Settlement. Plaintiffs agree to permit R+F to review Plaintiffs' motion for final approval of the Settlement at least two (2) calendar days before filing. R+F will not oppose certification of the Settlement Class.

**4.4 Proof of Notice.** No later than seven (7) calendar days before the deadline for Plaintiffs to file their brief in support of the Final Order and Judgment, the Settlement Administrator will serve upon Class Counsel and R+F a declaration confirming that notice to the Settlement Class has been provided in accordance with Section 5 of this Agreement.

**4.5 Court Approval Contingency.** This entire Settlement is contingent upon Court approval. Absent Court approval there is no settlement, and the procedural status of the Actions shall return to the *status quo ante*. If this Settlement is not approved by the Court, the Parties expressly reserve all of their rights, remedies and defenses, including but not limited to R+F's right to challenge class certification on any and all grounds.

**4.6 If the Settlement Does Not Become Final.** If the Court, or a reviewing court, fails to approve the Settlement or modifies or rejects the Settlement's terms in any material way, the Settlement will be deemed null and void, as if it had never been entered into by the Parties. In the event the Parties disagree over whether a modified or rejected term is material, the Parties shall reengage the mediator, first by way of expedited telephonic mediation and if unsuccessful, then by way of final, binding, non-appealable resolution. In the event the Settlement is deemed null and void, the Parties will resume the Actions as if the Settlement had not been entered, and the terms set forth in this Agreement will have no force and effect and may not be used in these Actions or any other action or proceeding of any kind for any purpose.

**4.7 The Settlement Date.** The Settlement does not become final or effective, subject to Court approval, until the Settlement Date.

## **5. CLASS NOTICE AND CLAIMS PROCEDURES.**

**5.1 Settlement Administration.** Notice and claims administration will be performed by the Settlement Administrator chosen by Plaintiffs' Counsel, subject to approval of the Court, from the following list of administrators: Epiq, Angeion, RG2, AB Data, P&N Consulting, KCC, Rust, or JND with the consent of R+F, which will not be unreasonably withheld. Plaintiffs' Counsel will receive price quotes for notice and administration from at least three potential settlement administrators and will share them with R+F. R+F and Plaintiffs' Counsel will work cooperatively with the Settlement Administrator in connection with administering the Settlement. The Settlement Administrator will be paid from the Cash Settlement Fund, and such payments will include, all costs, fees, and expenses that are incurred by the Settlement Administrator in connection with: (a) providing notice to the Settlement Class; and (b) administering the Settlement, including but not limited to the claims process.

**5.2 Class Notice.** Subject to the Court entering the Preliminary Approval Order, the Parties agree that the Settlement Administrator will provide notice and no more than one reminder notice in accordance with subsections (a) through (d) below via methods reasonably calculated to apprise the Settlement Class of the terms of the Settlement and Settlement Class Members' rights thereunder. R+F will use reasonable efforts to identify those customers who may be in the Settlement Class and to provide all available contact information, including email address, mailing

address, telephone, social media contact or other forms of contact, for those customers to the Settlement Administrator for the purpose of delivering notice in the methods outlined below.

**(a) Settlement Website and Full Notice.** The Settlement Administrator shall create the Settlement Website for this Settlement. The web address for the Settlement Website will be [www.LBsettlement.com](http://www.LBsettlement.com) or a name substantially similar and approved in advance by R+F. The Full Notice shall be posted on the Settlement Website and shall be substantially similar to the form attached as **Exhibit B**. The Settlement Website will also contain the Claim Form, Complaint, Agreement, Frequently Asked Questions (“FAQs”) about the Settlement prepared by R+F and approved by Class Counsel, the Preliminary Approval Order and Final Order and Judgment, following entry by the Court, and such other information agreed to by Plaintiffs’ Counsel and R+F. Within seven (7) court days of when Class Counsel files a motion for attorneys’ fees and costs, the Internet Posting will also post the fees and costs motion. The Settlement Website shall be operative starting on or before twenty (20) calendar days after entry of the Preliminary Approval Order and shall remain active for sixty (60) days after distribution of the Settlement Benefit to the majority of Authorized Claimants.

