UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: DEVA CONCEPTS PRODUCTS LIABILITY LITIGATION	
This Document Relates To:	Master File No. 1:20-cv-01234-GHW
All Cases	

DECLARATION OF GARY E. MASON IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

I, **Gary E. Mason,** being competent to testify, make the following declaration:

1. I am the Founding Partner of Mason Lietz & Klinger, LLP ("MLK") and I have been appointed as Plaintiffs' Co-Lead Counsel in this matter. I respectfully submit this Declaration in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement.[1] Except as otherwise noted, I have personal knowledge of the facts set forth in this Declaration and could testify competently to them if called upon to do so.

2. The Court appointed four Co-Lead Counsel to lead this consolidated class action. In addition to myself, the appointed Co-Lead Counsel are: Charles E. Schaffer, a partner with

[1] Unless otherwise indicated, capitalized terms shall have the meaning that the Class Settlement Agreement ascribes to them. *See generally* Class Settlement Agreement (filed concurrently herewith as Exhibit A to the Memorandum of Law in Support of Motion for Preliminary Approval).

Levin Berman & Sedran, LLP; Melissa Weiner a partner with Person Simon & Warshaw LLP; and Rachel Soffin, a partner with the Greg Coleman Law Firm. ECF No. 20.[2]

3. Co-Lead Counsel have vigorously represented the interests of the Settlement Class Members throughout the course of the litigation and settlement negotiations.

4. The Parties have spent approximately six months in extensive settlement discussions.

5. The Parties participated in two, full-day mediation sessions conducted by Zoom with the Honorable Dianne Welsh (Ret.). The first occurred on January 6, 2021, and the second occurred on February 9, 2021.

6. Prior to the first mediation on January 6, 2021, the Parties had extensive and productive discussions regarding the discovery each side needed prior to mediation.

7. Prior to the mediation, Co-Lead Counsel, by and through a combination of attorneys at their firms and other Class Members' counsel firms, interviewed and collected documents from hundreds of putative Class Members about their experiences with the Products. Co-Lead Counsel also conducted a survey of more than 5,000 putative Class Members.

8. Prior to the mediation, Co-Lead Counsel met and conferred with multiple retained experts who tested certain Products, designed case studies to further test the effects of the Products' use, and provided preliminary opinions and findings.

9. The Parties have exchanged substantial, confidential written materials pursuant to these settlement discussions that have allowed Co-Lead Counsel and their experts to evaluate the

[2] The Court appointed Gary E. Mason, Charles E. Schaffer, Rachel Soffin and Melissa Weiner as Co-Lead Interim Class Counsel. Ms. Soffin and Ms. Weiner have both indicated their intent to withdraw as counsel in this litigation. Their former clients, including those who are serving as Class Representatives, have retained Mr. Mason to represent them in this matter.

strengths and weaknesses of the claims asserted on behalf of the proposed Settlement Class and Defendant's defenses.

10. This confidential information additionally allowed Co-Lead Counsel to evaluate the Settlement Class's potential damages. Co-Lead Counsel determined that there are approximately 665,000 users of the Products at issue.

11. While there was no settlement after the first or second mediation sessions, the Parties made meaningfulprogress toward reaching a resolution, and Co-Lead Counsel diligently continued arm's-length settlement discussions with Judge Welsh.

12. Ultimately, Judge Welsh was prepared to make a mediator's proposal. Co-Lead Counsel rejected the offer of a mediator's proposal and instead made its own final and best offer. The Defendant accepted that offer and the Parties reached agreement on the Gross Settlement Amount and some but not all of the material terms of the Settlement.

13. The Parties then spent months negotiating the remaining material terms of the Settlement.

14. Ultimately, the Parties' settlement discussions resulted in the Settlement Agreement, which was fully executed on July 26, 2021. A true and correct copy of the Settlement Agreement is attached hereto as **Exhibit A.**

15. Co-Lead Counsel believe $5.2 million is sufficient to satisfy the anticipated claims, without the need to reduce any claims pro rata, based on: Co-Lead Counsel's examination of Defendant's sales information; Co-Lead Counsel's review of the statistics associated with Defendant's ongoing reimbursement program; Settlement Class Counsel's review of prior settlements involving adverse effects allegedly caused by haircare products; consultation with the lawyer who served as the Special Settlement Master on two prior haircare class action settlement;

extensive survey data collected from more than 5,000 putative Class Members; consultation with the Class Representatives; and extensive experience with class action settlements involving consumer products.

16. Based on extensive investigation and discovery, Co-Lead Counsel believe Plaintiffs could obtain class certification, defeat all dispositive motions Defendant may file, and proceed to a trial on the merits. Although Co-Lead Counsel remain convinced Plaintiffs' case has merit, they also recognize the substantial risks involved in continued litigation.

17. Substantial costs, risks, and delay militate in favor of settlement. Several years of challenges lay ahead for Plaintiffs, and victory is far from guaranteed. Plaintiffs would face significant risks at every step of the way toward summary judgment and trial, as Defendant would vigorously oppose each of Plaintiffs' actions. Such disputed litigation could include: (i) the pending Motion to Dismiss; (ii) contested class certification proceedings and possible interlocutory appeals of any class determination; (iii) costly and burdensome nationwide discovery, which would entail dozens of depositions, interrogatories, requests for admission, and voluminous document production; (iv) costly merits and class expert reports and discovery; (v) summary judgment motions; and (vi) trial. Defendant would appeal, if possible, any decisions in Plaintiffs' favor and success on appeal would necessarily be uncertain

18. In the judgment of Co-Lead Counsel, the Settlement is fair, reasonable and adequate. This judgment is based not only on the calculus of risk in engaging in motion practice, trials, and appeals, but also the sizable monetary recovery the Settlement delivers now with certainty.

19. Each of the Class Representatives also have signed the Settlement Agreement and approve of its terms. Each of the Class Representatives have assisted in Counsel's investigation of

the case, reviewed pleadings, maintained contact with counsel, provided or helped to provide medical records and other documents, remained available for consultation throughout the mediation, answered counsel's many questions, and reviewed the Settlement Agreement.

20. I have carefully studied the data provided by Defendant and information obtained from our investigation of the *WEN* Settlement and modelled the Settlement on that basis. I am confident that sufficient funds have been allocated to Tier 1 such that the benefit will not need to be reduced. The *WEN* Settlement offered a maximum of $20,000 per Class Member to Tier 2 Claimants. *WEN* Settlement at § 6.B. Here, Tier 2 Claimants are eligible to receive as much as $19,000. Class Counsel's investigation of the *WEN* Settlement revealed that the average payout to Tier 1 claimants was around $3,200. I estimate that the average for Tier 2 payments in this Settlement will be at least $3,200.

21. The fairness of this Settlement is additionally confirmed because it exceeded the expectations of a sophisticated mediator, who was well versed in the strengths and weaknesses of this litigation.

22. The National Alopecia Areata Foundation is the designated *cy pres* recipient in the event that residual funds remain after distributions to the Settlement Class.

23. The National Alopecia Areata Foundation is a 501(c)3 Non-Profit based in San Rafael, California, dedicated to the discovery of a cure or treatment for alopecia areata (hair loss) and supporting the conditions victims.

24. Defendant has informed Co-Lead Counsel that The National Alopecia Areata Foundation has not received any direct support from Defendant, either in kind or financial. Co-Lead Counsel believe that the work of The National Alopecia Areata Foundation is closely aligned

with the interests of the Class and the purpose of the underlying litigation. More information about The National Alopecia Areata Foundation is available at: www.naaf.org.

25. With regard to the Class Representatives, each Class Representative Plaintiff performed an important and valuable service for the benefit of the Settlement Class. Each met, conferred, and corresponded with Settlement Class Counsel as needed for the efficient prosecution of this litigation. Each Class Representative Plaintiff has participated in interviews by Settlement Class Counsel, provided personal information concerning this litigation, and remained intimately involved in the mediation, litigation and settlement processes.

26. As detailed in these resumes and in the previous leadership submissions by Co-Lead Counsel, Co-Lead Counsel Gary E. Mason and Charles E. Schaffer have substantial experience with consumer class actions in general and with consumer fraud and false advertising claims specifically.

27. Attached hereto as **Exhibit B** is the Settlement Agreement and Order issued by the Central District of California granting final approval of the settlement agreement in *Friedman v. Guthy-Renker, LLC*, No. 2:14-cv-06009 ("*WEN*"). I have closely studied this Settlement, reviewed the pleadings and settlement hearing transcripts, and interviewed the Claims Administrator responsible for making Tier 2 payment allocations. As a result of this investigation, I was able to determine that: 1) the Class size was estimated at 8,000,000; 2) less than 2% of the Class was eligible for Tier 2; 3) only a small number of Tier 2 claimants were eligible for the maximum award of $20,000, and 4) the average payout to Tier 2 claimants was around $3,200.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct, and that this declaration was executed in Washington, D.C. on this 26th day of July, 2021.

/s/ Gary E. Mason
Gary E. Mason

EXHIBIT A

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is entered into between Plaintiffs Wendy Baldyga, Marisa Cohen, Tami Nunez, Stephanie Williams, Erika Martinez-Villa, Tahira Shaikh, Marcy McCreary, Lauren Petersen, Jody Shewmaker, Diana Hall and Alanna Hall ("Plaintiffs"), individually and in their capacity as representative plaintiffs ("Class Representatives") on behalf of the putative Class Members (defined below); Defendant Deva Concepts, LLC ("Deva Concepts" or "Defendant") (Plaintiffs and Defendant, individually a "Party" and collectively, the "Parties"); Mason Lietz & Klinger LLP and Levin, Sedran & Berman, LLP, Court-appointed Co-Lead Counsel for Plaintiffs and the putative Class Members; and Greenberg Traurig, LLP, counsel for Defendant.

WHEREAS, the following putative class actions were consolidated before the Honorable Gregory H. Woods in the United States District Court for the Southern District of New York as *In re Deva Concepts Products Liability Litigation* under Master File No. 1:20-cv-1234 (the "Litigation") via an Order dated April 21, 2020:

1. *Dixon v. Deva Concepts, LLC*, No. 1:20-cv-01234-GHW ("*Dixon*"), filed February 12, 2020;
2. *Ciccia v. Deva Concepts*, *LLC*, No. 1:20-cv-01520-GHW ("*Ciccia*"), filed February 20, 2020;
3. *Schwartz v. Deva Concepts, LLC,* No. 1:20-cv-06157-GHW ("*Schwartz*"), filed February 25, 2020;
4. *Bolash v. Deva Concepts, LLC*, No. 1:20-cv-02045-GHW ("*Bolash*"), filed March 6, 2020;
5. *Abdulahi v. Deva Concepts, LLC,* No. 1:20-cv-02047-GHW ("*Abdulahi*"), filed March 6, 2020;

6. *Reilly v. Deva Concepts, LLC,* No. 1:20-cv-02156-GHW ("*Reilly*"), filed March 10, 2020;

7. *Orner v. Deva Concepts, LLC*, Case No. 1:20-cv-02662-GHW ("*Orner*") filed March 30, 2020; and

8. *Souza v. Deva Concepts, LLC*, No. 1:20-cv-02930-GHW ("*Souza*") filed April 9, 2020.

WHEREAS, the following additional putative class actions were consolidated with the Litigation before the Honorable Gregory H. Woods in the United States District Court for the Southern District of New York:

9. *Crawley v. Deva Concepts, LLC*, No. 1:20-cv-03152-GHW ("Crawley"), filed April 21, 2020, consolidated June 23, 2020;

10. *Calabrese v. Deva Concepts*, *LLC*, No. 1:20-cv-03309-GHW ("Calabrese"), filed April 28, 2020, consolidated June 25, 2020;

11. *Przybylski v. Deva Concepts*, *LLC*, No. 1:20-cv-03630-GHW ("Przybylski"), filed May 8, 2020, consolidated June 26, 2020;

12. *Biles v. Deva Concepts*, *LLC*, No. 1:20-cv-03537-GHW ("Biles"), filed May 6, 2020, consolidated June 30, 2020; and

13. *Bell v. Deva Concepts*, *LLC*, No. 1:20-cv-07136-GHW ("Bell"), filed June 1, 2020, consolidated November 5, 2020.

WHEREAS, Plaintiffs filed a Consolidated Amended Complaint ("Complaint" or "CAC") on October 2, 2020, alleging that Defendant designed, manufactured, distributed and sold haircare products that caused Plaintiffs and others similarly situated to incur economic damages and personal injuries such as scalp irritation, excessive shedding, hair loss, thinning, and breakage;

WHEREAS, the Complaint sought certification of a nationwide class of all persons who purchased or used Defendant's products within the United States or its territories;

WHEREAS, Defendant vigorously denies all liability with respect to the individual and class claims alleged in the Litigation and vigorously denies all allegations of wrongdoing asserted in the Litigation;

WHEREAS, the Parties participated in arms'-length settlement negotiations including two lengthy mediation sessions with the Honorable Federal Magistrate Judge (Ret.) Diane Welsh, a mediator with JAMS, on January 6, 2021, and February 9, 2021, and dozens of subsequent negotiations through Judge Welsh over almost 6 months. The Parties subsequently agreed to a global and final resolution of all issues pertaining to the Litigation as set forth in this Agreement;

WHEREAS, Plaintiffs, on behalf of themselves and on behalf of the putative Class Members, and Defendant desire to compromise and settle all issues, disputes and claims asserted or which could have been asserted in the Litigation whether known or unknown;

WHEREAS, after investigating the facts and carefully considering applicable law, the Plaintiffs and Co-Lead Counsel (defined below) have concluded that it would be in the best interests of the putative Class Members to enter into this Agreement in order to avoid the uncertainties of litigation, particularly complex litigation such as this, and to assure meaningful benefits to the Class, and that the terms and conditions of this Agreement, and the Settlement contemplated hereby, are fair, reasonable, and adequate and in the best interests of all members of the Settlement Class;

WHEREAS, Defendant has vigorously denied and continues to deny all of the claims and contentions alleged in the Litigation, denies any wrongdoing on its part or the part of others, and denies all liability to the Plaintiffs or the putative Class Members. Defendant has also conducted a

thorough investigation with its counsel and its independent experts and evaluated the risks and potential cost of litigating the issues raised in the Litigation and the benefits of the Agreement and proposed Settlement (defined below) described herein. Based on its evaluation and desire to avoid the time, expense and inherent uncertainties of litigation, Defendant desires to settle the Parties' dispute and the Litigation pursuant to the terms and conditions in this Agreement;

WHEREAS, the Parties agree that the Settlement proposed in this Agreement is fair, adequate, and reasonable.

NOW, THEREFORE, for adequate consideration as set forth herein, it is hereby stipulated and agreed, by and among the Parties, that: (i) the Parties desire to fully and finally resolve the Litigation and shall seek Court approval of their Settlement as required by Federal Rule of Civil Procedure 23(e); and (ii) upon such approval by the Court, a final order and judgment shall be entered fully and finally resolving the Litigation upon the terms and conditions set forth herein, or as modified by the Court and approved by the Parties as provided herein.

I. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth below, unless the context clearly indicates otherwise. Where appropriate, the terms used in the singular shall be deemed to include the plural and vice versa.

A. "Administrator" or "Settlement Administrator" means a third-party agent or administrator selected by Co-Lead Counsel and Defendant's Counsel (defined below) to help implement and effectuate the terms of this Agreement.

B. "Administration Account" or "Common Fund" means the account into which Defendant will pay the Gross Settlement Amount (defined below) and upon funding will be used for the purposes of (i) paying settlement administration costs; (ii) distributing settlement benefits to Claimants (defined below); (iii) distributing any Court-approved awards of Attorneys' Fees and

Costs, and Service Awards (defined below) in accordance with the terms of this Agreement; and (iv) the payment of any necessary taxes and expenses incurred in connection with the maintenance of the Administration Account.

C. "Aggregate Settlement Benefits" equals the sum of all claims of Class Members that the Settlement Administrator has accepted, including standard fixed award claims (Tier 1 Claims) and significant adverse reaction claims and claims for out-of-pocket expenses (Tier 2 Claims).

D. "Attorneys' Fees and Costs" shall mean the portion of the Fund set aside to compensate Co-Lead Counsel and other Plaintiffs' counsel for their time and to reimburse them for their reasonable expenses utilized to prosecute the Litigation on behalf of the Class Representatives and the Class, as further defined in Section V, below.

E. "Claim Form" means the document(s) to be submitted by Class Members seeking payment pursuant to this Agreement that will accompany the Class Notice and will be available online at the Settlement Website, substantially in the form of **Exhibit 1** and as discussed in Section VII of this Agreement.

F. "Claimant" means a Class Member who submits a Claim Form for payment as described in Section VII of this Agreement.

G. ""Class" or "Settlement Class" shall mean all persons who purchased and/or used any of the Products in the United States between February 8, 2008 and such date that is thirty (30) days after the Preliminary Approval Date, excluding (a) any officers, directors or employees, or immediate family members of the officers, directors or employees, of Defendant or any entity in which Defendant has a controlling interest, (b) any legal counsel or employee of legal counsel for Defendant, (c) the presiding Judge in the Lawsuit, as well as the Judge's staff and their immediate

family members, and (d) all persons who timely and properly exclude themselves from the Class as provided in the Settlement.

H. "Class Members" shall mean the purchasers and users making up the Class.

I. "Class Notice" shall mean the program to provide notice to Class Members, including: (i) a full, long-form notice in the form attached to this Agreement as Exhibit 5, which shall be posted on the Settlement Website and a copy of which shall be mailed to any Class Member upon request made by the Class Member to the Settlement Administrator; (ii) a short-form notice in the form attached to this Agreement as Exhibit 6, which shall be sent to Class Members for whom the Parties have a valid address (regular mail or email); (iii) a publication notice described below, and (iv) a Settlement Website described below.

J. "Class Period" shall mean the period from February 8, 2008 to such date that is thirty (30) days after the Preliminary Approval Date.

K. "Co-Lead Counsel" or "Settlement Counsel" shall mean Gary E. Mason of Mason Lietz & Klinger LLP and Charles E. Schaffer of Levin, Sedran & Berman, LLP.

L. "Court" shall mean the federal district court handling the Litigation.

M. "Defendant's Counsel" shall mean Keith E. Smith, Jaclyn DeMais and the law firm Greenberg Traurig, LLP.

N. "Effective Date" shall mean thirty (30) days after the Court's entry of the Final Judgment and Order if no document is filed within that time period seeking appeal, review, or any other relief in connection with the Agreement and/or the Final Judgment and Order. If any such document is filed, then the Effective Date shall be thirty (30) days after the date upon which all proceedings relating to such appeal, review, and other relief have fully and finally terminated in such a manner so as to permit full implementation of the Agreement and the Final Judgment and

Order without any further risk that the Agreement and/or the Final Judgment and Order could be further challenged.

O. "Final Judgment and Order" shall mean the final judgment and order, substantially in the form attached as **Exhibit 2**, issued by the Court that gives full and final approval to the Agreement, and all aspects of the Settlement.

P. "Gross Settlement Amount" refers to the payment by Defendant of the sum of $5,200,000.00 in full satisfaction of any claims asserted in the Litigation by Plaintiffs or Class Members who do not opt out of the Settlement pursuant to Section XI below, inclusive of Attorneys' Fees and Costs, any Service Award, and Notice and Administration Costs and all other costs or expenses.

Q. "Lien" or "Medical Lien" means any statutory lien of a Governmental Payor or any lien, pledge, charge, security interest, assignment, encumbrance, subrogation right, reimbursement claim, right to payment, third-party interest or adverse claim, of any nature whatsoever, in each case whether statutory or otherwise, held or asserted by any person, in relation to payment of medical bills for_hair loss, balding, and significant scalp irritation allegedly from use of the Products.

R. "Lien Administrator" means that person(s), agreed to and jointly recommended by Co-Lead Counsel and Counsel for the Defendant, and appointed by the Court, to perform the responsibilities assigned to the Lien Administrator under the Agreement, including, without limitation, as set forth in Section X.

S. "Litigation" shall mean the case captioned *In re Deva Concepts Products Liability Litigation* under Master File No. 1:20-cv-1234 and the underlying cases consolidated under the Litigation caption.

T. "Medicaid Program" means the federal program administered by the states under which certain medical items, services, and/or prescription drugs are furnished to Medicaid beneficiaries under Title XIX of the Social Security Act, 42 U.S.C. § 1396–1, et seq.

U. "Medicare Program" means the federal program administered by the Centers for Medicare & Medicaid Services ("CMS") under which certain medical items, services, and/or prescription drugs furnished to Medicare beneficiaries are reimbursed under Title XVIII of the Social Security Act, 42 U.S.C. § 1395, et seq. This program includes Part A and Part B, directly administered by CMS, and two parts administered by private entities that contract with CMS to serve Medicare beneficiaries on a capitated basis: Medicare Part C, which includes Medicare Advantage, Medicare cost, and Medicare health prepayment plans, and Medicare Part D, under which CMS contracts for coverage of certain outpatient prescription drugs.

V. "MSP Laws" means the Medicare Secondary Payer Act set forth at 42 U.S.C. § 1395y(b), as amended from time to time, and implementing regulations, and other applicable written CMS guidance.

W. "Net Settlement Amount" refers to the portion of the Gross Settlement Amount available to pay settlement benefits to Claimants after payment of Notice and Administrative Costs (defined below), any Court-awarded Attorneys' Fees and Costs, any Court-awarded Service Award, and the payment of any necessary taxes and expenses incurred in connection with the maintenance of the Administration Account.

X. "Notice and Administrative Costs" means the reasonable and Court-authorized costs and expenses of disseminating and publishing Class Notice in accordance with the Preliminary Approval Order, and all reasonable and authorized costs and expenses incurred by the Settlement Administrator in administering the Settlement, including but not limited to costs and

expenses of escrowing funds, mailing the settlement benefits to the Claimants, and performing all other tasks assigned to the Settlement Administrator pursuant to this Agreement, including the costs of a Special Master to assist in evaluating Tier 2 Claims (defined below) and the costs of the Lien Administrator.

Y. "Notice Date" shall mean the date when the Settlement Administrator first implements the Class Notice set forth in Section IV. The Notice Date and all settlement deadlines should be prominently displayed on the homepage of the Settlement Website.

Z. "Notice of Intention to Appear" shall mean the document that any Class Member must file with the Court if the Class Member has an Objection to the Agreement or any of the terms of the Settlement or court filings contemplated herein, and wishes to appear at the hearing on the Final Judgment and Order.

AA. "Objection" shall mean a written notice, signed by the individual Class Member, of objection to any aspect of the Agreement or any of the terms of the Settlement or court filings contemplated herein by or on behalf of a Class Member.

BB. "Objection Date" shall mean the deadline, to be set in the Preliminary Approval Order, by which an Objection must be filed with the Court and served on Co-Lead Counsel and Defendant's Counsel if not filed electronically through the Court's electronic filing system.

CC. "Other Insurer" means any person other than a Governmental Payor, a provider, a patient, or a relative or guardian of a patient that is obligated, under contract, agreement or otherwise, to pay health care costs of a Settlement Class Member, including, without limitation, a self-insured plan operated by an employer or a corporate or association health insurer or liability insurer.

DD. Preliminary Approval Date" shall mean the date when the Court preliminarily

approve this Agreement.

EE. "Preliminary Approval Order" shall mean the order of the Court preliminarily approving this Agreement and authorizing the Class Notice, substantially in the form attached as **Exhibit 3**.

FF. "Products" shall mean any DevaCurl products sold between February 8, 2008 and thirty (30) days after the Preliminary Approval Date, including the products listed in **Exhibit 4** to this Agreement.

GG. "Released Claims" shall mean the claims released under this Agreement as set forth in more detail in Section IX below.

HH. "Released Parties" shall mean Defendant and any individual or entity involved in the design, development, manufacture, distribution, or sale of any of the Subject Products (defined below), as well as all of its/their past, present and current respective parents, subsidiaries, affiliates, predecessor and successors, officers, employees, directors, shareholders, attorneys, and insurers, as well as all salons, hair care professionals, stylists, distributors, retailers, sellers, resellers, and wholesalers of the Subject Products (defined below).

II. "Request for Exclusion" shall mean a written request signed by the individual Class Member for exclusion from the Settlement.

JJ. "Service Award" shall mean any Court-approved amount to be paid to Plaintiffs for their service as representatives of the Class, which shall not exceed the amount agreed to by the Parties.

KK. "Settlement" shall mean the terms and conditions of this Agreement.

LL. "Settlement Website" shall mean the website maintained by the Administrator with a URL of "www.curlyhairsettlement.com" as more fully described in Section IV(E).

MM. "Tricare" means the federal program managed and administered by the United States Department of Defense through the Tricare Management Activity under which certain medical items, services, and/or prescription drugs are furnished to eligible members of the military services, military retirees, and military dependents under 10 U.S.C. § 1071, et seq.

NN. "Tier 1 Claim" shall mean a claim for a one-time payment of up to $20 as compensation for claims of personal injury after using the Products and/or for any claim related to the labeling or advertising of the Products, including, without limitation, for alleged failure to warn of potential harm regarding the Products.

OO. "Tier 2 Claim" shall mean a claim against the Common Fund for significant personal injury including hair loss, balding, and significant scalp irritation as an alleged result of using the Products and reimbursement of actual and documented amounts spent to redress alleged injuries, designed to compensate the Claimant for any alleged injuries sustained, up to a maximum of $18,000 per Claimant for personal injuries and up to a maximum of $1,000 for provable expenses.

PP. "Tier 2 Claim Award" shall mean an award calculated by the Settlement Administrator based upon the criteria and procedures set forth in Section VII.

QQ. "United States" means the fifty States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands of the United States, the Commonwealth of the Northern Mariana Islands, any other territory or possession of the United States, and any United States military or diplomatic establishment wherever located.

II. SETTLEMENT BENEFITS

A. Gross Settlement Amount. In full satisfaction of any claims asserted in this Litigation by Plaintiffs or Class Members who do not opt out of the Settlement pursuant to Section XI below, Defendant will pay the sum of Five Million, Two-Hundred Thousand Dollars

($5,200,000), which shall constitute the Gross Settlement Amount. Defendant shall pay the Gross Settlement Amount into the Administration Account no later than sixty (60) days after the Effective Date. Under no circumstances will Defendant be required to pay anything more than the Gross Settlement Amount, which shall provide the sole source to pay all settlement benefits to be paid to the Claimants, Notice and Administrative Costs, Co-Lead Counsels' and other Plaintiffs' Attorneys' Fees and Costs (to the extent awarded by the Court), Service Awards (to the extent awarded by the Court), and payment of any necessary taxes and expenses incurred in connection with the maintenance of the Administration Account.

B. Tax Treatment. The Administrative Account is intended to be a "qualified settlement fund" within the meaning of United States Treasury Regulation § 1.468B-1 ("QSF"). Neither the Parties nor the Settlement Administrator shall take a position in any filing or before any tax authority that is inconsistent with treating the Settlement Fund as a QSF. Defendant shall be the "transferor" and the Settlement Administrator shall be the "administrator" of the Settlement Fund within the meaning of United States Treasury Regulations §§ 1.468B-1(d)(1) and 1.468B-2(k)(3), respectively. As a result, the Settlement Administrator will be responsible for all tax withholding and reporting obligations of any payments made from the Settlement Fund, including any reporting required on IRS Form 1099, if any, for distributions made from the Settlement Fund. The Parties agree to take all necessary and reasonable actions to qualify the Settlement Fund as a QSF.

C. Common Fund. Defendant will make a one-time payment of the Gross Settlement Amount of $5,200,000 into a Common Fund. Class Members wishing to file a claim can make a claim against the Common Fund for personal injury claims, failure to warn claims, out-of-pocket expenses and past purchases of the Products of up to $19,000. All payments of claims, costs of

administration of the Settlement, Attorneys' Fees and Costs and Service Awards shall be paid only from this Common Fund. In no event will Defendant pay more than the amount of the Common Fund. All Claimants must submit a Claim Form, and Claimants must provide evidence in support of their claims. Claims will be evaluated based on criteria as generally set forth herein with discretion being placed with the Settlement Administrator and Special Master to implement the agreed-upon criteria and award a recovery within the range set forth in Section VII. For less significant claims or claims with undocumented proof of purchase or damages, the amount will be up to $20 per Claimant.

D. Equitable Relief. All new products manufactured by Defendant after July 1, 2021, and for a period of at least two (2) years thereafter, will, where physically possible (taking into consideration packaging format and size), add to the labels (in the United States and Canada) of all relevant Products language substantially similar to: "Scan for education, how-tos and product safety information." with an accompanying QR code directing consumers to a targeted landing page with further information consistent with that description.

III. PRELIMINARY APPROVAL

A. As soon as practicable after this Agreement is fully executed, for settlement purposes only, the Plaintiffs and Co-Lead Counsel shall request the Court to make preliminary findings, enter the Preliminary Approval Order granting conditional certification of the Class, subject to final findings and ratification in the Final Order and Judgment, and appoint the Plaintiffs as class representatives and Co-Lead Counsel as counsel for the Class. Neither Defendant nor Defendant's Counsel will object to such requests for the purposes of effectuating the Settlement. Such agreement not to object to class certification shall extend only as necessary to effectuate the Settlement. As set forth in the draft Preliminary Approval Order, the Plaintiffs shall request the Court to enter an order:

1. preliminarily approving and finding this Agreement and the Settlement as being fair, reasonable, and adequate;
2. conditionally certifying the Litigation as a settlement class action under Rule 23(b)(3) and (e) of the Federal Rules of Civil Procedure;
3. appointing Plaintiffs as class representatives and Co-Lead Counsel as counsel for the Class;
4. preliminarily approving the form, manner, and content of the Class Notice, as provided herein, and finding that notice is fair, reasonable, and the best notice practicable under the circumstances in connection with notifying the Class Members of their rights and responsibilities under the Settlement and satisfying due process and Rule 23 of the Federal Rules of Civil Procedure;
5. appointing the Settlement Administrator to send Class Notice and administer the Settlement;
6. providing that Class Members will have until a date certain to object to or file a request for exclusion from the Settlement, as provided herein;
7. establishing dates by which all papers in support of the motion for final approval of the Settlement, an application for payment of the Attorneys' Fees and Costs and Service Award, and/or any response to any valid and timely Objections shall be filed and served;
8. preliminarily approving the form of the Final Order and Judgment;
9. providing that all Class Members will be bound by the Final Order and Judgment fully and finally resolving the Litigation on the terms and conditions contained herein;

10. staying all proceedings against Defendant until the Court renders a final decision on approval of the Settlement;

11. preliminarily enjoining Class Members from commencing or prosecuting, either directly or indirectly, any action asserting any of the Released Claims;

12. setting the date and time of the Final Approval Hearing, subject to the availability of the Court, Co-Lead Counsel, and Defendant's Counsel, which date may be continued without necessity of further notice to the Class Members; and

13. entering a protective order, if necessary, to safeguard any information provided to the Settlement Administrator concerning the Class Members.

B. Unless otherwise agreed to by the Parties in writing, Co-Lead Counsel shall provide Defendant's Counsel with drafts of the moving papers requesting preliminary approval for review at least five (5) business days before the papers are filed.

C. In the event that the Court fails to issue either the Preliminary Approval Order substantially in the form of the attached **Exhibit 3**, or the Final Approval Order, the Parties agree that this Agreement is voidable by either Party by providing written notice to the other Party within fifteen (15) days of the Court's action declining to enter either such order. In such event, subject to the provisions regarding termination of the Agreement in Section XV below, each Party shall return to its respective pre-settlement posture without prejudice or waiver to any Party's pre-settlement position on any legal or factual issue.

D. The Parties shall cooperate with each other in good faith to carry out the purposes of and to effectuate this Agreement, and they shall take any and all actions and execute and deliver any and all additional documents reasonably necessary or appropriate to carry out the terms of this Agreement and the transactions contemplated hereby.

IV. NOTICE

A. Class Notice shall include (i) a full, long-form notice in the form attached to this Agreement as **Exhibit 5**, which shall be posted on the Settlement Website and a copy of which shall be mailed to any Class Member upon request made by the Class Member to the Settlement Administrator; and (ii) a short form notice in the form attached to this Agreement as **Exhibit 6**, which shall be sent to Class Members for whom the Parties have a valid address (regular mail or email). As to any direct-mail notice, the Settlement Administrator shall conduct a National Change of Address ("NCOA") update to verify the physical mailing addresses for the Class Members if such address is to be used. The Settlement Administrator shall not be required to send such Direct-Mail Notice to any Class Member whose last known street address, as updated through the National Change of Address registry, is determined to be undeliverable pursuant to one of the following mailing codes: F (foreign move, no new address available), G (postal box closed, no new address available), or K (move, left no forwarding address).

B. The Parties shall ensure that the Settlement Administrator receives the names of any Class Members and any available physical mailing addresses and/or e-mail address for such Class Members.

C. Notice will also be provided by advertisements in appropriate digital social and electronic media as agreed to by the Parties.

D. The Settlement Administrator, as a condition of its retention as Settlement Administrator, will keep all information it receives from Defendant concerning Class Members strictly confidential except as necessary to carry out the Settlement Administrator's functions in administering this Settlement. In the event any Class Member contacts Co-Lead Counsel concerning this Settlement, the Settlement Administrator may provide any information to Co-Lead Counsel concerning such Class Member to the extent necessary for Co-Lead Counsel to

communicate with the Class Member concerning the Settlement. No later than 60 days after the last settlement benefit check to any Class Member expires, the Settlement Administrator will segregate and keep confidential any records provided by Defendant and Claimants in a manner that ensures the data is not available through the internet or otherwise vulnerable to unauthorized access in any fashion.

E. No later than the mailing of the Class Notice, the Settlement Administrator shall establish a Settlement Website, which shall contain copies of the motion for preliminary approval and all documents filed in support thereof, including the Settlement Agreement and Exhibits thereto (including the Class Notice). The Settlement Website shall also contain other significant pleadings from the Action, including the operative complaint. The Settlement Website shall also contain the contact information for Co-Lead Counsel so that Class Members may contact Co-Lead Counsel with any questions regarding the Settlement. The Settlement Website at www.curlyhairsettlement.com shall include the capability for Class Members to submit a claim using an online Claim Form, substantially in the form set forth in **Exhibit 1** to the Agreement, and to upload any documents in support of the claim, including but not limited to: medical records, Claimant's personal statement, witness statements, proof of purchase, photographs and/or videos.

F. The Settlement Website shall remain open and accessible until sixty (60) days after the expiration of the last settlement benefit check mailed to any Claimant, except the on-line claim form shall be disabled no later than ten (10) days after the end of the Claims Period.

G. The Parties agree that any communications or publications by Co-Lead Counsel regarding the issues addressed in this Agreement will be consistent with the terms of this Agreement, the Class Notice, the Preliminary Approval Order, and the Final Judgment and Order.

V. ATTORNEYS' FEES/COSTS AND SERVICE AWARD

A. Counsel for the Class has indicated its intention to seek the Court's approval of the

payment of Attorneys' Fees and Costs to be paid from the Common Fund in the amount of up to one third (33.33%) of the Gross Settlement Amount. Defendant has not agreed to or consented to the payment of Attorneys' Fees and Costs in any amount and reserves the right to oppose any application once filed. Co-Lead Counsel agrees that they will not seek Attorneys' Fees and Costs from the Court that exceed those sums.

B. Defendant agrees to take no position on Plaintiff's and Co-Lead Counsel's application for an Service Award to Plaintiffs to be paid from the Gross Settlement Amount so long as the Service Awards do not exceed $600 per Class Representative, subject to Court approval, and Plaintiffs and Co-Lead Counsel agree that they will not seek a Service Award that exceeds that sum. Any Service Award approved by the Court for Plaintiffs will be in addition to, and not in lieu of, the settlement benefits to which Plaintiffs are entitled pursuant to Section II of this Agreement.

C. The Settlement Administrator will pay any Court-approved award of Attorneys' Fees and Costs. This amount will be paid to Co-Lead Counsel no later than sixty (60) days following the Effective Date pursuant to their written instructions.

D. The Settlement Administrator will pay any Court-approved Service Awards by way of checks made payable to each Class Representative no later than sixty (60) days following the Effective Date.

VI. SETTLEMENT ADMINISTRATOR

A. The Parties will engage KCC Class Action Services LLC (the "Settlement Administrator") to implement the Notice Plan and to administer the settlement and claims process. The Notice Plan will be substantially similar to the KCC Proposal dated May 20, 2021, and the *In re Deva Concepts Notice Plan Highlights* document dated June 3, 2021. The Notice Plan will be designed to reach at least 85% of the possible Class Members, including approximately 50% of

the estimated 665,000 Class Members to receive direct notice by email or postal mail from Defendant's records.

B. Under no circumstances will any of Defendant's wholesale or retail customers or distributors be requested or compelled to supply customer personal identifying information (including names, addresses or email addresses of their customers) or to post any in-store notice of this Settlement.

C. The Settlement Administrator shall coordinate with Defendant and Co-Lead Counsel on the timing of Notice which will be implemented as soon as practicable as agreed to by the Parties.

D. Costs of the Notice Plan consistent with all applicable requirements that satisfy the standards for due process (including direct notice, publication and media notice) will be paid from the Common Fund. The Common Fund will be used to pay for claims administration, including, if necessary, the use of a Special Master.

E. Co-Lead Counsel and Defendant's Counsel will coordinate with the Settlement Administrator to provide the Class Notice to the Class Members, as provided by the Preliminary Approval Order. The Settlement Administrator shall administer the Settlement in accordance with the terms of this Settlement Agreement and, without limiting the foregoing, shall treat any and all documents, communications, and other information and materials received in connection with the administration of the Settlement as confidential and shall not disclose any or all such documents, communications, or other information to any person or entity except to counsel for the Parties, as provided for in this Settlement Agreement or by Court order.

VII. CLAIMS PROCESS

A. Tier 1 - Undocumented Minor Adverse Reaction and Economic Loss Claims. Any Class Member who purchased at least one of the Products identified in the Litigation, and who

does not timely request to opt-out from the Settlement Class, may submit a Tier 1 Claim for a one-time payment of up to $20 as compensation for claims of personal injury after using the Products and/or for any claim related to the labeling or advertising of the Products, including, without limitation, for alleged failure to warn of potential harm regarding the Products. Tier 1 Claimants must submit a Claim Form and provide all of the information required therein to meet the requirements of a Tier 1 Claim. If Tier 1 Claims made against the Common Fund collectively exceed $750,000, payments made to each Class Member who submitted a valid Tier 1 Claim will be reduced on a *pro rata* basis.

B. Tier 2 - Documented Significant Adverse Reaction Claims. Any Class Member who alleges to have suffered significant personal injury including hair loss, balding, and significant scalp irritation as a result of using the Products, and does not timely request to opt-out from the Settlement Class, may make a claim against the Common Fund for reimbursement of actual and documented amounts spent to redress such alleged injuries, as well as an injury award designed to compensate the Claimant for any alleged injuries sustained, up to a maximum of $18,000 per Claimant for injuries and $1,000 for provable expenses, as set forth below. In order to make a Tier 2 Claim, the Class Member must submit a valid and complete Claim Form, along with Supporting Documentation as described therein.

C. Proof of Significant Adverse Reaction Damages. To be eligible for a payment from the Common Fund for a Tier 2 Significant Adverse Reaction Claim, Claimant must submit to the Settlement Administrator, in addition to a completed Tier 2 Claim Form declaration, appropriate evidence documenting the injuries alleged to be suffered after using the Products. Without limitation, the following forms of documents will be considered "Supporting Documentation" and shall be received by the Settlement Administrator in support of a Tier 2 Claim:

1. Before and after photographs showing the damage to Claimant's hair and/or scalp. Each photo submitted must be dated and labeled as either a "before" or "after" photo.
2. Video testimony of the Claimant describing the claimed injury.
3. Medical records, doctor's notes, test results, and/or a statement from a licensed medical professional indicating damage to the Claimant's hair or scalp after using the Products as well as any pre-existing conditions that may have caused the alleged hair loss.
4. Written or video statement from the Claimant's hair stylist(s) indicating the amount of hair loss suffered and any lasting effects. If written, this statement must be dated and signed by the hair stylist(s).
5. Written or video statements from other witnesses that can testify about the damage to Claimant's hair or scalp and its effect on Claimant (e.g., spouse, family, friends). Any statement must include the witness's name, address and their relationship to the Claimant. If written, these statements must be dated and signed by the witness.

D. Proof of Out-of-Pocket Expense Claims. Claimant may make a Claim for documented out-of-pocket expenses. The following forms of Supporting Documentation shall be received by the Settlement Administrator in support of a claim for reimbursement of actual and documented out-of-pocket expenses incurred to redress injury purportedly caused by the Products, up to a maximum of $1,000:

1. Dated medical bills evidencing payments made by the Claimant related to the Claimant's claimed injury along with medical records indicating the visit related to damage alleged to be caused by use of the Products;
2. Dated receipts for out-of-pocket expenses; dated credit card statements evidencing

payment by the Claimant related to the Claimant's claimed injury;

3. Dated bank statements evidencing payment of out-of-pocket expenses related to the Class Member's claimed injury;

4. Dated receipts and/or declarations supplied by, for example, a medical provider or hair stylist, evidencing amount spent to redress a claimed injury will also be considered.

The Supporting Documentation described above is not intended to provide an exclusive list of the supporting evidence that may be submitted in support of a Tier 2 Claim. The Settlement Administrator shall have discretion to accept forms of evidence in addition to or in place of the examples set forth above.