**(b) Email Notice.** The Settlement Administrator will send an Email Notice to each Settlement Class Members with a valid email address provided by R+F. The Email Notice shall be substantially similar to the form attached as **Exhibit C** and will provide the web address of the Settlement Website and an email and mailing address to contact the Settlement Administrator. The Settlement Administrator will provide the Email Notice on or before sixty (60) calendar days after entry of the Preliminary Approval Order.

**(c) Postcard Notice.** The Settlement Administrator will send a Postcard Notice to any Settlement Class Member for whom Email Notice it is not reasonable or available and for whom it has a postal address. The Postcard Notice shall be substantially similar to the form attached as **Exhibit D**, and will provide the web address of the Settlement Website and an email and mailing address to contact the Settlement Administrator. The Settlement Administrator, will provide the Postcard Notice on or before sixty (60) calendar days after entry of the Preliminary Approval Order.

**(d) Text or Social Media Notice.** If a reminder notice is needed as set forth herein or if Email Notice or Postcard Notice is not reasonable or available to more than ten percent of Settlement Class Members, the Settlement Administrator upon ten (10) days advance notice to Class Counsel and R+F’s Counsel, and with their consent, which will not be unreasonably withheld, shall provide such notice via text messages or social media. The text or social media notices shall be substantially similar to the Email Notice, unless otherwise agreed to by the Parties. The Settlement Administrator will provide no more than one reminder notice to Settlement Class Members who have already been provided with Email Notice or Postcard Notice only if agreed to by Plaintiffs’ Counsel and R+F’s Counsel based on the number of Claim Forms submitted to the Settlement Administrator at least fourteen (14) days prior to the Claim Filing Deadline. The Settlement Administrator will provide an agreed upon reminder notice no more than seven (7) days prior to the Claims Filing Deadline.

### **5.3 Claims Procedure.**

(a) Each Settlement Class Member who wishes to obtain a Settlement Benefit must submit a complete and valid Claim Form on or before the Claim Filing Deadline. Each Settlement Class Member must elect a Cash Benefit or Credit Benefit on the Claim Form.

(b) The Claim Form may be submitted electronically or by postal mail. The delivery date is deemed to be the date (i) the Claim Form is deposited in the U.S. Mail as evidenced by the postmark, in the case of submission by U.S. mail, or (ii) in the case of submission electronically through the Settlement Website, the date the Settlement Administrator receives the Claim Form, as evidenced by the transmission receipt.

**5.4 Right to Verify.** The Settlement Administrator shall review all submitted Claim Forms and supporting documentation for completeness, validity, accuracy, and timeliness and may contact any claimant to request additional information and/or documentation to determine the validity of any Claim. In addition, the Settlement Administrator and/or R+F may verify that: (i) the information set forth in or attached to a submitted Claim Form is accurate; and (ii) the Claimant is a Settlement Class Member.

**5.5 Objections.** Any Settlement Class Member who has not submitted a timely written exclusion request pursuant to Section 5.6 of this Agreement and who wishes to object to the fairness, reasonableness, or adequacy of the Agreement, may elect to object to the Agreement by sending a written objection to the Settlement Administrator that (a) states the case name and number: *Lash Boost Cases*, JCCP No. 4981 (Cal. Superior Ct., San Francisco County); (b) states the full name, address, and telephone number of the Settlement Class Member making the objection; (c) contains a statement that he/she objects to the Agreement and the reasons for the objections; and (d) is signed by the Settlement Class Member making the objection or an authorized representative. The written objection must be submitted to the Settlement Administrator either electronically through the Settlement Website or by U.S. Mail. The written objection must be submitted electronically or postmarked no later than the Objection Deadline. The Settlement Administrator must serve on Class Counsel and R+F's Counsel a list of Settlement Class Members who have objected along with the substance of those objections no later than seven (7) court days prior to the filing date of Plaintiffs' motion for final approval. If a Settlement Class Member submits both an exclusion request and an objection, the exclusion request shall take precedence and be considered valid and binding, and the objection shall be deemed to have been sent by mistake and rejected.

(a) Settlement Class Members have the option to appear at the Fairness Hearing, either in person or through counsel hired at the Settlement Class Member's expense, to object to the fairness, reasonableness, or adequacy of the Agreement, or to the award of attorneys' fees regardless of whether they have timely submitted a written objection to the Settlement Administrator.