E. Verification and Investigation. Each Claimant filing a Tier 2 Claim will authorize the Administrator, consistent with HIPAA and other applicable privacy laws, to verify facts and details of any aspect of the Claim and/or the existence and amounts, if any, of any Liens. The Administrator, at its sole discretion, may request additional documentation or authorizations, which each Claimant agrees to provide in order to claim a Tier 2 Claim Award. No Claim will be considered complete and eligible for payment of any Tier 2 Claim Award until such time that any additional documentation requested by the Administrator is provided and/or deficiencies are cured. The Administrator will have the discretion to undertake or cause to be undertaken further verification and investigation, including into the nature and sufficiency of any Claim documentation.

F. Administrator's Determination of Tier 2 Claims. The amount of any claim payment will be determined by the Settlement Administrator, who has significant experience in the claims process, using an objective point system agreed upon by the Parties. The Settlement Administrator

will determine the value of all Tier 2 claims, and award points based upon, without limitation, the sufficiency and credibility of the evidence; the severity of the hair loss, balding, thinning and/or scalp irritation; the duration of the hair loss, balding, thinning, and/or scalp irritation; and the amount of documented out-of-pocket expenses. The intent of the settlement is to pay Tier 2 Claimants for any and all injuries they may have allegedly suffered as a result of their use of the Products. As directed by the Parties, the Settlement Administrator shall have authority to assign points by determining the validity, or lack thereof, of any Tier 2 Claims submitted, including the sufficiency of the Class Member's evidence of his or her claimed injury, and any other documentation submitted in support of the Tier 2 Claim. This includes the authority to evaluate, and assign points, if any, on the basis of whether a Claimant suffered hair loss that is clearly attributable to another cause or suffered from another condition that is linked to hair loss.

If necessary, to evaluate a claim, the Settlement Administrator may issue a one-time request to the Claimant to provide any information that is missing or improperly submitted on the Tier 2 Claim Form. The Settlement Administrator shall review any revised Tier 2 Claims and adjust the points assigned, if warranted. The Settlement Administrator shall have full and final authority to award points to a Tier 2 Claim, or no points at all. A Class Member whose Tier 2 Claim is awarded no points shall be considered to have submitted a Tier 1 Claim to be determined under the applicable criteria.

G. Credits for Amounts Previously Paid by Defendants. Claimants who have previously received compensation from Defendant will have the amount of such payments credited against their recovery, if any, in this Settlement. Defendant will provide the Administrator with a database of amounts paid by Defendant to Class Members. To the extent it is determined that a Claimant has previously received payment from Defendant, the Administrator shall determine the

point equivalent of the amount to be credited and reduce the Claimants points awarded. To determine the amount of point reduction, the Administrator shall make a preliminary determination of the value of a point by taking the Net Settlement Amount divided by the total points preliminarily awarded to get the Preliminary Point Value. The Administrator shall then take the amount previously paid by Defendant to a Claimant divided by the Preliminary Point Value to arrive at the Claimant's Point Reduction.

H. Final Award Allocation. The final determination of all points awarded shall be subject to final review by Co-Lead Counsel and counsel for Defendant, either of whom may propose additional adjustments to points awarded. The Special Master will review all claims and points allotted by the Settlement Administrator, the proposed changes by the Parties, if any, and approve a final allocation of points that shall be binding and non-appealable. Each Claimant's final award allocation will be based upon the point value obtained by dividing the Net Settlement Amount by the total number of points allotted.

I. Deadline to Submit Claims. Class Members will have ninety (90) days from the Notice Date of the Settlement to submit either Tier 1 or Tier 2 claims ("Claims Period"). Claims may be reviewed and evaluated throughout the Claims Period. Payments will be made only after the conclusion of the Claims Period and when all claims have been submitted to and evaluated by the Settlement Administrator.

J. Within 30 days after the Court enters the Final Judgment and Order, or as soon thereafter as the Settlement Administrator has completed its evaluation of all submitted claims (hereinafter "Claims Completion Date"), the Settlement Administrator shall calculate the Net Settlement Amount by subtracting from the Gross Settlement Amount (i) all current and anticipated Class Notice and Administration Costs; (ii) any Attorneys' Fees and Costs awarded by

the Court; (iii) any Service Award approved by the Court; (iv) any necessary taxes and tax expenses, and (v) any other costs of administering the Settlement.

K. Within 30 days following the later of the Claims Completion Date or the Effective Date, the Settlement Administrator will send settlement benefit checks by mail or electronically if selected by Claimant, to eligible Claimants (i.e., Claimants the claims for which the Settlement Administrator has accepted and, if a Tier 2 claim, for which all liens have been resolved.).

L. With respect to any amount remaining from the Net Settlement Amount after distribution of (i) any Court-approved Notice and Administration Costs; (ii) any Attorneys' Fees and Costs awarded by the Court; (iii) any Service Award approved by the Court; (iv) any necessary taxes and tax expenses; and (v) settlement benefits to Claimants, the Administrator shall pay any such remaining amount as a *cy pres* fund payment to the National Alopecia Areata Foundation.

M. Under no circumstances shall any portion of the Gross Settlement Amount or the Net Settlement Amount be returned to Defendant unless the Agreement is terminated in accordance with this Agreement.

VIII. FINAL APPROVAL

A. Motion for Final Approval. Plaintiffs must apply for Court approval of the Final Order and Judgment no later than the date set forth in the Preliminary Approval Order, which application shall request final approval of the Settlement Agreement. Unless otherwise agreed to by the Parties in writing, Co-Lead Counsel shall provide Defendant's Counsel with drafts of the moving papers requesting final approval for review at least five (5) business days before the motion is filed.

B. Among other terms mutually agreed by the Parties and approved by the Court, the Final Order and Judgment shall enter a final judgment:

1. determining that the Settlement is fair, reasonable, and adequate;

2. certifying the Litigation as a settlement class action under Rule 23(b)(3) and (e) of the Federal Rules of Civil Procedure;

3. determining that the Class Notice provided through the Settlement Administrator, satisfied due process and Rule 23 of the Federal Rules of Civil Procedure so as to bind the Class Members and fully and finally resolve the Litigation;

4. permanently enjoining Class Members from commencing or prosecuting, either directly or indirectly, any action asserting any of the Released Claims as defined in Sections I and IX; and

5. retaining exclusive jurisdiction over the Parties, the Administrative Account, the Class Members who do not request exclusion pursuant to Section XI of this Agreement, and all objectors to enforce the Settlement Agreement and Final Order and Judgment according to their terms.

C. Litigation Status if Settlement Not Approved. This Settlement Agreement is being entered into for settlement purposes only. If the Court conditions its approval of the Final Order and Judgment on any material modifications of this Settlement Agreement that are not acceptable to Defendant and/or to Plaintiffs, if the Court does not approve the Settlement or enter the Final Order and Judgment, or if the Effective Date does not occur for any reason (including any reversal of the Final Order and Judgment by an appellate court or remand wherein the material terms herein are not reinstated), then this Settlement Agreement and the Settlement will be deemed null and void *ab initio*. In that event: (a) the Preliminary Approval Order, Final Order and Judgment, and any other order post-dating preliminary approval of the Settlement and all of their provisions will be vacated ("Denial Date"), including, but not limited to, the conditional certification of the Class, conditional appointment of Plaintiffs as Class Representatives, and conditional appointment of Co-

Lead Counsel as Settlement Counsel; (b) the Litigation will revert to the status that existed before the Settlement Agreement's execution date and the Parties shall not have waived any of their claims or defenses; (c) no term or draft of this Settlement Agreement or any part of the Parties' settlement discussions, negotiations, or documentation will have any effect, be admissible into evidence, or be subject to discovery for any purpose in the Litigation or any other proceeding; (d) Defendant shall retain all of its rights to object to the maintenance of the Litigation as a class action; and (e) all amounts paid by Defendant into the Administration Account will be returned to Defendant within five (5) calendar days of the Denial Date, subject to the provisions of Section XV of this Agreement.

IX. RELEASES AND ACKNOWLEDGMENTS

A. Releases. As of the entry of the Final Judgment and Order, Plaintiffs and the Class Members release Defendant and the Released Parties from any and all claims, demands, actions, causes of actions, individual actions, class actions, damages, obligations, liabilities, appeals, reimbursements, penalties, costs, expenses, attorneys' fees, liens, interest, injunctive or equitable claims and/or administrative claims, whether known or unknown, filed or unfiled, asserted or unasserted, regardless of the legal theories involved, that were brought or could have been brought in the Litigation that relate in any manner to the subject matter of the Litigation, including, but not limited to, design, manufacture, distribution, sale, and use in any way of the Products by any Class Member ("Releases").

B. Acknowledgements. Plaintiffs, on behalf of themselves and the Class Members, hereby:

1. acknowledge, represent, covenant, and warrant that the obligations imposed by Releases shall be forever binding, and that the Releases may not be modified, amended, annulled, rescinded, or otherwise changed unless in writing signed and

notarized by duly authorized representative of Defendant to which the modification, amendment, annulment, rescission, or change applies, and which writing expressly refers to the Releases and this Settlement Agreement;

2. acknowledge, represent, covenant, and warrant that they have not made any assignment of any right, claim, or cause of action covered by the Releases to any individual, corporation, or any other legal entity whatsoever;

3. acknowledge, represent, covenant, and warrant that they have full power, competence, and authority to execute and deliver the Releases;

4. acknowledge, represent, covenant, and warrant, to the extent the Releases may be deemed a general release, that Plaintiffs and the Class Members waive and release any and all provisions, rights, and benefits conferred by Section 1542 of the California Civil Code which provides that "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY" or any other similar federal or state law;

5. acknowledge, represent, covenant, and warrant that (i) they fully understand the facts on which the Settlement Agreement is executed may be different from the facts now believed by them and their counsel to be true and expressly accept and assume the risk of this possible difference in facts and agree that this Settlement Agreement remains effective despite any difference in facts that later may be discovered; and (ii) they hereby waive any right or ability to challenge the Settlement upon the discovery

of any new facts, any additional claims, or a change in the law regardless of why or how such facts, claims, or law was/were not otherwise known to them prior to executing and agreeing to this Settlement Agreement;

6. acknowledge, represent, covenant, and warrant that the Releases and acknowledgments above were bargained for and are an essential and material element of this Agreement.

X. MEDICAL LIENS AND OTHER RIGHTS FOR REIMBURSEMENT

A. The Medicare Program, Medicaid Program, Tricare and Other Insurers reimbursement obligations including, without limitation, all subrogation claims, liens, or other rights to payment, that have been or may be asserted by any governmental entity (hereinafter collectively "Government Liens") for payment of medical costs or expenses related to treatment for hair loss, balding, and significant scalp irritation from use of the Products, shall be resolved by Claimants with the assistance of their counsel, who will provide proof of satisfaction of said Governmental Lien(s) to Defendant and the Settlement Administrator. Claimants are responsible for all valid, legally enforceable medical, healthcare provider, insurance, employer or attorney liens, including the Government Liens. The Parties will work together to ensure that the interests of Medicare are protected and that all statutory and regulatory requirements are met to ensure compliance with, among other statutes, the MSP Laws. Released Parties are not responsible for any Lien. Co-Lead Counsel shall retain a Lien Administrator to ascertain and resolve the Government Liens or Government subrogation interest obligations, or any other lien obligations, pursuant to this Agreement. Claimant may satisfy the Government Liens or Government subrogation interest obligations of this section with an appropriate holdback amount determined by the Lien Administrator pending final determination by CMS.

B. Each Claimant and Co-Lead Counsel agree and acknowledge that should there be

any Liens for payment of medical costs and expenses arising out of the Claims for hair loss, balding, and/or scalp irritation from use of the Products, whether by statute or contract, Claimants and Co-Lead Counsel will alone reimburse the lienholder, which may be accomplished through the Lien Administrator, from the proceeds of this Settlement for the amounts of said Liens. Claimants and Co-Lead Counsel agree to indemnify, hold harmless and defend the Released Parties in any suit brought by a lienholder that is related to the Claims, the Litigation, or the surrounding circumstances. Claimants and Co-Lead Counsel further warrant that any outstanding medical bills for treatment related to or arising out of the Claims for hair loss, balding, and/or scalp irritation allegedly from use of the Subject Products, including bills for mental health treatment, will be paid from the proceeds of this Settlement, even if those amounts equal the full Claim Award to the Claimant.

XI. REQUEST FOR EXCLUSION BY CLASS MEMBERS

A. Any Class Member may make a request to be excluded from the Settlement ("Request for Exclusion") by mailing or delivering such request in writing signed by the individual Class Member to the Settlement Administrator.

B. Any Request for Exclusion must be postmarked or actually delivered not later than sixty (60) days after the Notice Date (the "Exclusion Date"). The Request for Exclusion shall (1) state the Class Member's full name and current address; (2) specifically state the Class Member's desire to be excluded from the Class; and (3) be signed personally by the Class Member. Failure to comply with these requirements and to timely submit the Request for Exclusion will result in the Class Member being bound by the terms of this Agreement.

C. Any Class Member who submits a timely Request for Exclusion may not file an Objection and shall be deemed to have waived any rights or benefits under this Agreement.

D. The Settlement Administrator shall provide a copy of any Request for Exclusion to

Co-Lead Counsel and Defendant's Counsel within ten (10) days after receipt of such Request for Exclusion.

E. Co-Lead Counsel shall provide the names and addresses of those Class Members seeking exclusion to the Court within 15 days of the Exclusion Date.

F. In the event that more than a confidential number of Class Members submit a proper and timely Request for Exclusion, Defendant shall have the option to void this Agreement by providing written notice to Co-Lead Counsel within fifteen (15) days of the final date by which such exclusions forms are due. In such event, subject to the provisions regarding termination of the Agreement in Section XV, each Party shall return to its respective pre-settlement posture without prejudice or waiver to any Party's pre-settlement position on any legal or factual issue. The actual number of opt outs triggering Defendant's right to withdraw shall be considered Highly Confidential and shall not be disclosed to anyone other than Co-Lead Counsel who are signatories to the Settlement Agreement and the Court. If disclosure to the Court is necessary, all efforts should be made to submit this information under seal.

G. Revocation of Request for Exclusion. Prior to entry of the Final Order and Judgment, any Settlement Class Member may seek to revoke his or her Request for Exclusion from the Class and thereby receive the benefits of the Settlement Agreement by submitting a request to the Administrator by email, mail, or through the Settlement Website (who will forward these to Co-Lead Counsel and Defendant's Counsel) stating "I wish to revoke my request to be excluded from the Settlement Class" (or substantially similar clear and unambiguous language), and also containing the Settlement Class Member's printed name, address, phone number, and date of birth. Such revocation shall be effective only with the express written consent of the Defendant (in its sole discretion).

XII. OBJECTIONS BY CLASS MEMBERS

A. As set forth in the Class Notice, any Class Member who wishes to object to any provision of this Agreement must file a written notice of Objection (an "Objection") with the Court no later than sixty (60) days after the Notice Date ("Objection Date"), or any other date set by the Court in the Preliminary Approval Order and must serve the Objection on Co-Lead Counsel and Defendant's Counsel.

B. To state a valid Objection, a Class Member must include the following information in the Objection: (1) full name, current address, and current telephone number; (2) documentation sufficient to establish membership in the Class; (3) a statement as to whether the Objection applies only to the objector, to a specific subset of the class, or to the entire class; (4) a statement of the basis for the Objection, including the factual and legal grounds for the position; (5) copies of any documents supporting the Objection; (6) the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the Objection to the Settlement or fee application; (7) any and all agreements that relate to the Objection or the process of objecting—whether written or oral—between objector or objector's counsel and any other person or entity; and (8) the number of times the objector, the objector's counsel and/or counsel's law firm have objected to a class action settlement within the five years preceding the date that the objector files the Objection, the caption of each case in which such prior objections have been made, and a copy of any orders related to or bearing upon such prior objections that were issued by the trial and appellate courts in each listed case. The Class Member must personally sign the Objection (an attorney's signature is not sufficient).

C. Subject to the approval of the Court, any Class Member filing an Objection may appear, in person or by counsel, at the hearing on the Final Judgment and Order. However, to be eligible for appearance at the hearing, such Class Member must file with the Court and serve upon

all counsel designated in the Class Notice, a notice of intention to appear at the hearing on the Final Judgment and Order ("Notice of Intention to Appear") by the Objection Date. The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that the Class Member or counsel will present to the Court. Any Class Member who does not provide a Notice of Intention to Appear in complete accordance with these specifications, subject to approval by the Court, may be deemed to have waived any objections to the Agreement and may be barred from speaking or otherwise presenting any views at the hearing on the Final Judgment and Order.

D. Co-Lead Counsel agree that they will be solely responsible for defending this Agreement and the Final Judgment and Order in the event of an appeal or challenge by a Class Member or any other individual or entity. Defendant will make a filing either joining and/or not opposing Co-Lead Counsel's defense.

XIII. EXCLUSIVE REMEDY

A. This Agreement shall provide the sole and exclusive remedy for any and all Released Claims of Class Members who do not request exclusion pursuant to Section XI of this Agreement. Upon entry of the Final Judgment and Order, each Class Member who does not request exclusion pursuant to Section XI of this Agreement shall be barred from initiating, asserting, or prosecuting against any of the Released Parties any Released Claims.

B. The Court shall retain exclusive and continuing jurisdiction over the Action, over all Parties to the Action, and over Class Members who do not request exclusion pursuant to Section XI of this Agreement to interpret and enforce the terms, conditions, and obligations of the Final Judgment and Order and this Agreement.

XIV. REPRESENTATIONS AND WARRANTIES

A. Co-Lead Counsel represent and warrant that they have the authority, on behalf of Plaintiffs, to execute, deliver, and perform this Agreement and to consummate all of the

transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Co-Lead Counsel and Plaintiffs and constitutes their legal, valid, and binding obligation.

B. Defendant, through its undersigned attorneys, represents and warrants that it has the authority to execute, deliver, and perform this Agreement and to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Defendant and constitutes its legal, valid, and binding obligation.

XV. TERMINATION

A. In addition to the circumstances outlined above that entitle the Parties to terminate this Agreement, either Party shall have the right to terminate this Agreement in the event that the Court or any appellate court rejects, denies approval, or modifies the Agreement or any portion of the Agreement in a material way.

B. If any Party elects to terminate the Agreement under this provision, the Party shall provide the other Party with notice of the termination fifteen (15) days after the event or action that gives rise to the termination. In such event, each Party shall return to its respective pre-settlement posture without prejudice or waiver to any Party's pre-settlement position on any legal or factual issue. No portion of the Gross Settlement Amount that has already been incurred for Notice and Administrative Costs or necessary taxes and expenses in connection with the maintenance of the Administration Account will be returned to Defendant even if the Court does not grant Final Approval or the Effective Date does not occur. Any amount expended prior to termination of this Settlement shall be considered a taxable cost allowed to the prevailing party.

XVI. BEST EFFORTS

A. The Parties and their counsel agree to cooperate fully with one another and to use their best efforts to effectuate the Settlement and administration of the claims hereunder, including,

without limitation, by seeking or not objecting to preliminary and final Court approval of this Settlement Agreement and the Settlement embodied herein, by carrying out the terms of this Settlement Agreement, and by promptly agreeing upon and executing all such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement.

B. The Parties and their counsel understand and agree that the administration of a class action lawsuit can be complex and that, from time to time after the entry of the Final Order and Judgment, unique, non-material issues with respect to individual Class Members may arise that are not directly covered by the terms of this Settlement Agreement. In the event any such non-material issues arise, the Parties and their counsel agree to cooperate fully with one another and to use their respective best efforts to come to agreement, which agreement shall not be unreasonably withheld.

C. Any requests for cooperation shall be narrowly tailored and reasonably necessary for the requesting party to recommend the Settlement to the Court and to carry out its terms.

XVII. MISCELLANEOUS PROVISIONS

A. This Settlement Agreement reflects the Parties' compromise and settlement of disputed claims. Its provisions and all related drafts, communications, discussions, and any material provided by Defendant during the Parties' negotiations cannot be construed as or deemed to be evidence of an admission or concession of any point of fact or law (including, but not limited to, matters respecting class certification) by any person or entity and cannot be offered or received into evidence in any other action or proceeding as evidence of an admission or concession, except as necessary to enforce the Settlement Agreement. Defendant expressly denies (a) any and all liability, culpability, and wrongdoing with respect to the Litigation and matters alleged therein and (b) that the Litigation could be certified and maintained as a class action under Federal Rule of Civil Procedure 23 or other state rule of procedure or law other than by way of settlement.

B. The Recitals are incorporated by this reference and are part of the Settlement Agreement.

C. The headings of the sections and paragraphs of this Agreement are included for convenience only and shall not be deemed to constitute part of this Agreement or to affect its construction.

D. Capitalized words, terms, and phrases are used as defined in Section I, above, or elsewhere in this Agreement.

E. This Agreement may not be modified or amended except in writing and signed by all of the Parties.

F. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

G. Except as otherwise provided in this Agreement, each Party bears his, her, or its own attorneys' fees, costs and expenses of the Litigation and in connection with this Agreement.

H. The Parties to this Agreement reserve the right to correct any inadvertent, non-substantive mistakes or typographical errors contained in the Agreement or the Exhibits.

I. The Parties execute this Agreement voluntarily and without duress or undue influence. All of the Parties warrant and represent that they are agreeing to the terms of this Settlement Agreement based upon the legal advice of their respective counsel, that they have been afforded the opportunity to discuss the contents of this Agreement with their counsel, and that the terms and conditions of this document are fully understood and voluntarily accepted.

J. 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 or the Final Order and Judgment entered in the Litigation. The administration and consummation of the Settlement embodied in this Agreement shall be under the authority of the Court. The Court shall retain jurisdiction to protect, preserve, and implement the Agreement, including but not limited to, the Release. The Court expressly retains jurisdiction to enter such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of this Agreement. The Parties do not intend by this provision to give the Court authority to change any term or condition of this Agreement over the objection of any Party.

K. The determination of the terms of, and the drafting of, this Agreement has been by mutual agreement after negotiation, with consideration by and participation of all Parties and their counsel. Since this Agreement was drafted with the participation of all Parties and their counsel, the presumption that ambiguities shall be construed against the drafter does not apply. The Parties were represented by competent and effective counsel throughout the course of settlement negotiations and in the drafting and execution of this Agreement, and there was no disparity in bargaining power among the Parties to this Agreement.

L. This Agreement constitutes the entire, fully integrated agreement among the Parties and cancels and supersedes all prior written and unwritten agreements and understandings pertaining to the settlement of the Litigation.

M. Except where time periods set forth herein explicitly reference "business days," all time periods set forth herein shall be computed in calendar days, inclusive of any weekends and holidays. In computing any period of time prescribed or allowed by this Agreement, the day of the act, or default, from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or Court holiday, in which event the period shall run until the end of the next day that is not one of the

aforementioned days. Each of the Parties reserves the right, subject to the Court's approval, to seek any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement, and to modify or supplement any notice contemplated hereunder.

N. Any failure by any of the Parties to insist upon the strict performance by any of the other Parties of any of the provisions of this Agreement shall not be deemed a waiver of any provision of this Agreement, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions herein.

O. All notices to the Parties or counsel required by this Agreement shall be made in writing and communicated by electronic and regular mail to the following addresses (unless one of the Parties subsequently designates one or more other designees):

For Plaintiffs and Co-Lead Counsel:

Gary E. Mason
MASON LIETZ & KLINGER LLP
5101 Wisconsin Ave., NW Ste 305
Washington, DC 20016
Tel: (202) 429-2290
gmason@masonllp.com

Charles E. Schaffer (admitted *pro hac vice*)
LEVIN, SEDRAN & BERMAN, LLP
510 Walnut Street, Suite 500
Philadelphia, PA 19106
Tel: (215) 592-1500
cschaffer@lfsblaw.com

For Defendant and Defendant's Counsel:

Keith E. Smith
GREENBERG TRAURIG, LLP
1717 Arch Street
Three Logan Square, Suite 400
Philadelphia, PA 19103
Tel: (215) 988-7800
smithkei@gtlaw.com

IN WITNESS WHEREOF, the Parties and their representatives have executed this Agreement as of the dates(s) indicated on the lines below.

Co-Lead Counsel

Dated: Jul 26, 2021

Gary Mason (Jul 26, 2021 16:02 EDT)

Gary E. Mason
MASON LIETZ & KLINGER LLP
5101 Wisconsin Ave., NW Ste 305
Washington, DC 20016
Tel: (202) 429-2290
gmason@masonllp.com

Dated: Jul 26, 2021

Charles Schaffer (Jul 26, 2021 11:37 EDT)

Charles E. Schaffer (admitted *pro hac vice*)
LEVIN, SEDRAN & BERMAN, LLP
510 Walnut Street, Suite 500
Philadelphia, PA 19106
Tel: (215) 592-1500
cschaffer@lfsblaw.com

Deva Concepts, LLC

Dated: Jul 26, 2021

Keith E. Smith (Jul 26, 2021 14:07 EDT)

By: Its Attorneys: Keith E. Smith (authorized to execute on behalf of Deva Concepts, LLC)
GREENBERG TRAURIG, LLP
1717 Arch Street
Three Logan Square, Suite 400
Philadelphia, PA 19103
Tel: (215) 988-7843
smithkei@gtlaw.com

Dated: Jul 26, 2021

Keith E. Smith (Jul 26, 2021 14:07 EDT)

Keith E. Smith
GREENBERG TRAURIG, LLP
1717 Arch Street
Three Logan Square, Suite 400
Philadelphia, PA 19103
Tel: (215) 988-7843
smithkei@gtlaw.com
Counsel for Defendant, Deva Concepts, LLC

Class Representatives:

Wendy Baldyga (Jul 22, 2021 11:17 PDT)
Dated: Jul 22, 2021
Wendy Baldyga

Marisa Cohen (Jul 23, 2021 09:56 PDT)
Dated: Jul 23, 2021
Marisa Cohen

Tami Nunez (Jul 22, 2021 22:11 EDT)
Dated: Jul 22, 2021
Tami Nunez

Dated: Jul 22, 2021
Stephanie Williams

Erika Martinez (Jul 23, 2021 11:19 CDT)
Dated: Jul 23, 2021
Erika Martinez-Villa

Dated:
Marcy McCreary

Lauren Petersen (Jul 22, 2021 14:37 CDT)
Dated: Jul 22, 2021
Lauren Petersen

Dated:
Jody Shewmaker

Dated:
Diana Hall

Alanna Hall (Jul 24, 2021 16:04 EDT)
Dated: Jul 24, 2021
Alanna Hall

Dated:
Tahira Shaikh

Class Representatives:

_____ Dated:
Wendy Baldyga

_____ Dated:
Marisa Cohen

_____ Dated:
Tami Nunez

_____ Dated:
Stephanie Williams

_____ Dated:
Erika Martinez-Villa

_____ Dated: 07/22/2021
Tahira Shaikh

_____ Dated:
Marcy McCreary

_____ Dated:
Lauren Petersen

_____ Dated:
Jody Shewmaker

_____ Dated:
Diana Hall

_____Dated:
Alanna Hall

---------- Dated:
Wendy Baldyga

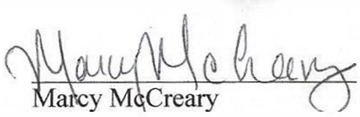
---------- Dated:
Marisa Cohen

---------- Dated:
Tami Nunez

---------- Dated:
Stephanie Williams

---------- Dated:
Erika Martinez-Villa

---------- Dated:
Tahira Shaikh

 Dated:
Marcy McCreary

---------- Dated:
Lauren Petersen

---------- Dated:
Jody Shewmaker

---------- Dated:
Diana Hall

---------- Dated:
Alanna Hall,

Class Representatives:

---------- Dated:
Wendy Baldyga

Dated:
Marisa Cohen

Dated:
Tami Nunez

---------- Dated:
Stephanie Williams

---------- Dated:
Erika Matiinez-Villa

---------- Dated:
Tahira Shaikh

---------- Dated:
Marcy McCreary

---------- Dated:
Lauren Petersen

jhc(v,),1. ,Dated: 7/7 z/21
Jody Shewmaker

---------- Dated:
Diana Hall

Dated:
Alanna Hall,

Class Representatives:

_____ Dated:
Wendy Baldyga

_____ Dated:
Marisa Cohen

_____ Dated:
Tami Nunez

_____ Dated:
Stephanie Williams

_____ Dated:
Erika Martinez-Villa

_____ Dated:
Tahira Shaikh

_____ Dated:
Marcy McCreary

_____ Dated:
Lauren Petersen

_____ Dated:
Jody Shewmaker

DocuSigned by:
Diana Hall
B983F1A7D141443...
_____ Dated: 7/23/2021
Diana Hall

_____Dated:
Alanna Hall

EXHIBIT 1

DevaCurl Products Settlement Administrator
P.O. Box xxxx
City, ST xxxxx-xxxx

[redacted]

DVC

«Barcode»
Postal Service: Please do not mark barcode

Claim: DVC-«Claim8»-«CkDig»
«FirstNAME» «LastNAME»
«Addr1» «Addr2»
«City», «State»«FProv» «Zip»«FZip»
«FCountry»

In re Deva Concepts Products Liability Litigation

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Master File No. 1:20-cv-1234

Must Be Postmarked
No Later Than
Month XX, 2021

Claim ID: <<Claim8>>
PIN Code: <<PIN>>

DEVACURL HAIRCARE PRODUCTS SETTLEMENT CLAIM FORM

INSTRUCTIONS

1. Please complete all steps of this Claim Form. You must submit all of the required information and documentation in order to have a valid claim.
2. To complete the Claim Form, you must sign and date the Declaration at the bottom of this form.
3. Return your signed and completed Claim Form and all of your documentation postmarked by _____, 2021. Your Claim can be submitted by mail, email or online:

   By mail: DevaCurl Products Settlement Administrator
   P.O. Box xxxx
   City, ST xxxxx-xxxx

   By email: info@curlyhairsettlement.com

   Online: www.CurlyHairSettlement.com

4. QUESTIONS? Visit the settlement website at www.CurlyHairSettlement.com or call 1-888-XXX-XXXX.

STEP ONE: CLASS MEMBER IDENTIFICATION

First Name | M.I. | Last Name

Primary Address

Primary Address Continued

City | State | ZIP Code

Email Address

Area Code — Telephone Number (Home) — Area Code — Telephone Number (Work)

FOR CLAIMS PROCESSING ONLY	OB	CB	DOC / LC / REV	RED / A / B

STEP TWO: ATTORNEY NAME AND CONTACT INFORMATION (IF REPRESENTED)

I am represented by an attorney. If yes, please list your attorney's name and contact information below. If no, continue to Step Three. ○ Yes ○ No

Name of Attorney

Mailing Address of Attorney

City State Zip Code

Phone Number of Attorney

___ — ___ — ____

Email Address of Attorney

STEP THREE: CLASS MEMBERSHIP & BACKGROUND

Please provide information for all of the statements below.

1. I purchased DevaCurl Products approximately ___ times between February 8, 2008 and _____, 2021.
2. I purchased DevaCurl Products through the following outlet(s) (Fill all that apply):
   ○ www.devacurl.com ○ Ulta ○ CosmoProf ○ Other professional beauty outlet
   ○ Sephora ○ Other specialty beauty retailers ○ Amazon ○ DevaChan Salon ○ Other Salon
3. I used DevaCurl Products between the approximate dates:
   MM / DD / YYYY to MM / DD / YYYY

TIER 1 CLAIM FORM

○ I certify that I have purchased, used, or had used on me DevaCurl Products and would like to make a claim of up to $20 from this Settlement. Please continue to Step Eleven: Declaration on Page 8 of this form.

TIER 2 CLAIM FORM

STEP FOUR: DAMAGE TO HAIR & SCALP

Please complete all of the questions/statements below. As explained below, you must supply a personal statement fully describing your injuries.

1. When was the approximate date you began to notice injury to your hair or scalp?
   MM / DD / YYYY

2. I suffered from the following injuries (Fill all that apply):

○ Loss of hair ○ Change in hair texture ○ Hair breakage ○ Loss of hair color/color change

○ Bald spots ○ Visible thinning ○ Damage to scalp ○ Change of curl pattern

○ Other

3. If you suffered from hair loss, what was the extent of your hair loss? Please provide estimated percentage of hair loss:

○ Less than 25% ○ 25% ○ 50% ○ 75% ○ 100%

4. Has your hair loss and/or irritation stopped? ○ Yes ○ No

5. If yes, how long did it take for the hair loss and/or irritation to stop?

○ 3 months or less ○ 3 to 6 months ○ 6 months to 1 year ○ More than 1 year ○ More than 2 years

6. If no, what estimated percentage of your hair has *not* grown back?

○ Less than 25% ○ 25% ○ 50% ○ 75% ○ 100%

7. Did you contact the outlet from which you purchased DevaCurl Products or anyone else with a complaint about the damage to your hair or scalp? ○ Yes ○ No

a. If you made a complaint, what is the approximate date of your complaint?

M M / D D / Y Y Y Y

b. If you made a complaint, with whom did you make your Complaint? (Fill all that apply):

○ DevaCurl Corporate ○ DevaChan Salon ○ Other salon ○ Ulta ○ Sephora

○ Amazon ○ Government entity ○ Other Retailer

○ Other. Please add additional detail below.

c. I have attached a copy of my complaint or communications referenced in 7 above. ○ Yes ○ No

What were your estimated out-of-pocket costs relating to the damage of your hair and/or scalp? $.

What type of expenses did you incur?

○ Purchased wigs ○ Purchased therapeutic hair or scalp products ○ Medical bills ○ Purchased headbands

○ Purchased extensions ○ Salon treatments ○ Special haircuts

8. Do you have documentation and/or any evidence that you can provide along with this Claim Form? ○ Yes ○ No

9. If yes, attach copies of the documentation to this Claim Form.

STEP FIVE: EMOTIONAL INJURIES

If you are making a claim for emotional injuries, please complete all of the questions/statements below and attach any additional documentation or statements you may have. You must supply a written or video statement fully describing any emotional injuries that resulted from the damage to your hair and/or scalp.

1. As a result of the damage to my hair and/or scalp, I have one or more of the following conditions (Fill all that apply):

   ○ Anxiety ○ Depression ○ Damage to self-esteem ○ Impaired daily activity

   ○ Impaired ability to do my job ○ Damage to relationships ○ Affected special event

   ○ Other. If other, please explain briefly and in detail in your statement:

2. How long did your emotional injuries last?

   M M / D D / Y Y Y Y to M M / D D / Y Y Y Y

3. Did you seek professional help, like counseling, for your emotional damages? ○ Yes ○ No

4. If yes, what type of treatment did you seek?

   Name of Provider

   Practice

   Address

   City State Zip Code

   Phone Number

   — —

5. How many times have you gone to treatment? times

6. What time period did you go to treatment?

   M M / D D / Y Y Y Y to M M / D D / Y Y Y Y

7. Are you still seeking treatment? ○ Yes ○ No

8. Do you have documentation and/or any evidence that you can provide along with this Claim Form? ○ Yes ○ No

9. If yes, attach copies of the documentation to this Claim Form.

STEP SIX: MEDICAL CONDITIONS

1. Have you ever suffered from any hair loss or scalp irritation **prior** to using DevaCurl Products? ○ Yes ○ No

2. If yes, when did this occur?

   M M / D D / Y Y Y Y to M M / D D / Y Y Y Y

3. Have you experienced any of the following in the three years before, during, or after your use of DevaCurl Products? (Fill all that apply):

○ Pregnancy ○ Death of a Close Friend/Family Member ○ Job Change
○ Financial Troubles (i.e., declared bankruptcy; lost job) ○ Divorce
○ Other Stressors

4. Have you ever suffered from any of the following in the three years prior to or during your use of DevaCurl Products? (Fill all that apply):

○ Hormone replacement therapy ○ Autoimmune disease ○ Alopecia ○ Thyroid problems
○ Psoriasis or other skin condition ○ Depression ○ Perimenopause or menopause ○ Cancer
○ Other

5. Have you had any of the following treatments prior to or during your use of DevaCurl Products? (Fill all that apply):

○ Chemotherapy ○ Radiation ○ Fertility
○ Other

6. If you had hair loss or scalp irritation prior to using DevaCurl Products, did your hair loss or scalp irritation worsen, improve, or stay the same after you started using DevaCurl Products?

○ Worsen ○ Improve ○ Stay the same

STEP SEVEN: MEDICAL TREATMENTS

Did you see a doctor or other medical provider related to your hair loss and/or scalp irritation? ○ Yes ○ No

If yes, complete this section. If not, continue to the next step.

Under the terms of the Settlement, you may be reimbursed for any out-of-pocket expenses you incurred as a result of the hair loss or scalp irritation. However, **PROOF OF PAYMENT IS REQUIRED** for reimbursement, such as receipts, cancelled checks, bank statements, account statements, etc. Medical payments covered by insurance will not be reimbursed. Co-pay or out-of-pocket medical payments related to hair loss or scalp irritation qualify for reimbursement. Payments made by your insurance company are not recoverable.

In the section below (starting on page 11), list your out-of-pocket expenses for medical treatments, approximate date of payment and to whom payment was made. **Attach the corresponding documentation to your Claim Form.** Please attach an additional sheet if you have additional expenses. If you need additional space, please additional sheets as necessary. If some of your expenses were paid by insurance or otherwise reimbursed, please indicate below.

Date
MM / DD / YYYY

Amount Paid
$.

Proof attached?
Yes No

Name of Provider

Description of Services

Address

City

State

Zip Code

Phone Number
— —

Type of Provider
Primary care physician/family doctor Dermatologist Specialist Psychiatrist Therapist
Other

Name of Insurance Provider

Member ID

Plan Number

Group Number

Diagnosis
Telogen Effluvium (temporary hair loss) Thyroid disease Alopecia areata Hereditary hair loss
Scarring alopecia Cancer treatment Hormonal imbalance Syndrome (PCOS) Scalp infection
Medication side effects Scalp Psoriasis Deficiency of iron, biotin, protein, or zinc Major psychological stress
Abrupt hormonal changes (including those associated with childbirth and menopause)

Date
MM / DD / YYYY

Amount Paid
$.

Proof attached?
Yes No

Name of Provider

Description of Services

Address

City

State

Zip Code

Phone Number
— —

Type of Provider
Primary care physician/family doctor Dermatologist Specialist Psychiatrist Therapist
Other

Name of Insurance Provider

Member ID

Plan Number

Group Number

Diagnosis
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Medication side effects Scalp Psoriasis Deficiency of iron, biotin, protein, or zinc Major psychological stress
Abrupt hormonal changes (including those associated with childbirth and menopause)

Date
MM / DD / YYYY

Amount Paid
$.

Proof attached?
Yes No

Name of Provider

Description of Services

Address

City

State

Zip Code

Phone Number
— —

Type of Provider
Primary care physician/family doctor Dermatologist Specialist Psychiatrist Therapist
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Abrupt hormonal changes (including those associated with childbirth and menopause)

Date
MM / DD / YYYY

Amount Paid
$.

Proof attached?
Yes No

Name of Provider

Description of Services

Address

City

State

Zip Code

Phone Number
— —

Type of Provider
Primary care physician/family doctor Dermatologist Specialist Psychiatrist Therapist
Other

Name of Insurance Provider

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Medication side effects Scalp Psoriasis Deficiency of iron, biotin, protein, or zinc Major psychological stress
Abrupt hormonal changes (including those associated with childbirth and menopause)

Less Amount Paid by Insurance or Otherwise Reimbursed: $.

Total Out-of-Pocket Expenses: $.

If you have seen a doctor or other medical provider related to your hair loss, scalp irritation and/or emotional distress, you will need to provide an authorization for the release of medical records and billing information for your doctor or other medical provider under the Health Insurance Portability and Accountability Act ("HIPAA") and other similar laws. Please complete such Medical Records Authorization for each medical provider.

STEP EIGHT: OTHER TREATMENTS & EXPENSES

Please complete all of the questions/statements below and attach any additional documentation or statements you may have.

As a result of the damage to my hair and/or scalp from the use of DevaCurl Products, I used the following treatments to repair the damage to my hair and/or scalp or address a change in my appearance (Fill all that apply):

○ Salon treatments ○ Special haircuts ○ Wigs ○ Extensions ○ Home treatment/Over-the-counter
○ Other

Under the terms of the Settlement, you may be reimbursed for any out-of-pocket expenses you incurred as a result of the hair loss or scalp irritation. However, **PROOF OF PAYMENT IS REQUIRED** for reimbursement, such as receipts, cancelled checks, bank statements, account statements, etc.

In the section below (starting on page 11), list your out-of-pocket expenses, approximate date of payment and to whom payment was made. **Attach the corresponding documentation to your Claim Form.** Please attach an additional sheet if you have additional expenses. If you need additional space, please attach additional sheets as necessary.

Date
MM / DD / YYYY

Amount Paid
$.

Proof attached?
Yes No

Name of Provider

Description of Services

Address

City

State

Zip Code

Phone Number
— —

Type of Provider
Primary care physician/family doctor Dermatologist Specialist Psychiatrist Therapist
Other

Name of Insurance Provider

Member ID

Plan Number

Group Number

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Abrupt hormonal changes (including those associated with childbirth and menopause)

Date
MM / DD / YYYY

Amount Paid
$.

Proof attached?
Yes No

Name of Provider

Description of Services

Address

City

State

Zip Code

Phone Number
— —

Type of Provider
Primary care physician/family doctor Dermatologist Specialist Psychiatrist Therapist
Other

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Medication side effects Scalp Psoriasis Deficiency of iron, biotin, protein, or zinc Major psychological stress
Abrupt hormonal changes (including those associated with childbirth and menopause)

Date
MM / DD / YYYY

Amount Paid
$.