**5.6 Exclusion from the Settlement Class.** Settlement Class Members may elect not to be part of the Settlement Class and not to be bound by this Agreement. To make this election, Settlement Class Members must submit a Notice of Opt-Out electronically or by postal mail. Settlement Class Members may also send a signed letter or postcard to the Settlement Administrator stating: (a) the name and case number of the *Gorzo-Scherr* Action; (b) the full name, address, and telephone number of the person requesting exclusion; and (c) a statement that he/she does not wish to participate in the Agreement, postmarked no later than the Exclusion Deadline. The Settlement Administrator must serve on Class Counsel and R+F's Counsel a list of Settlement

Class Members who have timely and validly excluded themselves from the Settlement Class no later than seven (7) court days prior to the filing date of Plaintiffs' motion for final approval. If a Settlement Class Member submits both a Claim Form and an exclusion request, the Claim Form shall take precedence and be considered valid and binding, and the exclusion request shall be deemed to have been sent by mistake and rejected.

## **6. ADDITIONAL PROVISIONS.**

**6.1 Change of Time Periods.** All time periods and dates described in this Agreement are subject to the Court's approval. These time periods and dates may be changed by the Court or by the Parties' written agreement without notice to the Settlement Class.

**6.2 Inadmissibility.** This Agreement (whether approved or not approved, revoked, or made ineffective for any reason) and any proceedings or discussions related to this Agreement are inadmissible as evidence of any liability or wrongdoing whatsoever in any court or tribunal in any state, territory, or jurisdiction. Further, this Agreement shall not be construed or offered or received into evidence as an admission, concession, or presumption that class certification is appropriate, except to the extent necessary to consummate this Agreement and the binding effect of the Final Order and Judgment.

**6.3 Mutual Cooperation and Best Efforts.** The Parties acknowledge and agree to fully cooperate with each other and use their best efforts to accomplish the terms of this Agreement, including but not limited to the execution of documents and any other action reasonably necessary to implement the Settlement and the terms and conditions of this Agreement.

**6.4 No Prior Assignments.** In executing this Agreement, each Plaintiff and Settlement Class Member warrants and represents that s/he has not assigned, sold, transferred or otherwise disposed to any third party any actual or potential claim, any portion of any actual or potential claim, or any other matters that are being released in the Agreement. Each Plaintiff and Settlement Class Member agrees to defend, indemnify, and hold harmless R+F from and against any claim (including payment of attorneys' fees and costs) based on or in connection with or arising out of any such assignment, sale, transfer, or other disposition made, purported or claimed.

**6.5 Non-Reversionary Settlement.** There will be no reversion of any funds to R+F.

**6.6 Qualified Settlement Fund.** The Parties agree that the Cash Settlement Fund, plus any interest accrued thereon, is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.458B-1.

**6.7 Intervening Change of Law.** Except as expressly provided herein in relation to the Injunctive Relief, the Settlement will not be affected by any future change, modification, reversal or clarification of law. Any change, modification, reversal or clarification of law will not affect the validity or enforceability of the Settlement unless such change, modification, reversal or clarification of law renders this Agreement unlawful.

**6.8 Voluntary Agreement.** This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of the Parties, or of any other person, firm, or entity.

**6.9 Binding on Successors.** This Agreement shall bind and inure to the benefit of the respective successors, assigns, legatees, heirs, and personal representatives of each of the Parties.



**6.10 Solvency.** R+F warrants and represents that it is not “insolvent” within the meaning of 11 U.S.C. § 101(32) both as of the time this Agreement is executed and as of the time the Cash Settlement Fund is actually transferred or made as reflected in this Agreement. In the event of a final order of a court of competent jurisdiction, not subject to any further proceedings, determining the transfer of the Cash Settlement Fund, or any portion thereof, by or on behalf of R+F to be a preference, voidable transfer, fraudulent transfer, or similar transaction under the federal bankruptcy code or applicable state law and any portion thereof is required to be refunded, then, at the election of Plaintiffs’ Counsel, the Settlement may be terminated and the releases given and the judgment entered in favor of R+F pursuant to the Settlement shall be null and void.