Proof attached?
Yes No

Name of Provider

Description of Services

Address

City

State

Zip Code

Phone Number
— —

Type of Provider
Primary care physician/family doctor Dermatologist Specialist Psychiatrist Therapist
Other

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Abrupt hormonal changes (including those associated with childbirth and menopause)

Date
MM / DD / YYYY

Amount Paid
$.

Proof attached?
Yes No

Name of Provider

Description of Services

Address

City

State

Zip Code

Phone Number
— —

Type of Provider
Primary care physician/family doctor Dermatologist Specialist Psychiatrist Therapist
Other

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Medication side effects Scalp Psoriasis Deficiency of iron, biotin, protein, or zinc Major psychological stress
Abrupt hormonal changes (including those associated with childbirth and menopause)

Total Out-of-Pocket Expenses: $.

STEP NINE: PROOF OF INJURIES & WITNESS STATEMENTS

1. **Proof of injuries and witness statements.** Do you have documentation of your proof of injuries and/or witness statements that corroborate your claims? ○ Yes ○ No

2. If yes, and even if you are already included with the Claim Form as requested above, please identify what form of proof you are including:

   a. Photos: Before and after photos of the damage to your hair and/or scalp. Each photo must be dated and labeled as either "before" or "after" photos. ○ Yes ○ No

   b. Medical records: Copies of medical records, doctor's notes, test results and/or a statement from your doctor indicating damage to your hair or scalp after using DevaCurl Products. ○ Yes ○ No

   c. Statement from your hair stylist(s): Written or video statements from your hair stylist(s) indicating the amount of hair loss suffered and any lasting effects. ○ Yes ○ No

   d. Statements from other witnesses: Written or video statements that can testify about the damage to your hair and its effect on you (e.g. spouse, family friends). Please be sure to include any witnesses' names and their relationship to you. ○ Yes ○ No

If you do provide a video statement, it will need to be sent via email to the following: info@curlyhairsettlement.com.

3. **Copies of receipts or other proof of expenses.** As detailed above, in order to be reimbursed for any expenses related to your Claim, **you must submit copies of receipts or other proof of payment along with your Claim Form**.

The extent of scalp irritation and/or hair loss suffered and the duration of the hair loss are two critical components of evaluating your claim. Before and after photographs are often the best resource for demonstrating the amount of hair loss or scalp damage suffered. If you would like to provide additional information in the form of a written statement or video, you may also include any additional information you believe would be helpful in evaluating your claim.

STEP TEN: ADDITIONAL INFORMATION

1. Other than the above, are there any additional costs or damages associated with DevaCurl Products that you are claiming? ○ Yes ○ No

2. If yes, please provide as attachment to this Claim Form.

STEP ELEVEN: DECLARATION

I declare, under penalty of perjury, under the laws of the United States, that the information provided in the Claim Form is true and correct.

I certify that I purchased, used, and/or had DevaCurl Products used on me between February 8, 2008 and Effective Date and that all of the information provided in this Claim Form and all of the documents and information filed in support of this Claim Form is true and correct.

Signature: _____ Dated (mm/dd/yyyy): _____

Print Name: _____

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EXHIBIT 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: DEVA CONCEPTS PRODUCTS LIABILITY LITIGATION	
This Document Relates To:	Master File No. 1:20-cv-01234-GHW
All Cases	

[PROPOSED] ORDER
GRANTING FINAL APPROVAL OF CLASS SETTLEMENT

Before the Court is Plaintiffs' Motion requesting that the Court enter an Order granting Final Approval of the Class Action Settlement involving Plaintiffs and Defendant Deva Concepts, LLC ("Defendant" or "DevaCurl"), as fair, reasonable, and adequate.

Having reviewed and considered the Settlement Agreement and the Motion for Final Approval of the Settlement, and having conducted a Final Approval Hearing, the Court makes the findings and grants the relief set forth below approving the Settlement upon the terms and conditions set forth in this Final Order and Judgment.

THE COURT not being required to conduct a trial on the merits of the case or determine with certainty the factual and legal issues in dispute when determining whether to approve a proposed class action settlement; and

THE COURT makes the findings and conclusions hereinafter set forth for the limited purpose of determining whether the Settlement should be approved as being fair, reasonable, adequate and in the best interests of the Settlement Class;

IT IS ON THIS _____ day of _____, 2021,

ORDERED that:

1. The Settlement involves allegations in Plaintiffs' Consolidated Class Action Complaint that Defendant designed, formulated, manufactured, distributed and sold haircare products that are falsely and misleadingly labeled and sold as well as caused adverse reactions resulting in personal injures to Plaintiffs and the Class.

2. The Settlement does not constitute an admission of liability by DevaCurl, and the Court expressly does not make any finding of liability or wrongdoing by DevaCurl.

3. Unless otherwise noted, words spelled in this Order with initial capital letters have the same meaning as set forth in the Settlement Agreement.

4. On _____ the Court entered an Order which among other things: (a) approved the Notice to the Settlement Class, including approval of the form and manner of notice under the Notice program set forth in the Settlement Agreement; (b) provisionally certified a class in this matter, including defining the Class, appointing Plaintiffs as the Settlement Class Representatives, and appointing Settlement Class Counsel; (c) preliminarily approved the Settlement; (d); set deadlines for opt-outs and objections; (e) approved and appointed the Claims Administrator; and (f) set the date for the Final Approval Hearing.

5. In the Order Granting the Motion for Preliminary Approval of Class Settlement Agreement, pursuant to Rule 23(b)(3) and 23(e), for settlement purposes only, the Court certified the Settlement Class, defined as follows:

> All persons who purchased and/or used any of the Products in the United States between February 8, 2008 and such date that is thirty (30) days after the Preliminary Approval Date, excluding (a) any officers, directors or employees, or immediate family members of the officers, directors or employees, of Defendant or any entity in which Defendant has a controlling interest, (b) any legal counsel or employee of legal counsel for Defendant, (c) the presiding Judge in the Lawsuit, as well as the

Judge's staff and their immediate family members, and (d) all persons who timely and properly exclude themselves from the Class as provided in the Settlement.

6. The Court, having reviewed the terms of the Settlement Agreement submitted by the Parties pursuant to Rule 23(e), grants Final Approval of the Settlement Agreement and defines the Settlement Class as defined therein and in the Preliminary Approval Order, and finds that the Settlement is fair, reasonable, and adequate and meets the requirements of Rule 23.

7. The Settlement Agreement provides, in part, and subject to a more detailed description of the Settlement terms in the Settlement Agreement, for:

a. A process for Settlement Class Members to submit claims for compensation that will be evaluated by a Claims Administrator mutually agreed upon by Settlement Class Counsel and Defendant's Counsel;

b. Labeling changes to Defendant's Products;

c. Defendant to pay all Notice and Claims Administration costs from the Common Fund.;

d. Defendant to pay a Court-approved amount for Attorneys' Fees and Costs of Settlement Class Counsel and other Plaintiffs' Counsel from the Common Fund not to exceed $1,733,160, constituting 33 and 1/3% of the Common Fund; and

e. Defendant to pay a Service Award not to exceed $600 to each of the Class Representatives from the Common Fund.

8. The terms of the Settlement Agreement are fair, reasonable, and adequate and are hereby approved, adopted, and incorporated by the Court. The Parties, their respective attorneys, and the Claims Administrator are hereby directed to consummate the Settlement in accordance with this Order and the terms of the Settlement Agreement.

9. Notice of the Final Approval Hearing, the proposed motion for Attorneys' Fees and Costs, and the proposed Service Award payment to Class Representatives have been provided to Settlement Class Members as directed by this Court's Orders, and an affidavit or declaration of the Settlement Administrator's compliance with the Notice program has been filed with the Court.

10. The Court finds that such Notice, as therein ordered, constitutes the best possible notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Settlement Class Members in compliance with the requirements of Rule 23(c)(2).

11. As of the final date of the Opt-Out Period, ____ potential Settlement Class Members have submitted a valid Opt-Out Request to be excluded from the Settlement. The names of those persons are set forth in Exhibit A to this Order. Those persons are not bound by this Final Order and Judgment, as set forth in the Settlement Agreement.

12. The Court has considered all the documents filed in support of the Settlement, and has fully considered all matters raised, all exhibits and affidavits filed, all evidence received at the Final Approval Hearing, all other papers and documents comprising the record herein, and all oral arguments presented to the Court.

13. Pursuant to the Settlement Agreement, Defendant and the Settlement Administrator shall implement the Settlement in the manner and time frame as set forth therein.

14. Pursuant to the Settlement Agreement, Plaintiff and the Settlement Class Members release claims against Defendants and all Released Parties, as defined in the Settlement Agreement, as follows: As of the entry of the Final Judgment and Order, Plaintiffs and the Class Members release Defendant and the Released Parties from any and all claims, demands, actions, causes of actions, individual actions, class actions, damages, obligations, liabilities, appeals, reimbursements, penalties, costs, expenses, attorneys' fees, liens, interest, injunctive or equitable claims and/or administrative claims, whether known or unknown, filed or unfiled, asserted or unasserted, regardless of the legal theories involved, that were brought or could have been brought in the Litigation that relate in any manner to the subject matter of the Litigation, including, but not

limited to, design, manufacture, distribution, sale, and use of the Subject Products by any Class Member.

15. Released Claims shall not include the right of any Settlement Class Member or any of the Released Parties to enforce the terms of the Settlement contained in the Settlement Agreement and shall not include the claims of those persons identified in Exhibit A to this Order who have timely and validly requested exclusion from the Settlement Class.

16. On the Effective Date and in consideration of the promises and covenants set forth in the Settlement Agreement, (i) Plaintiffs and each Settlement Class Member, and each of their respective spouses and children with claims on behalf of the Settlement Class Member, executors, representatives, guardians, wards, heirs, estates, successors, predecessors, next friends, co-borrowers, co-obligors, co-debtors, legal representatives, attorneys, agents, and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf (including the government in the capacity as *parens patriae* or on behalf of creditors or estates of the releasors), and each of them (collectively and individually, the "Releasing Persons"), and (ii) Settlement Class Counsel, other plaintiff's counsel who have asserted claims in the Litigation, and each of their past and present law firms, partners, or other employers, employees, agents, representatives, successors, or assigns will be deemed to have, and by operation of the Final Order and Judgment shall have, fully, finally, completely, and forever released and discharged the Released Parties from the Released Claims.

17. The matter is hereby dismissed with prejudice and without costs except that the Court reserves jurisdiction over the consummation and enforcement of the Settlement.

18. In accordance with Rule 23, this Final Order and Judgment resolves all claims against all Parties in this Action and is a final order. There is no just reason to delay the entry of

final judgment in this matter, and the Clerk is directed to file this Order as the Final Judgment in this matter.

Done and ordered this _____ day of _____, 2021.

_____

EXHIBIT 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: DEVA CONCEPTS PRODUCTS LIABILITY LITIGATION	
This Document Relates To:	Master File No. 1:20-cv-01234-GHW
All Cases	

[PROPOSED] ORDER PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT, PROVISIONALLY CERTIFYING A NATIONWIDE CLASS, APPROVING PROPOSED NOTICE, AND SCHEDULING FAIRNESS HEARING

Upon review and consideration of the Settlement and all Exhibits thereto that have been filed with the Court, pursuant to Rule 23 of the Federal Rules of Civil Procedure, it is HEREBY ORDERED, ADJUDGED and DECREED as follows:

1. The Court has carefully reviewed the Settlement, as well as the files, records, and proceedings to date in this matter. The definitions in the Settlement are hereby incorporated as though fully set forth in this Order, and capitalized terms shall have the meanings attributed to them in the Settlement.

2. The Parties have agreed to settle the Litigation upon the terms and conditions set forth in the Settlement that has been filed with the Court. The Settlement, including all Exhibits thereto, is preliminarily approved as fair, reasonable, and adequate. Plaintiffs, by and through their counsel, conducted a robust investigation into the facts and law relating to the matters alleged in their Complaints, including into marketing, advertising, and labeling of the products, as well as legal research as to the strength and sufficiency of the claims and defenses thereto, and

appropriateness of class certification. The Settlement provides meaningful relief to the Class including potentially substantial cash payments for those who allege to have suffered significant injuries (up to $19,000 cumulatively), equitable relief, and compensation for even those with modest damages that Plaintiffs and Class Counsel believe are potentially recoverable or provable at trial without the costs, uncertainties, delays, and other risks associated with continued litigation, trial, and/or appeal.

3. The Court provisionally certifies, for settlement purposes only, a Class of:

> All persons who purchased and/or used any of the Products in the United States between February 8, 2008 and such date that is thirty (30) days after the Preliminary Approval Date, excluding (a) any officers, directors or employees, or immediate family members of the officers, directors or employees, of Defendant or any entity in which Defendant has a controlling interest, (b) any legal counsel or employee of legal counsel for Defendant, (c) the presiding Judge in the Lawsuit, as well as the Judge's staff and their immediate family members, and (d) all persons who timely and properly exclude themselves from the Class as provided in the Settlement.

4. The Court provisionally finds, for settlement purposes only and conditioned upon the entry of this Order and subject to final findings and ratification in the Final Order and Judgment, and the occurrence of the Effective Date, that the prerequisites for a class action under Rule 23 of the Federal Rules of Civil Procedure have been satisfied in that: (a) the number of Class Members is so numerous that joinder of all Members thereof is impracticable; (b) there are questions of law and fact common to the Class; (c) the claims of the Plaintiffs are typical of the claims of the Class they seek to represent; (d) the Plaintiffs have fairly and adequately represented the interests of the Class and will continue to do so, and the Plaintiffs have retained experienced counsel to represent them; (e) the questions of law and fact common to the Class Members predominate over any questions affecting any individual Class Member; and (f) a class action is

superior to the other available methods for the fair and efficient adjudication of the controversy. All of these findings are made for settlement purposes only.

5. The Court appoints Gary E. Mason of Mason, Lietz, and Klinger LLP and Charles E. Schaffer of Levin Sedran & Berman LLP as counsel for the Class ("Class Counsel"). For purposes of these settlement approval proceedings, the Court finds that these attorneys are competent and capable of exercising their responsibilities as Class Counsel.

6. The Court designates named Plaintiffs Wendy Baldyga, Marisa Cohen, Tami Nunez, Stephanie Williams, Erika Martinez-Villa, Tahira Shaikh, Marcy McCreary, Lauren Petersen, Jody Shewmaker, Diana Hall, and Alanna Hall as the representatives of the Class.

7. The Fairness Hearing shall be held before this Court on _____, 2021, at _____, to determine whether the Settlement is fair, reasonable, and adequate, and whether it should receive final approval. The Court will also address Class Counsel's application for an award of Attorneys' Fees and Costs and Service Awards for the Plaintiffs (collectively, the "Fee Application") at that time. Papers in support of final approval of the Settlement and the Fee Application shall be filed with the Court according to the schedule set forth in Paragraph 18 below. The Fairness Hearing may be postponed, adjourned, or continued by order of the Court without further notice to the Class. After the Fairness Hearing, the Court may enter a Final Order and Judgment in accordance with the Settlement that will adjudicate the rights of the Class Members (as defined in the Settlement) with respect to the claims being settled.

8. Pending the Fairness Hearing, all proceedings in the Litigation, other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement and this Order, are stayed.

9. The Court approves, as to form and content, the Long-Form Notice ("Long Form Notice") and the Short-Form Notice ("Short Form Notice"), attached as Exhibits 5 and 6, respectively, to the Settlement Agreement. The Court further approves the Notice Plan set forth in the Settlement and the Declaration of Carla Peak in Support of Settlement Notice Program ("Peak Decl."), filed with Plaintiffs' Motion for Preliminary Approval of the Settlement.

10. The Court finds that the Long Form Notice, Short Form Notice, and Notice Plan are reasonable, that they constitute due, adequate, and sufficient notice to all persons entitled to receive notice, and that they meet the requirements of due process and Federal Rule of Civil Procedure 23(e). Specifically, the Court finds that the manner of dissemination of the individual notice and media campaign described in the Declaration of Carla A. Peak complies with Rule 23(e), as it is also the best practicable notice under the circumstances, given the manner in which Defendant sells the Products, and is reasonably calculated, under all the circumstances, to apprise members of the class of the pendency of this Action, the terms of the Settlement, and their right to object to the Settlement or exclude themselves from the Class. Notice shall be issued as soon as practicable after this Preliminary Approval Order (the "Notice Date").

11. Class Members will have ninety (90) days total, from the Notice Date, to submit their Claim Forms, which the Court finds is adequate and sufficient time.

12. Each member of the Class who wishes to be excluded from (*i.e.*, opt out of) the Class and follows the procedures set forth in this Paragraph shall be excluded. Members of the Class wishing to exclude themselves from the Settlement must send to the Settlement Administrator by U.S. mail (to the address described in the Notice) a personally signed letter including (a) their full name (individuals only); (b) current address; (c) a clear statement communicating that they elect to be excluded from the Class, do not wish to be a Class Member,

understand that they will not receive any monetary benefit under the Settlement, and that they elect to be excluded from any judgment entered pursuant to the Settlement; (d) their original signature; and (e) the case name and case number (*In Re: Deva Concepts Products Liability Litigation*, No: 1:20-cv-01234-GHW). Any request for exclusion (*i.e.*, to opt out) must be postmarked no later than sixty (60) days from the Notice Date. All persons who properly elect to opt out of the Settlement shall not be Class Members and shall relinquish their rights and eligibility for Benefits under the Settlement, should it be finally approved, and may not file an objection to the Settlement or appear at the Fairness Hearing.

13. Any member of the Class who fails to submit a valid and timely request for exclusion shall be bound by all terms of the Settlement and the Final Order and Final Judgment.

14. Class Members may object to the terms and conditions of the Settlement, the certification of the Class, the entry of the Final Order and Judgment, the amount of Attorney's Fees and Costs requested by Class Counsel, and/or the amount of the Service Awards requested by the Plaintiffs, by filing a written objection with the Court and serving the written objection upon Class Counsel and Defense Counsel (as defined in the Settlement) in the manner set forth in paragraph 5. Class Members who fail to file with the Court and serve upon Class Counsel and Defense Counsel timely written objections in the manner specified in the Settlement, the Long Form Notice, and the Summary Notice shall be deemed to have waived all objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement. The Court will not consider written objections that are mailed to the Court and not filed, or objections that are served on the Parties but not filed with the Court.

15. Class Members who object must set forth (a) their full name (individuals only); (b) current address; (c) a written statement of their objection(s) and the reasons for each objection;

(d) a statement of whether they intend to appear at the Fairness Hearing (e) their signature; (f) the case name and case number (*In Re: Deva Concepts Products Liability Litigation*, No: 1:20-cv-01234-GHW); and (g) a detailed list of any other objections submitted by the Class Member, or his/her counsel, to any class actions submitted in any court, whether state, federal, or otherwise, in the United States in the previous five (5) years. If the Class Member or his/her counsel has not objected to any other class action settlement in any court in the United States in the previous five (5) years, he/she shall affirmatively state so in the written materials provided in connection with the Objection to this Settlement. No Class Member shall be entitled to be heard at the Fairness Hearing (whether individually or through separate counsel) or to object to the Settlement, and no written objections or briefs submitted by any Class Member shall be received or considered by the Court at the Fairness Hearing, unless copies of any written objections and/or briefs, along with the Class Member's statement of intent to appear at the Fairness Hearing, have been filed with the Court and served via U.S. mail on the Settlement Administrator, as well as emailed to Class Counsel and Defense Counsel at the addresses set forth below no later than sixty (60) days from the Notice Date. Class Members who intend to appear but do not object to the Settlement shall file a Notice of Appearance no later than sixty (60) days from the Notice Date. Objections must be served as follows:

Upon Settlement Administrator at:

DevaCurl Settlement Administrator
KCC Class Action Services LLC
[at the address provided in the Notice]

Upon Class Counsel at:

Gary E. Mason
MASON LIETZ & KLINGER LLP
5101 Wisconsin Ave., NW, Ste 305
Washington, D.C. 20016

Email: gmason@masonllp.com

Charles E. Schaffer
LEVIN SEDRAN & BERMAN LLP
510 Walnut Street, Suite 500
Philadelphia, PA 19106
Email: cschaffer@lfsblaw.com

Upon Defense Counsel at:

Keith E. Smith
GREENBERG TRAURIG, LLP
200 Park Avenue
New York, NY 10166
Email: smithkei@gtlaw.com

16. Class Counsel shall file their Fee Application on or before 21 days prior to the deadline for Settlement Class Members to object or exclude themselves from the Settlement.

17. Papers in support of final approval of the Settlement shall be filed with the Court on or before 14 days prior to the Final Approval Hearing.

18. Responses to objections to the Settlement or Fee Application shall be filed with the Court on or before 14 days prior to the Final Approval Hearing.