**6.11 Parties Represented by Counsel.** The undersigned Parties hereby acknowledge that they have been represented in negotiations for and in the preparation of this Agreement by independent counsel of their own choosing, that they have read this Agreement and have had it fully explained to them by such counsel, and that they are fully aware of the contents of this Agreement and of its legal effect.

**6.12 Authorization.** Each Party warrants and represents that there are no liens or claims of lien or assignments in law or equity or otherwise of or against any of the claims or causes of action released herein. Each Party represents that s/he or it is fully and duly authorized to enter into and to execute this Agreement.

**6.13 Entire Agreement.** This Agreement and all exhibits hereto contain the entire agreement between the Parties and constitute the complete, final, and exclusive embodiment of their agreement with respect to the Actions. This Agreement is executed without reliance on any promise, representation, or warranty by any Party or any Party’s representative other than those expressly set forth in this Agreement.

**6.14 Construction and Interpretation.** Neither the Parties nor any of the Parties’ respective attorneys shall be deemed the drafter of this Agreement for purposes of interpreting any provision hereof in any judicial or other proceeding that may arise between or among them. This Agreement has been, and must be construed to have been, drafted by all the Parties to it, so that any rule that construes ambiguities against the drafter will have no force or effect.

**6.15 Headings and Formatting of Definitions.** The various headings used in this Agreement are solely for the convenience of the Parties and shall not be used to interpret this Agreement. Similarly, bolding and italicizing of definitional words and phrases is solely for the Parties’ convenience and may not be used to interpret this Agreement. The headings and the formatting of the text in the definitions do not define, limit, extend, or describe the Parties’ intent or the scope of this Agreement.

**6.16 Modifications and Amendments.** No amendment, change, or modification of this Agreement or any part thereof shall be valid unless in writing signed by the Parties or their counsel and approved by the Court.

**6.17 Governing Law.** This Agreement is entered into in accordance with the laws of the State of California and shall be governed by and interpreted in accordance with the laws of the State of California, exclusive of its conflicts of law principles. R+F agrees that for purposes of the Settlement the Superior Court may assert general personal jurisdiction over it.

**6.18 Agreement Constitutes a Complete Defense.** To the extent permitted by law, this Agreement may be pled as a full and complete defense to, and may be used as the basis for an

injunction against, any action, suit, or other proceedings that may be instituted, prosecuted, or attempted in breach of or contrary to this Agreement.

**6.19 Execution Date.** This Agreement shall be deemed executed upon the last date of execution by all of the undersigned parties.

**6.20 Northern District of California.** As soon as practicable after the Settlement Date, R+F and the *Lewis* Plaintiffs will jointly move for dismissal with prejudice of the *Lewis* Action.

**6.21 Continuing Jurisdiction.** The Parties agree that the Court shall retain jurisdiction for eight years over the interpretation, effectuation, and implementation of this Agreement.

**6.22 Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument. The several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies of executed copies of this Agreement may be treated as originals.

**6.23 Recitals.** The Recitals are incorporated by this reference and are part of the Agreement.

**6.24 No Conflict Intended.** Any inconsistency between this Agreement and the attached exhibits will be resolved in favor of this Agreement.

**6.25 Class Counsel Signatories.** Because the members of the Settlement Class could potentially be numerous, it is impossible or impractical to have each member of the Settlement Class execute this Agreement. The Full Notice to the Settlement Class described above will advise all members of the Settlement Class of the binding nature of the releases in this Agreement. Such Full Notice, when approved by the Court and completed by the Parties, will have the same force and effect as if this Agreement were executed by each Settlement Class Member who does not timely opt out of the Settlement.

**6.26 Notices.** Any notice, instruction, objection or application to the Court sought in connection with this Agreement or other document to be given by any Party to any other Party shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid, if to R+F to the attention of R+F's Counsel, and if to Settlement Class Members to the attention of Plaintiffs' Class Counsel on their behalf.