19. In summary, the deadlines set by this Order are as follows:

(a) The Long Form Notice shall be published within forty-five (45) days after the entry of this Order;

(b) The Short Form Notice shall be published within forty-five (45) days after the entry of this Order;

(c) Class Counsel shall file their Fee Application no later than 21 days prior to the deadline for Settlement Class Members to object or exclude themselves from the Settlement;

(d) Papers in support of final approval of the Settlement shall be filed with the Court on or before 14 days prior to the Final Approval Hearing;

(e) Members of the Class who desire to be excluded shall submit requests for exclusion postmarked no later than sixty days from the Notice Date;

(f) All written objections to the Settlement, including written notices of the objecting Class Member's intention to appear at the Fairness Hearing, shall be filed with the Court and served on Class Counsel and Defense Counsel no later than sixty days from the Notice Date;

(g) Class Members who intend to appear but do not object to the Settlement shall file a Notice of Appearance by no later than sixty days from the Notice Date;

(h) Responses to objections to the Settlement or the Fee Application shall be filed with the Court no later than 14 days prior to the Final Approval Hearing; and

(i) The Fairness Hearing shall be held on **[DATE]** at **[TIME]**.

20. These deadlines may be extended by order of the Court, for good cause shown, without further notice to the Class. Class Members must consult the Settlement Website www.curlyhairsettlement.com regularly for updates and further details regarding extensions of these deadlines.

21. Pending final determination of whether the Settlement should be approved, Plaintiffs and Class Members, or any of them, are prohibited from directly, indirectly, derivatively, in a representative capacity, or in any other capacity, commencing, prosecuting, or continuing any other action in any forum (state or federal) against any of the Released Parties (as that term is defined in the Settlement Agreement) in any court or tribunal asserting any of the Released Claims (as that term is defined in the Settlement Agreement).

22. KCC Class Action Services LLC is hereby appointed as Settlement Administrator for this Settlement and shall perform all of the duties of the Settlement Administrator set forth in the Settlement.

23. Class Counsel and Defense Counsel are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Order or the Settlement, including making, without further approval of the Court, minor changes to the form or content of the Long Form Notice, Short Form Notice, and other Exhibits that they jointly agree are reasonable or necessary.

24. In the event the Court does not grant final approval to the Settlement, or if for any reason the Parties fail to obtain a Final Order and Judgment as contemplated in the Settlement, or the Settlement is terminated pursuant to its terms for any reason, or the Effective Date does not occur for any reason, then the following shall apply:

a. All orders and findings entered in connection with the Settlement shall become null and void and have no force and effect whatsoever, shall not be used or referred to for any purposes whatsoever, and shall not be admissible or discoverable in this or any other proceeding;

b. The provisional certification of the Class for settlement purposes pursuant to this Order shall be vacated automatically, and the Litigation shall proceed as though the Class had never been certified pursuant to this Settlement and the related findings had never been made;

c. Nothing contained in this Order is, or may be construed as, a presumption, concession, or admission by or against Defendant or Plaintiffs of any default, liability, or wrongdoing as to any facts or claims alleged or asserted in the Litigation, or in any actions or proceedings, whether civil, criminal or administrative, including, but not limited to, factual or legal matters relating to any effort to certify the Litigation as a class action;

d. Nothing in this Order or pertaining to the Settlement, including any of the documents or statements generated or received pursuant to the claims process, shall be used as evidence in any further proceeding in this Action, including, but not limited to, motions or proceedings seeking treatment of the Litigation as a class action; and

e. All of the Court's prior Orders having nothing whatsoever to do with the Settlement shall, subject to this Order, remain in force and effect.

DATED: _____

_____
The Honorable Gregory H. Woods

EXHIBIT 4

Exhibit 4 to Deva Concepts LLC Class Action Settlement Agreement and General Release
List of DevaCurl Products Included in the Settlement

Arc AnGEL
Beautiful Mess
B'Leave In
Buildup Buster
The Curl Maker
Deep Sea Repair
DevaFresh
DevaCare Low-Poo
DevaCare No-Poo
DevaCare One Condition
DevaCare Arc AnGEL
DevaCare Detangling Spray
Flexible Hold Hair Spray
Frizz Free Volumizing Foam
Heaven in Hair
High Shine
Leave in-Decadence
Light Defining Gel
Low Poo Delight
Low Poo Original
Melt into Moisture
MirrorCurls
Mist-er Right
No Comb Detangling Spray
No Poo Original
No Poo Blue
No Poo Decadence
No-Poo Quick Cleanser Spray
One Condition Decadence
One Condition Delight
One Condition Original
Set it Free
Set Up and Above
Shine Spray
Spray Gel
Styling Cream
Super Cream
Super Mousse
Super Stretch
Ultra Defining Gel
Wash Day Wonder
Wave Maker

EXHIBIT 5

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

If you purchased or used a DevaCurl Haircare Product, you may be entitled to receive payment from a class action settlement.

A court authorized this Notice. This is not a solicitation from a lawyer.

READ THIS NOTICE CAREFULLY. YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DO NOT ACT.

- The Settlement will provide a total of $5,200,000 to fully settle and release claims of all persons who purchased and/or used any DevaCurl haircare products ("DevaCurl" or the "Products," as defined below) in the United States and its territories between February 8, 2008, and [such date that is thirty (30) days after the Preliminary Approval Date.]
- A settlement has been reached in a lawsuit against Deva Concepts, LLC ("Defendant"). The lawsuit alleges that Defendant designed, manufactured and sold DevaCurl haircare products that allegedly caused certain users to suffer personal injury including hair loss, hair damage or scalp irritation. Plaintiffs also asserted that statements made in connection with the marketing of DevaCurl were untrue and misleading. Defendant vigorously denies these allegations and contends that there is no link between hair loss, hair damage or scalp irritation and DevaCurl, and that Defendant did not make any untrue or misleading statements. Liability is disputed in this matter, and DevaCurl has not been proven to cause any damage to users or consumers, nor has it been determined that any advertising of the Products was false or misleading. The makers of DevaCurl stand behind the quality, safety, and formulation of the Products, all of which meet or exceed all applicable safety and quality standards set by the cosmetics industry and confirmed by its independent experts. However, to avoid the cost of a trial, and potential risks for both sides, the Parties have reached a Class Action Settlement, which was preliminarily approved by the United States District Court for the Southern District of New York on __, 2021.
- Your legal rights are affected whether you act or not. **Read this Notice carefully.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	Get no payment. Give up your rights to assert an action against Defendant involving DevaCurl.
SUBMIT A CLAIM FORM	The only way to get payment
EXCLUDE YOURSELF	Get no payment. This is the only option that allows you to be part of another lawsuit against the Defendant involving DevaCurl.
OBJECT TO THE SETTLEMENT	Write to the Court presenting your grounds for objection to the Settlement.

- These rights and options—**and the deadlines to exercise them**—are explained in this Notice. The deadlines may be moved, cancelled or otherwise modified. Consult the Settlement Website at www.curlyhairsettlement.com regularly for updates and further details.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made only after the Settlement is approved by the Court and after any appeals are resolved. For Claimants with medical bills for their alleged injuries, payments cannot be made until all liens are resolved. Please be patient.

IMPORTANT QUESTIONS AND ANSWERS

BASIC INFORMATION

1. What is this Lawsuit about?

A lawsuit is pending in the United States District Court for the Southern District of New York claiming that Deva Concepts, LLC (the "Defendant") designed, manufactured and sold DevaCurl Haircare Products ("DevaCurl" or the "Products") which allegedly caused certain users to suffer personal injury including hair loss, hair damage or scalp irritation and also claiming that statements made in connection with the marketing of the Products were false and misleading (the "Lawsuit"). Defendant vigorously denies these allegations and contends that there is no link between hair damage and DevaCurl, and that Defendant did not make any untrue or misleading statements.

2. Why is this a class action?

In a class action, one or more people called "Named Plaintiffs" sue on behalf of themselves and other people. Together, all of these people are referred to as the "Class." A court resolves the claims of the entire Class in a class action, except for those who exclude themselves from the Class (see Question 15). The Court then resolves the claims asserted for all Class Members at one time. Here, the Court has preliminarily certified a Class for settlement purposes only. United States District Court Judge Gregory H. Woods is in charge of this class action.

3. Why is there a settlement?

The Court has not decided in favor of the Plaintiffs or Defendant. Instead, both sides have agreed to the Settlement. By agreeing to the Settlement, and if the Settlement is approved by the Court, the Parties avoid the costs and uncertainty of class certification and a trial, and the Class Members who timely submit a claim supported by appropriate documentation (see Question 12) will get compensation without having to commit to a full trial. The Named Plaintiffs and counsel for the Class ("Class Counsel") believe the Settlement is best for all Class Members considering the risks of going forward to trial.

WHO IS IN THE SETTLEMENT?

To be eligible to submit a claim for a payment from the Settlement, between February 8, 2008 and [30 days after Preliminary Approval] you must have purchased, used, or had used on you at least one Devacurl cleanser, conditioner, styling or treatment product, including the following: Arc AnGEL, Beautiful Mess, B'Leave In, Buildup Buster, The Curl Maker, Deep Sea Repair, DevaFresh, DevaCare Low-Poo, DevaCare No-Poo, DevaCare One Condition, DevaCare Arc AnGEL, DevaCare Detangling Spray, Flexible Hold Hair Spray, Frizz Free Volumizing Foam, Heaven in Hair, High Shine, Leave in-Decadence, Light Defining Gel, Low Poo Delight, Low Poo Original, Melt into Moisture, MirrorCurls, Mist-er Right, No Comb Detangling Spray, No Poo Original, No Poo Blue, No Poo Decadence, No-Poo Quick Cleanser Spray, One Condition Decadence, One Condition Delight, One Condition Original, Set it Free, Set Up and Above, Shine Spray, Spray Gel, Styling Cream, Super Cream, Super Mousse, Super Stretch, Ultra Defining Gel, Wash Day Wonder, and Wave Maker ("DevaCurl" or the "Products").

4. How do I know if I am part of the Settlement?

You are a Class Member for purposes of the Settlement if you fit this description:

All persons who purchased and/or used any of the Products in the United States between February 8, 2008 and such date that is thirty (30) days after the Preliminary Approval Date, excluding (a) any officers, directors or employees, or immediate family members of the officers, directors or employees, of Defendant or any entity in which Defendant has a controlling interest, (b) any legal counsel or employee of legal counsel for Defendant, (c) the presiding Judge in the Lawsuit, as well as the Judge's staff and their immediate family members, and (d) all persons who timely and properly exclude themselves from the Class as provided in the Settlement.

5. If I purchased DevaCurl but did not suffer any personal injury, am I included?

Any person who purchased and/or used DevaCurl in the United States and its territories after February 8, 2008 and on or before [30 days after Preliminary Approval], is a Class Member unless such person is within one of the excluded categories or properly excludes himself or herself from the Class, even if such person does not claim to have suffered personal injury from using DevaCurl. Class Members who purchased DevaCurl but did not suffer personal injury are still eligible for a one-time payment of up to $20.

6. Are there exceptions to being included?

The following categories of people are not included in the Class even if they purchased or used DevaCurl in the United States and its territories between February 8, 2008 and [30 days after the date of the Preliminary Approval Date]:

- Officers, directors or employees, or immediate family member of officers, directors, or employees, of Defendant or any entity in which Defendant has a controlling interest;
- Any legal counsel or employee of legal counsel for Defendant;
- The presiding judge in the class action Lawsuit and his immediate family members and staff members; and
- All persons who timely and properly exclude themselves from the Class as provided in the Settlement.

7. I'm still not sure if I am included.

If you are still not sure whether you are eligible to submit a claim, you can call the toll-free number, **[NUMBER]**. Or visit www.curlyhairsettlement.com for more information.

THE SETTLEMENT BENEFITS – WHAT YOU CAN GET

8. What does the Settlement provide?

While vigorously denying any liability, Defendant has agreed to settle this matter through the creation of a non-reversionary Settlement Fund of $5,200,000 which will be used to pay valid claims, as well as for the costs of notice and administration of the Settlement, Service Awards to the Named Plaintiffs and Attorneys' Fees and Costs. In addition, Defendant has agreed to implement label changes to the Products.

$750,000 of the Fund will be set aside to pay Tier 1 Claims. Any person who purchased DevaCurl, used DevaCurl, or had DevaCurl used on them between February 8, 2008, and [30 days after Preliminary Approval], can file a Tier 1 Claim for a one-time cash payment of up to $20 as compensation for claims of minor personal injury after using DevaCurl or for alleged false statements regarding DevaCurl. If Tier 1 Claims exceed the $750,000 allocated to pay Tier 1 Claims, the payments made to each Class Member who submit a valid Tier 1 Claim will be reduced on a *pro rata* basis.

The remainder of the Fund, after payment of costs of notice and administration, Service Awards, Attorneys' Fees and Costs and Tier 1 Claims, will be used to pay Tier 2 Adverse Reaction Claims of up to $19,000 per Class Member, consisting of up to $18,000 per Claimant for injuries and up to $1,000 for provable expenses, to compensate Class Members for claimed adverse reactions causing personal injuries such as hair loss, hair damage, scalp irritation and emotional distress that accompanied such alleged injuries and any claims of misleading marketing.

Class Members can submit only one claim, either a Tier 1 Claim or a Tier 2 Claim. However, Class Members whose Tier 2 Claims are denied shall be automatically considered to have made and be eligible for a Tier 1 Claim as long as they provided sufficient information to make them eligible for a Tier 1 claim.

9. Tier 1 Claims (Up To $20)

If you purchased, used or had used on you any of the Products listed in response to Question 3 and submit a timely and valid Claim Form, you may be entitled to a payment up to $20 as compensation for claims of personal injury after using DevaCurl or for alleged false statements regarding DevaCurl. If Tier 1 Claims exceed the $750,000 allocated to pay Tier 1 Claims, the payments made to each Class Member who submits a valid Tier 1 Claim will be reduced on a *pro rata* basis.

10. Tier 2 Claims – Payments for Significant Adverse Reaction Claims

If you purchased any of the Products listed in response to Question 3, submit a timely and valid Claim Form, and provide sufficient documentation regarding your injuries and expenses incurred because of those injuries, you may receive up to $18,000 per Claimant for injuries and up to $1,000 for provable expenses as set forth below. In order to make a Tier 2 Claim, the Class Member must submit a valid and complete Claim Form, along with Supporting Documentation as described therein.

Any claims made and monies recovered under Tier 2 may be subject to lien subrogation payments. As with any personal injury settlement, if you visited a medical professional, an insurance carrier that paid for any portion of your medical bill is entitled to a portion of your settlement. While in most states the amount owed to the insurance carrier is governed by statute, it is possible that the insurance carrier could hold you liable for the amount it paid, up to the total value of your settlement.

HOW TO RECEIVE A PAYMENT – SUBMITTING A CLAIM

11. How can I get a payment?

If you are a member of the Class and want to receive a payment under the Settlement, you must submit a Claim Form. A Claim Form and directions are attached as **Appendix A** to this Class Notice. You may also obtain and print a Claim Form and other relevant documents by visiting www.curlyhairsettlement.com. Please read the instructions carefully and fill out the form completely and accurately. Claim Forms can be submitted two ways: electronically or by mail.

Your Claim Form must be submitted electronically at www.curlyhairsettlement.com no later than 11:59 p.m. Pacific Time on **[CLAIMS FORM DEADLINE]** or by mail postmarked no later than **[CLAIMS FORM DEADLINE]** and addressed to:

KCC Class Action Services LLC
[ ]
[ ]

12. What supporting documents am I required to submit with a Tier 2 Claim?

To be eligible for a payment from the Common Fund for a Tier 2 Significant Adverse Reaction Claim, Claimant must submit to the Settlement Administrator, in addition to a completed Tier 2 Claim Form, appropriate evidence documenting the injuries alleged to be suffered after using the Products listed in response to Question 3. Without limitation, the following forms of documents will be considered "Supporting Documentation" and shall be received by the Settlement Administrator in support of a Tier 2 Claim:

1. Before and after photographs showing the damage to Claimant's hair and/or scalp. Each photo submitted must be dated and labeled as either a "before" or "after" photo.
2. Video testimony of the Claimant describing the claimed injury.
3. Medical records, doctor's notes, test results, and/or a statement from a licensed medical professional indicating damage to the Claimant's hair or scalp after using the Products as well as any pre-existing conditions that may have caused the alleged hair loss.
4. Written or video statement from the Claimant's hair stylist(s) indicating the amount of hair loss suffered and any lasting effects. If written, this statement must be dated and signed by the hair stylist(s).
5. Written or video statements from other witnesses that can testify about the damage to Claimant's hair or scalp and its effect on Claimant (i.e., spouse, family, friends). Any statement must include the witnesses' name, address and their relationship to the Claimant. If written, these statements must be dated and signed by the witnesses.

Claimant may make a Claim for documented out-of-pocket expenses. The following forms of Supporting Documentation shall be received by the Settlement Administrator in support of a claim for reimbursement of actual and documented out-of-pocket expenses incurred to redress injury purportedly caused by the Subject Products, up to a maximum of $1,000:

1. Dated medical bills evidencing payments made by the Claimant related to the Claimant's claimed injury along with medical records indicating the visit related to damage alleged to be caused by use of the Products;
2. Dated receipts for out-of-pocket expenses; dated credit card statements evidencing payment by the Claimant related to the Claimant's claimed injury;
3. Dated bank statements evidencing payment of out-of-pocket expenses related to the Claimant's claimed injury.
4. Dated receipts and/or declarations supplied by, for example, a medical provider or hair stylist, evidencing the amount spent to redress a claimed injury will also be considered.

The Supporting Documentation described above is not intended to provide an exclusive list of the supporting evidence that may be submitted in support of a Tier 2 Claim. The Settlement Administrator shall have discretion to accept forms of evidence in addition to or in place of the examples set forth above.

Each Claimant filing a Tier 2 Claim will authorize the Administrator, consistent with HIPAA and other applicable privacy laws, to verify facts and details of any aspect of the Claim and/or the existence and amounts, if any, of any Liens. The Administrator, at its sole discretion, may request additional documentation or authorizations, which each Claimant agrees to provide in order to claim a Tier 2 Claim Award. No Claim will be considered complete and eligible for payment of any Tier 2 Claim Award until such time that any additional documentation requested by the Administrator is provided and/or deficiencies are cured. The Administrator will have the discretion to undertake or cause to be undertaken further verification and investigation, including into the nature and sufficiency of any Claim documentation.

The amount of any Claim payment will be determined by the Settlement Administrator, who has significant experience in the claims process, using an objective point system agreed upon by the Parties. The Settlement Administrator will determine the value of all Tier 2 Claims, and award points based upon, without limitation, the sufficiency and credibility of the evidence, the severity of the hair loss or thinning, duration of the hair loss or thinning and amount of documented out-of-pocket expenses. The intent of the Settlement is to pay Tier 2 Claimants for any and all hair loss, hair damage, scalp irritation, or other such injuries consistent with the allegations in the Lawsuit, as well as for any alleged untrue or misleading marketing. As directed by the Parties, the Settlement Administrator shall have authority to assign points by determining the validity, or lack thereof, of any Tier 2 Claims submitted, including the sufficiency of the Claimant's evidence of his or her claimed injury, and any other documentation submitted in support of the Tier 2 Claim. This includes the authority to evaluate, and assign points, if any, on the basis of whether a Claimant suffered hair loss, hair damage, or scalp irritation that is clearly attributable to another cause or suffered from another condition that is linked to hair loss, hair damage, or scalp irritation. Payments may be reduced if the Claimant already received payment from Defendant.

13. When will I get my payment?

The Court will hold a hearing at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, Courtroom 12C, New York, NY 10007 on_____, 2021 to decide whether to grant final approval to the Settlement. If Judge Woods approves the Settlement, any objecting Class Member has the right to file an appeal. Payments under the Settlement will be made only after any appeals have been resolved in favor of the Settlement. Payments to eligible Class Members who submit valid and timely Claims will be distributed only after the Settlement Administrator

evaluates all Tier 2 Claims and (for certain individuals) when liens are fully resolved. Please be patient.

14. What am I giving up if I stay in the Class?

Unless you exclude yourself, you are a member of the Settlement Class, and that means that you cannot sue, continue to sue, or be part of any other lawsuit concerning DevaCurl. The Released Parties are Deva Concepts, LLC, as well as any individual or entity involved in the design, development, manufacture, distribution, or sale of any of the Products, as well as all of its/their past, present and current respective parents, subsidiaries, affiliates, predecessors, successors, officers, employees, directors, shareholders, attorneys, and insurers, as well as all salons, hair care professionals, stylists, distributors, retailers, sellers, resellers, and wholesalers of the Products ("Released Parties"). Staying in the Class means that you will have the right to submit a Claim Form, and will also mean that you release all claims against the Released Parties arising out of or relating in any way to the purchase and/or use of DevaCurl Products, regardless of whether such claim is known or unknown, asserted or as yet unasserted. Staying in the Class also means that all of the Court's orders will apply to you and legally bind you.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want to submit a claim for payment from the Settlement, and you want to keep the right to sue or continue to sue the Defendant (or any of the other Released Parties) in the future about DevaCurl, then you must take steps to remove yourself from the Class. This process is sometimes called "opting out" of the Settlement Class.