PLAINTIFFS' COUNSEL	R+F'S COUNSEL
<p style="text-align: center;">Michael D. Woerner Juli E. Farris <b>Keller Rohrback LLP</b> 1201 3rd Avenue, Suite 3200 Seattle, WA 98101</p> <p style="text-align: center;">Annick Persinger <b>Tycko &amp; Zavareei LLP</b> 1970 Broadway, Suite 1070 Oakland, CA 94612</p>	<p style="text-align: center;">Stephanie A. Sheridan Anthony J. Anscombe <b>Steptoe &amp; Johnson LLP</b> One Market Street, Spear Tower, Suite 3900 San Francisco, CA 94105</p>

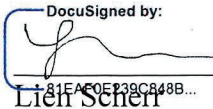
**6.27 List of Exhibits:** The following exhibits are attached to this Agreement:

- Exhibit A: [Proposed] Preliminary Approval and Provisional Class Certification Order
- Exhibit B: Full Notice
- Exhibit C: Email Notice
- Exhibit D: Postcard Notice
- Exhibit E: Claim Form
- Exhibit F: Injunctive Relief
- Exhibit G: [Proposed] Final Approval Order and Judgment
- Exhibit H: Notice of Opt-Out

**AGREED TO AND ACCEPTED:**

Dated: October \_\_, 2021  
10/25/2021

**Plaintiff Lien Scherr**

By:  \_\_\_\_\_  
Lien Scherr

Dated: October 25, 2021

**Plaintiff Caryn Gorzo**

By: \_\_\_\_\_  
Caryn Gorzo

Dated: October 25, 2021

**Plaintiff Kasey Poe**

By: \_\_\_\_\_  
Kasey Poe

Dated: October 25, 2021

**Plaintiff Anna Dohnke**

By: \_\_\_\_\_  
Anna Dohnke

Dated: October \_\_, 2021

**Plaintiff Jolene Lewis Volpe**

By: \_\_\_\_\_  
Barbara Lewis

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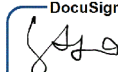
Dated: October \_\_, 2021

**Plaintiff Lien Scherr**

By: \_\_\_\_\_  
Lien Scherr

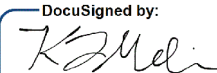
Dated: October 25, 2021

**Plaintiff Caryn Gorzo**

By:  \_\_\_\_\_  
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Caryn Gorzo

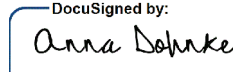
Dated: October 25, 2021

**Plaintiff Kasey Poe**

By:  \_\_\_\_\_  
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Kasey Poe

Dated: October 25, 2021

**Plaintiff Anna Dohnke**

By:  \_\_\_\_\_  
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Anna Dohnke

Dated: October \_\_, 2021

**Plaintiff Jolene Lewis Volpe**

By: \_\_\_\_\_  
Barbara Lewis

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**AGREED TO AND ACCEPTED:**

Dated: October \_\_, 2021

**Plaintiff Lien Scherr**

By: \_\_\_\_\_  
Lien Scherr

Dated: October \_\_, 2021

**Plaintiff Caryn Gorzo**

By: \_\_\_\_\_  
Caryn Gorzo

Dated: October \_\_, 2021

**Plaintiff Kasey Poe**

By: \_\_\_\_\_  
Kasey Poe

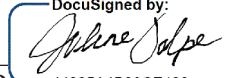
Dated: October \_\_, 2021

**Plaintiff Anna Dohnke**

By: \_\_\_\_\_  
Anna Dohnke

Dated: October 25, 2021

**Plaintiff Jolene Lewis Volpe**

By:  \_\_\_\_\_  
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Dated: October \_\_, 2021