15. How can I opt out of the Settlement?

To exclude yourself from the Settlement, you must "opt out" or exclude yourself by mailing a note signed by you that lists your full name, current address, the case name and number (*In Re: Deva Concepts Products Liability Litigation*, No: 1:20-cv-01234-GHW), and the statement: "I wish to be excluded from the DevaCurl Class Action Settlement and do not wish to be a Class Member. I understand that I will not receive any monetary benefit under the Settlement, and I elect to be excluded from any judgment entered pursuant to the Settlement.". You must mail your exclusion request postmarked no later than ___, 2021, to the Settlement Administrator at DevaCurl Class Settlement Exclusions, Claims Administrator, XXXXX, XXXXXX, XX, XXXXX.

Requests for exclusion must be exercised individually, not as or on behalf of a group, class or subclass. You cannot exclude yourself by phone or by email. If you ask to be excluded, you will not get any settlement payment, and you cannot object to the Settlement. You will not be legally bound by anything that happens in this Lawsuit. You may be able to sue (or continue to sue) Defendant (or the other Released Parties) in the future, after the Settlement is finally approved. Do not submit both a Claim Form and a request for exclusion. If you submit both, the Court may disregard your request for exclusion.

16. If I don't exclude myself, can I sue Defendant for the same thing later?

No. Unless you exclude yourself, you give up any right to sue the Defendant or other Released Parties for claims about any injury or misrepresentation regarding DevaCurl. If you have a pending

lawsuit, speak to your lawyer in that lawsuit immediately. You must exclude yourself from *this* Class to continue with your own lawsuit. Remember, the exclusion deadline is___**,** 2021.

17. If I exclude myself, can I get money from the Settlement?

No. If you exclude yourself, you cannot submit a Claim form to ask for any benefits from this Settlement. However, you may be able to sue, continue to sue, or be part of a different individual lawsuit against the Defendant in the future.

OBJECTING TO THE SETTLEMENT

If you are a Class Member and do not exclude yourself, you can tell the Court that you don't agree with the Settlement, or some part of it, and request that the Settlement not be approved.

18. How can I tell the Court if I have grounds to object to the Settlement?

If you are a Class Member and do not exclude yourself, you can object to the Settlement. You can provide the Court with the reasons why you think the Court should not approve it. The Court will consider your views. Your written objection must include: (1) your full name (individuals only); (2) your current address; (3) a written statement of your objection(s) to the Settlement and the reasons for each objection; (4) a statement of whether you intend to appear at the Fairness Hearing; (5) your signature; (6) the case name and case number: *In Re: Deva Concepts Products Liability Litigation*, No: 1:20-cv-01234-GHW; and (7) a detailed list of any other objections submitted by you or your counsel to any class actions in any court, whether state or otherwise, in the United States in the previous five (5) years. If you or your counsel has not objected to any other class action settlement in any court in the United States in the previous five (5) years, you shall affirmatively so state.

If you are not represented by your own lawyer you must mail your Written Notice of Objection to the Settlement Administrator at _____, postmarked no later than ___, 2021.

If you are represented by your own lawyer (*i.e.*, not Class Counsel) then your lawyer must file an appearance and your Written Notice of Objection with the Clerk of the Court in which the Lawsuit, *In Re: Deva Concepts Products Liability Litigation*, No: 1:20-cv-01234-GHW, is pending by _____, 2021, and must also mail these materials to the Settlement Administrator at Deva Concepts Class Settlement Objections, c/o Settlement Administrator, XXXXXXXXXX, received by the Court, Class Counsel and Defendant's Counsel no later than ___, 2021.

The right to object to the Settlement must be exercised individually by a Class Member or through his or her attorney, and not as a member of a group, class or subclass.

19. What is the difference between objecting and asking to be excluded?

Objecting is simply a way of telling the Court that you don't like something about the Settlement. You can object only if you stay in the Class. You will also be bound by any subsequent rulings in this case and you will not be able to file or participate in any other lawsuit based upon or relating to the claims of this Lawsuit. If you object to the Settlement, you still remain a Class Member and you will still be eligible to submit a Claim Form. Excluding yourself (*i.e.*, opting out) is telling the Court that you don't want to be a part of the Class. If you exclude yourself, you have no basis to object to the Settlement and appear at the Fairness Hearing because it no longer affects you.

THE LAWYERS REPRESENTING YOU

20. Do I have a lawyer in this case?

The Court has appointed Gary E. Mason of Mason Lietz & Klinger LLP and Charles E. Schaffer of Levin Sedran & Berman LLP ("Class Counsel") to represent you and the other Class Members in this Lawsuit. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

21. How will the lawyers and other expenses be paid?

Class Counsel have worked on this case since 2020 and have not been paid anything to date for their work on this case. Class Counsel will request Attorneys' Fees and Expenses of up to 33% of the Settlement. The Court has to approve any Attorneys' Fees and Expenses awarded in this case.

Class Counsel will also ask the Court to approve Service Awards of no more than $600 to each of the eleven (11) Class Representatives for their work on behalf of the Class. Any such payment to these individuals also must be approved by the Court. These payments are incentive payments intended to compensate the putative class representatives for bringing the Lawsuit, and in consideration of the time and effort they expended in prosecuting this Lawsuit.

These amounts and the cost of administering the Settlement will be deducted from the Settlement Fund.

THE COURT'S FINAL APPROVAL HEARING

The Court will hold a final hearing (called a Fairness Hearing) to decide whether to grant final approval of the Settlement. You may attend and ask to speak, but you don't have to.

22. When and where will the Court decide whether to approve the Settlement?

On **[DATE]**, at [**TIME**] the Court will hold a Fairness Hearing at the United States District Court for the Southern District of New York in Courtroom 12C of the Daniel Patrick Moynihan, United States Courthouse, 500 Pearl St. New York, NY 10007-1312. At this hearing the Court will consider whether the Settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. Judge Woods will listen to people who have asked to speak at the hearing and who have complied with the requirements for submitting objections set forth in Question 20 above. After the hearing, the Court will decide whether to approve the Settlement. It is unknown how long that decision will take.

The hearing may be moved to a different date or time, so it is a good idea to check www.curlyhairsettlement.com for updates.

23. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have. However, you are welcome to come at your own expense. If you submit an objection, you do not have to come to Court to talk about it. As long as you submitted your objection on time in accordance with the procedures set forth in Question 20 above, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

24. May I speak at the hearing?

Yes. You may ask the Court for permission to speak at the Fairness Hearing, but only in connection with an objection that you have timely submitted in accordance with the procedure set forth in Question 20 above. You cannot speak at the Final Approval Hearing if you have excluded yourself.

IF YOU DO NOTHING

If you do nothing, you will get no money from this Settlement. If you do not submit a Claim Form, your claim will not be considered. If you do not exclude yourself, you will not be able to start a new lawsuit, continue with a lawsuit, or be part of any other lawsuit against the Defendant (or the other Released Parties) concerning DevaCurl and the claims brought in the Lawsuit.

GETTING MORE INFORMATION

25. Are there more details about the Settlement?

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement by visiting www.CurlyHairSettlement.com, by calling the Settlement Administrator toll free at 1-888-XXX-XXXX**,** or by writing to Class Counsel at either of these addresses:

Gary E. Mason
MASON LIETZ & KLINGER LLP
5101 Wisconsin Ave., NW, Ste. 305
Washington D.C. 20016

Charles E. Schaffer
LEVIN, SEDRAN & BERMAN, LLP
510 Walnut Street, Suite 500
Philadelphia, PA 19106

26. How do I get more information about the Settlement?

You can call 1-888-XXX-XXXX toll free, write to the Settlement Administrator at DevaCurl Class Settlement Class Action Administrator,_____, or visit the website at www.CurlyHairSettlement.com where you will find answers to common questions about the Settlement, the Claim Form and instructions for submitting it, important documents filed in the

Lawsuit, plus other information to help you determine whether you are a Class Member and whether you are eligible for a payment.

PLEASE DO NOT CALL THE COURT FOR INFORMATION OR ADVICE

EXHIBIT 6

If you purchased or used DevaCurl haircare products, you may be entitled to receive payment from a Class Action Settlement.

A settlement has been reached in a lawsuit against Deva Concepts, LLC ("Defendant"). The lawsuit alleges that Defendant designed, manufactured, and sold DevaCurl haircare products ("Products") that allegedly caused certain users to suffer personal injury including hair loss, hair damage or scalp irritation. Plaintiffs also asserted that statements made in connection with the marketing of the Products were untrue and misleading. Defendant vigorously denies these allegations and contends that there is no link between hair loss, hair damage or scalp irritation and the Products, and that it made no untrue or misleading statements. Liability is disputed in this matter, and the Products have not been proven to cause hair loss, hair damage or scalp irritation to consumers, nor has it been determined that any advertising of the Products was false or misleading. Defendant stands behind the quality, safety, and formulation of the Products, all of which meet or exceed all safety and quality standards set by the cosmetics industry and confirmed by its independent experts. However, to avoid the cost of a trial, and potential risks for both sides, the Parties have reached a Class Action Settlement, which was preliminarily approved by the United States District Court for the Southern District of New York on __, 2021.

Under the terms of the Settlement, you may be entitled to compensation if you purchased, used, or had the Products used on you in the United States or its territories between February 8, 2008 and [30 days after the date of the Preliminary Approval] (the "Class Period"). Excluded from the Class are (a) any officers, directors or employees, or immediate family members of the officers, directors or employees, of Defendant or any entity in which Defendant has a controlling interest, (c) any legal counsel or employee of legal counsel for Defendant, (d) the presiding Judge in the Lawsuit, as well as the Judge's staff and their immediate family members, and (e) all persons who timely and properly exclude themselves from the Class as provided in the Settlement.

What Does the Settlement Provide?

Defendant has agreed to settle this matter through the creation of a non-reversionary Settlement Fund of $5,200,000.00, which will be used to pay valid claims, as well as for the costs of notice and administration of the Settlement, Service Awards to the Class Representatives and Attorneys' Fees and Costs. In addition, Defendant has agreed to implement label changes to the Products. $750,000 of the Fund will be set aside to pay Tier 1 Claims. Any person who purchased, used or had the Products used on them during the Class Period can file a Tier 1 Claim for a one-time cash payment up to $20 as compensation for claims of alleged minor personal injury after using the Products or for alleged false statements regarding the Products. If Tier 1 Claims exceed the $750,000 allocated to pay Tier 1 Claims, the payments made to each Class Member who submit a valid Tier 1 Claims will be reduced on a *pro rata* basis.

The remainder of the Fund, after payment of costs of notice and administration, Service Awards, Attorneys' Fees and Costs, and Tier 1 Claims, will be used to pay Tier 2 Adverse Reaction Claims of up to $19,000 per Class Member, consisting of up to $18,000 per Claimant for injuries and up to $1,000 for provable expenses, to compensate consumers for claimed adverse reactions causing

personal injuries such as hair loss, hair damage, scalp irritation and emotional distress that accompanied such alleged injuries and any claims of misleading marketing.

More information regarding the potential value of your specific claim can be found at www.curlyhairsettlment.com.

Class Members can submit only one claim, either a Tier 1 Claim or a Tier 2 Claim. However, Class Members whose Tier 2 Claims are denied shall be automatically considered to have made and be eligible for a Tier 1 Claim.

How Do You Submit A Claim?

To qualify for payment, you must complete and submit a Claim Form, signed by you under penalty of perjury, along with any required supporting documents by __, 2021. Online Claim Forms and instructions for submitting claims are available at www.curlyhairsettlement.com. Claim Forms and instructions can also be obtained by calling 1-888-XXX-XXXX.

What Are Your Other options?

If you don't want to be legally bound by the Settlement, you must "opt out" or exclude yourself by mailing a note signed by you that lists your full name, current address, the case name and number (*In Re: Deva Concepts Products Liability Litigation*, No: 1:20-cv-01234-GHW), and the statement: "I wish to be excluded from the DevaCurl Class Action Settlement and do not wish to be a Class Member. I understand that I will not receive any monetary benefit under the Settlement, and I elect to be excluded from any judgment entered pursuant to the Settlement." Opt-Out statements must be postmarked no later than_____, 2021. If you properly exclude yourself, you will not get any Settlement payment and you cannot object to the Settlement. However, you will retain any legal claims you may have against the Defendant and may be able to sue on your own in the future.

If you are a Class Member, you can object to any part of the Settlement you don't like, and the Court will consider your views. Your objection must be timely, in writing, and contain certain specific information as described at www.curlyhairsettlement.com or available by calling 1-888-XXX-XXXX. Objections must be received by the Court, Class Counsel and Defendant's Counsel by_____, [insert 60 days after Notice Date]].

The Court will hold a Final Approval Hearing at the United States District Court for the Southern District of New York on **[DATE]** at **[TIME].** At this hearing, the Court will consider whether the Settlement is fair, reasonable and adequate and whether to approve the Class Representatives Service Awards and the Attorneys' Fees and Costs requested by Class Counsel. You may attend the hearing, and you may hire your own lawyer at your expense, but you are not required to do either. The Court will consider timely written objections and will listen to objectors who request to speak at the hearing.

How Can You Get More Information?

This Notice is just a summary. A more detailed notice, as well as the Settlement Agreement and other documents related to this lawsuit, can be found online at www.curlyhairsettlement.com. For more information, you may call or write to the Class Administrator at 1-888-XXX-XXXX or P.O. Box XXXX, XXXXXXXXX.

EXHIBIT B

United States District Court
Central District of California

AMY FRIEDMAN; JUDI MILLER; KRYSTAL HENRY-McARTHUR; and LISA ROGERS, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

GUTHY-RENKER, LLC and WEN BY CHAZ DEAN, INC.,

Defendants.

Case No. 2:14-cv-06009-ODW(AGRx)

ORDER GRANTING MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT [216] AND GRANTING MOTION FOR ATTORNEYS' FEES AND COSTS [218]

I. INTRODUCTION

Plaintiffs Amy Friedman, Judi Miller, Krystal Henry-McArthur, and Lisa Rogers bring this class action lawsuit against Defendants Guthy-Renker, LLC and Wen By Chaz Dean, Inc., alleging that Defendants' line of "WEN" haircare products caused their hair to fall out. In mid-2016, the parties reached a class-wide settlement of all claims, and the Court preliminarily approved the settlement. (ECF No. 178.) Pending before the Court are the following: (1) Motion for Final Approval of the Class Settlement; (2) Motion for Attorneys' Fees, Costs, and Incentive Awards; and (3) Objections to the Class Settlement. For the reasons discussed below, the Court **GRANTS** both Motions and **OVERRULES** the Objections to the Settlement. (ECF Nos. 216, 218.)

II. BACKGROUND

A. Factual Background

The Court has previously recited at length the factual and procedural history underlying this case (ECF Nos. 41, 146, 167, 178), and thus the Court only briefly summarizes those facts here. Wen By Chaz Dean designed the "WEN" line of haircare products and licensed those products to Guthy-Renker, which in turn manufactured, marketed, and sold them throughout the United States. According to Plaintiffs, the WEN Hair Care Products cause hair loss and scalp irritation. Plaintiffs further allege that Guthy-Renker falsely advertised the product as safe, failed to warn consumers about the potential for hair loss, and erroneously instructed consumers to use excessive amounts of the product.

B. Procedural History Prior to Preliminary Approval

Following pre-certification discovery, and after four mediations, the parties reached a class-wide settlement of all claims in this action. (ECF Nos. 135, 137, 140, 144; Class Counsel Decl. ¶ 4, ECF No. 153-2.) The total settlement fund amounted to $26.25 million. (Class Counsel Decl., Ex. A ("Settlement Agreement") § 6, ECF No. 170-1.) The settlement agreement established a two-tier claim system for class members. Under Tier 1, any class member who purchased WEN Hair Care Products could submit a claim without any supporting documentation for a one-time payment of $25. (*Id.* § 6A.) Under Tier 2, class members who suffered more extensive injuries could recover up to $20,000 by submitting a claim with supporting documentation. (*Id.* § 6B.) An independent special master would then analyze and value the claim. (*Id.*) The special master's decision would be final and not subject to appeal or reconsideration.[1] (*Id.*) Any class member who either submitted a Tier 1 or Tier 2 claim, or who did not affirmatively opt out of the class, would release all advertising and bodily injury claims against Defendants.

[1] In short, although not denominated as such, it appears that Tier 1 claims were intended to compensate the class for false advertising, while Tier 2 claims appeared intended to compensate class members for personal injuries.

The agreement reserved up to $5,000,000 to pay for Tier 1 claims, meaning that each claimant would receive the full $25 payout only if 200,000 or fewer class members submitted Tier 1 claims. (*Id.*) The total amount allotted to pay Tier 2 claims would be the amount remaining in the fund after Tier 1 claims, incentive awards, administrative costs, and attorneys' fees were paid out (which the Court originally estimated to be $13.86 million). (Order at 4, ECF No. 178.) In the event the number of claims submitted in either tier exceeded the funds set aside for that tier, all claim payments within the tier would be proportionally reduced. (*Id.* §§ 7, 15.) Finally, the agreement called for the payment of $6.5 million in attorneys' fees, a total of $57,500 in incentive awards to the named plaintiffs, and close to $1 million (approximately) in administrative costs. (*Id.* §§ 8, 9, 11, 13, 14; *see also* Order at 4–5.) For a more in-depth recitation of the terms of the settlement, see Order at 4–8, ECF No. 178.

On October 28, 2016, the Court conditionally certified a settlement-only class and preliminarily approved the terms of the settlement and the form and method of notice. (ECF No. 178.) The Court noted, however, that it was troubled by: (1) the potential for significant reductions in claim payouts; (2) the fact that the incentive awards were at or near the ceiling established by the Ninth Circuit for such awards; and (3) the size of the fee award to class counsel. (*See* Order at 15–18.) The Court set a final settlement approval hearing for June 5, 2017. (*Id.* at 23.)

C. Procedural History Following Preliminary Approval

1. Class Notice

The settlement administrator, Dahl Administration, LLC ("Dahl"), used several methods to give notice to the class. First, following preliminary approval of the settlement, the parties subpoenaed the records of various retailers to obtain contact information for all of the class members. (*See* Omnibus Decl. ¶ 11–12, ECF No. 216-1; Dahl Decl. ¶ 6, ECF No. 217.) Based on these records, the administrator estimated that there were approximately 8.1 million people in the class. (Dahl Decl. ¶ 7.) Approximately 60% of these class members ultimately received notice of the

settlement by e-mail,[2] and the remaining members received notice by regular mail where a mailing address could be identified. (*Id.* ¶¶ 10–13.) Approximately 97.12% of the class received either e-mail notice or mail notice of the settlement. (*Id.* ¶ 13.)

Second, the administrator issued notice by publication. (*Id.* ¶¶ 14–15.) The administrator implemented a web-based publication campaign between December 23 and December 26, 2016, using banners on social media. (*Id.*) In addition, for what it is worth, there was extensive media coverage of the Court's preliminary approval of the settlement.[3] Third, the administrator set up a website that made available details of the settlement, the long-form notice of the settlement, a list of important dates and deadlines, a link to file an online claim, settlement documentation, and other resources related to this action and its settlement. (*Id.* ¶¶ 16–17.) Finally, the administrator also set up an automated and dedicated toll-free telephone system that provided information regarding the settlement. (*Id.* ¶¶ 18–20.) As of May 1, 2017, Dahl had also received and, where appropriate, responded to 15,294 emails and 2,076 pieces of written correspondence concerning the settlement. (*Id.* ¶ 21.)

2. Opt Outs and Objections

The administrator received 3,773 timely requests to opt out of the settlement. (*Id.* ¶ 22.) The administrator also received 10 timely written objections to the settlement and 2 untimely objections. (*Id.* ¶ 23.)

3. Tier 1 and 2 Claims Filed

Tier 1. The settlement administrator received 398,709 timely Tier 1 claims. (Nolan & Dahl Decl. ¶ 8, ECF No. 216-2.) This was well in excess of the 200,000

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[2] That is, the e-mail sent to them did not bounce back to the sender as undeliverable. (Dahl Decl. ¶¶ 9–10.)