**Plaintiff Bobbie Joe Huling**

By: Bobbie Joe Huling  
Bobbie Joe Huling

Dated: October \_\_, 2021

**Plaintiff Cynthia Whetsell**

By: \_\_\_\_\_  
Cynthia Whetsell

Dated: October \_\_, 2021

**Plaintiff Martha Merle**

By: \_\_\_\_\_  
Martha Merle

Dated: October \_\_, 2021

**Plaintiff Teresa Gattuso**

By: \_\_\_\_\_  
Teresa Gattuso

Dated: October \_\_, 2021

**Plaintiff Elissa Wagner**

By: \_\_\_\_\_  
Elissa Wagner

Dated: October \_\_, 2021

**Plaintiff Dixie Williams**

By: \_\_\_\_\_  
Dixie Williams

Dated: October \_\_, 2021

**Rodan & Fields, LLC**

By: \_\_\_\_\_  
Dimitri Haloulos  
Chief Executive Officer

**APPROVED AS TO FORM:**

Dated: October \_\_, 2021

**Plaintiff Bobbie Joe Huling**

By: \_\_\_\_\_  
Bobbie Joe Huling

Dated: October \_\_, 2021

**Plaintiff Cynthia Whetsell**

By: \_\_\_\_\_  
Cynthia Whetsell

Dated: October \_\_, 2021

**Plaintiff Martha Merle**

By: \_\_\_\_\_  
Martha Merle

Dated: October \_\_, 2021

**Plaintiff Teresa Gattuso**

By: \_\_\_\_\_  
Teresa Gattuso

Dated: October \_\_, 2021

**Plaintiff Elissa Wagner**

By: \_\_\_\_\_  
Elissa Wagner

Dated: October \_\_, 2021

**Plaintiff Dixie Williams**

By: \_\_\_\_\_  
Dixie Williams

Dated: October 27, 2021

**Rodan & Fields, LLC**

By: \_\_\_\_\_  
Marjorie M. Goux  
Chief Legal Officer

DocuSigned by:  
*Marjorie Goux*  
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**APPROVED AS TO FORM:**

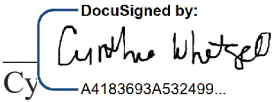
Dated: October \_\_, 2021

**Plaintiff Bobbie Joe Huling**

By: \_\_\_\_\_  
Bobbie Joe Huling

Dated: October<sup>25</sup>, 2021

**Plaintiff Cynthia Whetsell**

By:  \_\_\_\_\_  
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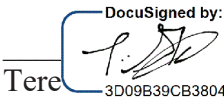
Dated: October \_\_, 2021

**Plaintiff Martha Merle**

By: \_\_\_\_\_  
Martha Merle

Dated: October<sup>25</sup>, 2021

**Plaintiff Teresa Gattuso**

By:  \_\_\_\_\_  
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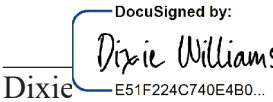
Dated: October \_\_, 2021

**Plaintiff Elissa Wagner**

By: \_\_\_\_\_  
Elissa Wagner

Dated: October <sup>25</sup>, 2021

**Plaintiff Dixie Williams**

By:  \_\_\_\_\_  
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Dated: October \_\_, 2021

**Rodan & Fields, LLC**

By: \_\_\_\_\_  
Dimitri Haloulos  
Chief Executive Officer

**APPROVED AS TO FORM:**



Dated: October \_\_, 2021

**Plaintiff Bobbie Joe Huling**

By: \_\_\_\_\_  
Bobbie Joe Huling

Dated: October \_\_, 2021

**Plaintiff Cynthia Whetsell**

By: \_\_\_\_\_  
Cynthia Whetsell

Dated: October <sup>25</sup> \_\_, 2021

**Plaintiff Martha Merle**

By:  \_\_\_\_\_  
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Martha Merle

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**Plaintiff Teresa Gattuso**

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Teresa Gattuso

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Martha Merle

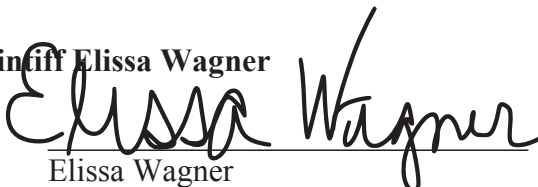
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**Plaintiff Teresa Gattuso**

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By:   
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**Plaintiff Dixie Williams**

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Dixie Williams

Dated: October \_\_, 2021

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Dimitri Haloulos  
Chief Executive Officer

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Dated: October \_\_, 2021

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By: Rosemary M. Rivas

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Juli E. Farris

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**GLANCY PRONGAY & MURRAY LLP**

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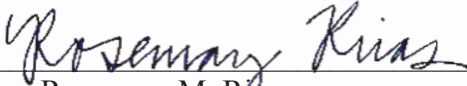
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**GIBBS LAW GROUP LLP**

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By: Rosemary M. Rivas

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**Attorneys for Plaintiffs and the Settlement Class:**

**KELLER ROHRBACK LLP**

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By: Rosemary M. Rivas

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By: Annick M. Persinger

**BESHADA FARNESE LLP**

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By: Peter J. Farnese

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**Attorneys for Plaintiffs and the Settlement Class:**

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By: Rosemary M. Rivas

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By: Annick M. Persinger

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Allison Willett



**LEVI & KORSINSKY LLP**

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Courtney E. Maccarone

Dated: October 25, 2021

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60A31D697F9D49A...  
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Joseph G. Sauder

**Attorneys for Defendant Rodan & Fields, LLC:**

Dated: October \_\_, 2021

**STEPTOE & JOHNSON LLP**

\_\_\_\_\_  
Stephanie A. Sheridan

4855-1348-1216, v. 2

Dated: October 25, 2021

**LEVI & KORSINSKY LLP**



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Courtney E. Maccarone

Dated: October \_\_, 2021

**SAUDER SCHELKOPF**

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Joseph G. Sauder

**Attorneys for Defendant Rodan & Fields, LLC:**

Dated: October 27, 2021

**STEPTOE & JOHNSON LLP**



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Stephanie A. Sheridan

# **EXHIBIT F**

## **EXHIBIT F: Injunctive Terms**

### Outer Tube Carton

This cosmetic product contains isopropyl cloprostenate, a synthetic prostaglandin analog. See directions & warnings inside the box.

### Primary Product Tube

Contains isopropyl cloprostenate. See directions & warnings.

### Insert

This cosmetic product contains isopropyl cloprostenate, a synthetic prostaglandin analog. See WARNINGS.

**DIRECTIONS:** Use R+F Lash Boost once daily in the PM, applying to the upper lash line only. Dripping or application away from the lash line may cause irritation and/or other unwanted effects.

1. Remove makeup and cleanse face.
2. Dry eyelids and lashes completely.
3. Apply serum only along the upper lash line of both eyes. Dip the brush once per eye and wipe any excess product off the brush before applying. Less is more.
4. Gently wipe off any excess serum from your eyelids or lashes.

Do not wash your face or eye area after applying. Wait approximately 90 seconds for serum to dry before going to sleep or applying other products around your eye area. Avoid eyelids and lashes when applying any other product to the eye area, including eye cream.

**WARNINGS:** For external use. Keep out of reach of children. Avoid getting in eyes; if so, rinse with water. Do not use if pregnant or nursing, undergoing treatment for glaucoma or cancer, or if you have ever experienced conjunctivitis, dry eyes, eye infections, styes, irritation from other cosmetics applied in the eye area, or any eye-related disorder or illness.

Some users have reported eye redness and itchiness, dry eyes, watering of the eyes, sensitivity, styes, inflammation of eyelid and eye, temporary darkening of skin around the eye area, lash loss and/or visible enhancement of hair around or outside the eye area. Stop use immediately if you experience these or other symptoms. If symptoms persist, seek medical attention.

During the time Lash Boost has been on the market, R+F has received reports from some customers of other reactions, including iris discoloration, the appearance of droopy eyelids, and the exacerbation of meibomian gland dysfunction, among others. These and other reactions have been associated with other products containing prostaglandin analogs. Lash Boost has undergone 8-week clinical cosmetic testing, but no long-term testing has been conducted.

### Website copy (B&A photos)

Plaintiffs are fine with this. (There is no reason to put in a required statutory disclaimer for dietary supplements on our before and after photos. Lash Boost is a cosmetic, not a dietary supplement.)

FAQ's:

What is in Lash Boost?

Same info as on label  
Lash Boost also contains [insert ingredient list].

Does Using Lash Boost Cause Reactions?

Same info as on label.

Consultants:

Trainings that include the information in the foregoing FAQs.

At least one of the following disclaimers on before and after pictures, as well as on advertising that uses the marketing claims (i.e. longer looking, fuller looking, darker looking): 1) \*This product contains isopropyl cloprostenate, a synthetic prostaglandin analog. Check directions and warnings,” 2) a hyperlink “See important safety information” which links to the former language, or 3) other language approved by Class Counsel.

Website:

Include drop down tab on product page that includes all information on the insert described above.

Marketing Claims:

No affirmative representations that this product is not a drug or that the product does not have the same side effects as other drug products.

No assertions that Lash Boost is not associated with iris discoloration.