[3] *See, e.g.*, Glamour, *The Class-Action Settlement Against Wen Hair Care Is Officially Moving Forward*, https://www.glamour.com/story/wen-hair-care-lawsuit-hair-loss-moving-forward (last visited July 20, 2017); People, *$26 Million Hair Loss Lawsuit Settlement Moves Forward for Wen Hair Care Products*, http://people.com/style/wen-hair-care-lawsuit-moves-forward/ (last visited July 20, 2017); CBS Los Angeles, *Class-Action Lawsuit Over Wen Hair Products Gets Preliminary Settlement Approval*, http://losangeles.cbslocal.com/2016/10/31/class-action-lawsuit-over-wen-hair-products-gets-preliminary-settlement-approval/ (last visited July 20, 2017).

maximum required for a full payout on each claim, and thus the parties predicted that each claimant would receive only $12.54—only 50% of what the parties originally predicted. (*Id.*)

Tier 2. The settlement administrator received somewhere between 25,000 and 29,000 timely Tier 2 claims. (*Id.* ¶ 9; Nolan Suppl. Decl. ¶ 5, ECF No. 228-3.) Judge Nan Nolan, who is a retired magistrate judge, was appointed as special master to evaluate these claims. (Nolan & Dahl Decl. ¶ 2.) As of May 1, 2017, Judge Nolan had reviewed and scored approximately 60% of the claims filed. (*Id.* ¶ 14.) Based on her review, Judge Nolan predicted that no pro-rata reductions would be needed for Tier 2 claims. (*Id.* ¶ 25.)

C. Final Approval Hearing

On June 5, 2017, the Court held a final approval hearing. (ECF No. 225.) At that hearing, the Court expressed its dissatisfaction with the following: (1) that Tier 1 claimants were receiving only half of the payout that the settlement notices reasonably led them to believe that they would receive; (2) the proposed incentive awards for Amy Friedman and Judi Miller were excessive; and (3) class counsel's fee recovery was excessive. (*See generally* ECF No. 231.) The Court subsequently issued an order directing the parties to inform the Court whether they intended to take any steps to address the Court's concerns regarding these issues. (ECF No. 226.)

On July 3, 2017, the parties submitted a report stating that they had amended the agreement to address the Court's concerns. (ECF Nos. 228, 229.) First, class counsel had agreed to reduce its fee request by $1 million, and to contribute that sum to paying Tier 1 claims. (Joint Report at 1–2.) In addition, the parties removed the $5 million cap on the payment of Tier 1 claims, thus allowing unused funds originally earmarked for Tier 2 claims to be used to pay Tier 1 claims instead. (*Id.*) By doing this, all Tier 1 claims would be paid out at full value ($25) without making any pro-rata reductions to Tier 2 claim payouts. (*Id.*; *see also* Dahl Suppl. Decl. ¶ 2, ECF No. 228-2.) Second, named Plaintiffs Amy Friedman and Judi Miller agreed to reduce

their incentive awards to $20,000 each. (Joint Report at 2–3.) Finally, the parties requested that the $250,000 cap on the special master's fee be increased to $400,000 to reflect the fact that the number of Tier 2 claims filed was more than six times the number that they originally anticipated receiving. (Nolan Suppl. Decl. ¶ 5, ECF No. 228-3.)

III. LEGAL STANDARD

The approval of a class action settlement takes place in two stages. *Ontiveros v. Zamora*, 303 F.R.D. 356, 363 (E.D. Cal. 2014). In the first stage of the approval process, the court preliminarily approves the settlement pending a fairness hearing, temporarily certifies a settlement class, and authorizes notice to the class. *See Murillo v. Pac. Gas & Elec. Co.*, 266 F.R.D. 468, 473 (E.D. Cal. 2010). At the fairness hearing, after notice is given to putative class members, the court entertains any of their objections to (1) the treatment of the litigation as a class action and/or (2) the terms of the settlement. *See Diaz v. Tr. Territory of Pac. Islands*, 876 F.2d 1401, 1408 (9th Cir. 1989) (holding that a court is required to hold a hearing prior to final approval of a dismissal or compromise of class claims to "inquire into the terms and circumstances of any dismissal or compromise to ensure it is not collusive or prejudicial"). Following such a hearing, the court must reach a final determination as to whether the parties should be allowed to settle the class action pursuant to the terms agreed upon. *See Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004).

IV. DISCUSSION

A. Class Certification

1. Legal Standard

Class certification is appropriate only if "each of the four requirements of Rule 23(a) and at least one of the requirements of Rule 23(b)" are met. *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1186 (9th Cir. 2001). Under Rule 23(a), the plaintiff must demonstrate that the requirements of numerosity, commonality,

typicality, and adequacy are met. *See* Fed. R. Civ. P. 23(a); *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 588 (9th Cir. 2012). Next, the proposed class must meet the requirements of at least one of the three types of class actions listed in Rule 23(b). *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2548 (2011). Under Rule 23(b)(3), the plaintiff must demonstrate that the requirements of predominance and superiority are met. Fed. R. Civ. P. 23(b)(3). Finally, where class certification is sought for settlement purposes only, the certification inquiry still "demand[s] undiluted, even heightened, attention." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

2. Discussion

The Court previously concluded that each of the Rule 23(a) and Rule 23(b)(3) requirements were met, and thus conditionally certified a settlement-only class. (Order at 4–8.) Objectors Christy Whaley Sparks and Ellen Bentz submitted objections arguing that tort claims are generally not suitable for class treatment. (ECF Nos. 206, 217-11.) However, there is no *per se* rule in the Ninth Circuit against certifying such claims. *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1230 (9th Cir. 1996). Moreover, the reason Bentz gives for why such certification might not be appropriate in this particular instance—because tort-based claims are "significant" and thus should not be waivable through the opt out process—is not persuasive, because this concern is not unique to tort-based claims. Tellingly, Bentz cites no authority for the proposition that potentially high-dollar claims should never receive class treatment, and the authority in this district is to the contrary. *See Boyd v. Bank of Am. Corp.*, 300 F.R.D. 431, 444 (C.D. Cal. 2014) ("[T]he potentially high value of the claims does not weigh against class certification.").

Sparks also gives several other reasons why litigating the class members' claims as a class action is not superior to litigating them individually. First, Sparks argues that individual lawsuits would be resolved more quickly than through the class action mechanism. However, Sparks gives little justification for this conclusion. She gives no estimate at all as to how long the claims process in this action might take or

how long an individual action would take to resolve. Moreover, Sparks' objection seems counterintuitive. The claims process in this settlement simply requires the submission of the class members' evidence for immediate evaluation by the special master. In contrast, an individual action would require *both* parties to take discovery—which in a products liability case could be extensive even for individual actions—and would potentially require them to try their claims.

Second, for persons who intend to pursue individual claims regardless of the existence of class certification or the class settlement, Sparks argues that they are burdened with the requirement that they timely opt out of this lawsuit before they may do so. However, again, the same can be said about *all* class actions (or at least Rule 23(b)(3) class actions); this is not an issue that is unique to this particular lawsuit. Simply pointing out the general burdens of class litigation does not show that class litigation is not the superior method for adjudicating *this* particular dispute.

The Court therefore overrules these portions of Sparks and Bentz's objections and, for the reasons more fully discussed in the Court's preliminary approval order, certifies the class the purpose of this settlement only.

B. Settlement Notice

1. Legal Standard

Class certification notices must comply with Rule 23(c)(2)(B). "For any class certified under Rule 23(b)(3), the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B).

The notice must clearly and concisely state in plain, easily understood language:

> (i) the nature of the action;
> (ii) the definition of the class certified;
> (iii) the class claims, issues, or defenses;
> (iv) that a class member may enter an appearance through an attorney if the member so desires;

(v) that the court will exclude from the class any member who requests exclusion;
(vi) the time and manner for requesting exclusion; and
(vii) the binding effect of a class judgment on members under Rule 23(c)(3).

Fed. R. Civ. P. 23(c)(2)(B)(i)–(vii).

The Ninth Circuit has approved individual notice to class members via e-mail. *See In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 946 (9th Cir. 2015). It has also approved notice via a combination of short-form and long-form settlement notices. *Id.*; *see also Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 331 (C.D. Cal. 2016) (approving e-mail and postcard notice, each of which directed the class member to a long-form notice); *Vandervort v. Balboa Capital Corp.*, 8 F. Supp. 3d 1200, 1204 (C.D. Cal. 2014); *In re Optical Disk Drive Antitrust Litig.*, No. 3:10-MD-02143 RS, 2014 WL 1654028, at *2 (N.D. Cal. Apr. 25, 2014).

For class action settlements, "[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1). "Notice is satisfactory if it generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard." *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (internal quotation marks omitted). The notice "does not require detailed analysis of the statutes or causes of action forming the basis for the plaintiff class's claims, and it does not require an estimate of the potential value of those claims." *Lane v. Facebook, Inc.*, 696 F.3d 811, 826 (9th Cir. 2012).

2. Analysis

The Court concludes that the notice provided to class members more than adequately satisfied these requirements. The parties used reasonable efforts to identify all individuals that were part of the class by issuing subpoenas to the retailers of WEN Hair Care Products. (Omnibus Decl. ¶¶ 11–12.) The parties provided individual short-form notice (by e-mail or regular mail) to over 97% of the class.

(Dahl Decl. ¶ 6.) The remaining 3% of class members received constructive notice through website publication. (*Id.* ¶¶ 14–15.)[4] Such notice is sufficient under Rule 23. The Court has also reviewed the short-form notices and publication notice to the class members and is satisfied that it adequately informs the class member of the nature of the action, the class claims, issues, and defenses, the ability of the members to request exclusion from the class, and the time and manner for requesting exclusion. The notices also give a sufficient overview of the terms of the settlement. The short-form notices also direct the class member to the long-form notice, which describes in detail the definition of the certified class, and advises the class member of their right to appear and contest the settlement. Finally, the settlement administrator maintained a website containing extensive information about the settlement and set up a dedicated telephone line regarding the settlement.

In light of this, the Court concludes that the notice provided to the class is the best practicable notice under the circumstances consistent with Rule 23. *See In re Google Referrer Header Privacy Litig.*, 87 F. Supp. 3d 1122, 1129 (N.D. Cal. 2015).

C. Settlement Terms

1. Legal Standard

"Assessing a settlement proposal requires the district court to balance a number of factors: the strength of the plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement." *Hanlon*, 150 F.3d at 1026. "Not all of these factors will apply to every class action settlement. . . . The relative degree of importance to be attached to any particular factor will depend upon and be dictated by the nature of the claim(s)

[4] Moreover, numerous class members were likely also alerted to the existence of the settlement via media publications.

advanced, the type(s) of relief sought, and the unique facts and circumstances presented by each individual case. Ultimately, the district court's determination is nothing more than an amalgam of delicate balancing, gross approximations, and rough justice." *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 525–26 (C.D. Cal. 2004) (internal citations and quotation marks omitted).

2. Analysis

The Court adopts its analysis granting preliminary approval of the terms of the settlement, subject to the Court's further analysis below concerning issues that have arisen since that preliminary approval.

i. Tier 1 Claims

The Court finds final approval of the Tier 1 claims process appropriate. For the reasons discussed in the preliminary approval order, a $25 payment per claimant is reasonable given the risks of further litigation. Moreover, because the parties have agreed to increase the amount of money set aside for paying Tier 1 claims such that each claimant will in fact receive $25 each, the Court's previous concerns on the potential pro-rata reduction to claim payouts is moot.

ii. Tier 2 Claims

For the reasons discussed in the preliminary approval order, the Court also finds the Tier 2 claims process reasonable. Moreover, because there will be no pro rata reductions to the payout of Tier 2 claims,[5] the Court finds final approval of the settlement appropriate.

iii. Special Master Fee

The Court finds the increase in the special master fee appropriate. The number of Tier 2 claims actually filed far exceeded the parties' original estimate. Moreover,

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[5] In addition, the settlement administrator testified that she valued the claims without artificially squeezing them to fit within the total pot of money set aside for Tier 2 claims. *See* Hr'g Tr. 28–29 ("Q. Do you believe there is enough money in the common fund to give a fair award to all members of the class? A. And without making any adjustments. . . . Q. Did you back into these numbers you created? A. No, I didn't. I didn't. I did it from the first two months of where I was teaching myself the story of Wen.").

the parties indicate that this increase will not prevent the Tier 2 claimants from receiving a full pay out on their claims pursuant to the special master's evaluation. (Joint Report at 3–4.) The Court therefore grants the increase in the special master fee from $250,000 to $400,000.

iv. Objections

The Court addresses the arguments submitted by the following objectors in connection with this settlement.[6] For the reasons discussed below, the Court overrules each objection.

Christy Whaley Sparks. (ECF No. 206.) The bulk of Sparks' lengthy objection is to the fairness of the settlement terms. Sparks' objection to those terms can be divided into three major categories: (1) promoting the strengths of Plaintiffs' case; (2) arguing that the Tier 2 claim amounts are inadequate; and (3) arguing that the Tier 2 claim-filing procedure is excessively onerous. The Court will address each argument in turn.

Strengths of Plaintiffs' Case. Sparks describes at length what she perceives to be the strength of Plaintiffs' case against Defendants. First, Sparks points to the presence of several allergens in the Wen Hair Products that she claims is not safe for use and which likely caused the symptoms that many class Plaintiffs experienced. Second, Sparks contends that WEN does not contain sufficient cleansers, which can result in Seborrheic Dermatitis. Third, Sparks emphasizes the physical and

[6] The Court also notes that it received relatively few objections (12) given the size of the class (8 million). *See In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008) (noting that, "[b]y any standard," receiving only three objections out of 57,630 class members "favors approval of the Settlement"). Moreover, not all of the objections even argued against the fairness of the settlement: three objectors argued that the settlement was unfair to *Defendants*, one objector simply pointed out a quirk in the claims filing procedure, and one did not appear to make any argument at all against the fairness of the settlement. Finally, one objection was from an apparent professional objector and devoid any real argument. The relatively few legitimate objections thus heavily favors approval of the settlement. *Nat'l Rural Telecommunications Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004) ("It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members.").

psychological effect on the user of hair loss, including negative self-esteem and depression. Fourth, Sparks points to the recent investigation initiated by the Food and Drug Administration into complaints of hair loss caused by WEN. Sparks accuses Guthy-Renker of not cooperating with the investigation and failing to adequately investigate any connection between use of WEN and hair loss. Finally, Sparks also accuses Defendants of hindering consumers from investigating the link between use of WEN and hair loss. Sparks cherry-picks two e-mails sent by Defendants to consumers where Defendants downplay the possibility of such a link.

The Court does not find these reasons sufficient to scuttle the settlement. First, while there may be some WEN users who have suffered some of the more serious symptoms and conditions that Plaintiff describes, there is no evidence that all or even most users suffered such injuries. Moreover, in response to Sparks' objection, Defendants present substantial evidence suggesting that the ingredients in WEN products do not in fact cause hair loss or scalp irritation at all. Thus, Sparks' objection does little to show that the evidence as to liability is particularly lopsided in favor of the class. And for any class member who did suffer unusually severe symptoms and who believes that the class settlement does not adequately compensate him or her for her injury, that person may opt out of the class and pursue an individual action. Finally, Sparks' overtures as to Defendants' lack of cooperation with the FDA or consumers does not even relate to the fairness of the settlement at all; it seems designed simply to cast Defendants in a bad light.

Onerous Claim Filing Procedures. Sparks argues that the claim filing procedures are onerous and do little to relieve the class of the risks of continued litigation. First, Sparks argues that the settlement still requires class members to prove causation. That is, the settlement claim forms request information regarding other medical conditions that could affect a claimant's hair loss (i.e., pregnancy, thyroid conditions, etc.), which Sparks believes is for the purpose of reducing payment based on a causation inquiry. Second, Sparks argues that the special master

will be making decisions based on the credibility of each claimant and their documentation, which is exactly what a jury would do anyway. Third, Sparks argues that the settlement requires documentation beyond what would be necessary at trial, yet also caps the total amount recoverable.

The Court is also not convinced by these arguments. First, the fact that the Special Master can consider other alternate or contributing causes of hair loss does not make the settlement unfair. Claimants are entitled to recover under Tier 2 to the extent that their use of WEN caused them hair loss or other injury. Where a claimant suffered hair loss that is clearly attributable to another cause, the claimant should not receive recovery. Similarly, if a claimant suffered from another condition that is linked to hair loss, the claimant's recovery should be limited to that hair loss caused by the use of WEN rather than the total amount of hair loss they might have suffered. Thus, allowing the special master to consider issues of causation is not a mark against the settlement. As to Sparks' second argument, the fact that the special master is still making some credibility determinations does not mean that the settlement lacks any benefit for the class. Finally, the submission of documentation always bolsters the credibility of a claimant's claim—whether through this claims process or at trial. The bare fact that Sparks *could* turn up at trial without any documentation of her injury does not mean that a jury would award her anything. Thus, requiring documentation does not make the settlement unfair or unreasonable in comparison to litigating the claim.

Tier 2 Payout is Insufficient. Sparks argues that the money set aside to payout Tier 2 claims is insufficient. However, as it appears that there have been no pro rata reductions to the Tier 2 claim payouts, this issue is moot.

Melissa Randolph. (ECF No. 217-11.) Randolph submitted an objection that stated only that she "fe[lt] the relief and notice is inadequate and the compensation is excessive." However, Randolph gives no explanation as to why she believes either the relief or notice is inadequate. This precludes any meaningful evaluation of her

objection. Moreover, the issue of attorneys' fees (if that is what Randolph is referring to by "compensation") is discussed in more detail elsewhere in this order. The Court therefore overrules this objection.

Lindsey Buss, Christina Brown, Patricia Seastrom-Miller. (ECF No. 217-11.) These persons object to the settlement on the basis that they do not believe that there were any problems with any WEN Haircare Products, and thus the Court should not require Defendants to pay anything in settlement. However, class members do not have standing to object that the settlement is unfair to *Defendants* rather than the class. *See In re First Capital Holdings Corp. Fin. Prod. Sec. Litig.*, 33 F.3d 29, 30 (9th Cir. 1994) (class members must have Article III standing to object to the settlement). The Court therefore overrules this objection.

Rosemary Renz. (ECF No. 217-11.) Renz noticed "unusual breakage" in her hair after using WEN and stopped using the product thereafter. She still has seven bottles of WEN products that she wishes to return for a full reimbursement, and she objects to the settlement on the basis that this is not a settlement option. She seeks $262 in reimbursement. Full reimbursement for multiple bottles purchased, however, would not be a compromise settlement, and thus is an unrealistic request. The Court therefore overrules this objection.

Kathleen Horn. (ECF No. 217-11.) Horn believes that a $25 settlement payment is insufficient. She states that she had a burning sensation on her scalp after using WEN and that she is losing more hair than normal. It appears that Horn overlooked the Tier 2 claims process before she filed this objection, which provides a procedure for claiming compensation based on hair loss. The Court therefore overrules this objection.

Tremaine Charles. (ECF No. 217-11.) Charles believes that a $25 settlement payment is insufficient. She also believes that the Tier 2 claims process is unduly burdensome in that it requires her to submit documentation that she no longer has, and that she is suffering emotional distress for which she should be compensated. As an

initial matter, Charles should have filed a Tier 2 claim rather than a simple Tier 1 claim. Moreover, requiring documentation is not a deficiency in the Tier 2 process—any lawsuit would require her to provide such documentation. If she believes that she is entitled to more money than what the settlement offers, she can also opt out and pursue an individual action. The Court therefore overrules this objection.

Pamela Sweeney. (ECF No. 217-11.) Sweeney objects to the settlement on a number of vague grounds, including: (1) the claims administration process is not properly overseen; (2) attorneys' fees are too high and are inadequately detailed; and (3) she joins all other objections made by other objectors. Sweeney's objections are too vague for the Court to properly analyze, and in any event seem to raise issues that are addressed elsewhere in Order. The Court therefore overrules this objection.

Pamela Behrend. (ECF No. 217-11.) Behrend objects to the settlement on the grounds that her home state (Pennsylvania) and several other states provide statutory damages for unfair trade practices in excess of $25. Thus, she argues that the claims of the Plaintiffs in this case, who are residents of states that do not have such statutory damages, are not typical of the class. She also argues that the amount set aside for Tier 1 claims is insufficient. Finally, she argues that the attorneys' fees in this case are excessive.

The Court does not find these objections persuasive. First, the states in which the named Plaintiffs reside is not what drives the application of California law to the nationwide class—indeed, the fact that *none* of the named Plaintiffs are residents of California shows this. Moreover, Defendants' lack of connection to Pennsylvania greatly increases the difficulty of certifying a nationwide class based on Pennsylvania law. Second, to the extent Behrend believes the settlement to be inadequate because there are states in which the maximum statutory damages exceeds $25, this also does not warrant withholding settlement approval. Pretrial settlements almost inevitably result in a reduced pay out based on a compromise; the fact that the settlement does not award all damages that one may be entitled to if they obtained a judgment fully in

their favor does not mean that the settlement is inadequate. *See In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving settlement that provided 9% of the maximum potential recovery, and suggesting that a "smaller certain award" is often preferable to "seek[ing] the full recovery but risk getting nothing"). Finally, the Court addresses Behrend's remaining objections elsewhere in this order. The Court therefore overrules this objection.

Ellen Bentz. (ECF No. 217-11.) Bentz objects that: (1) the total settlement amount is insufficient to compensate the class; (2) attorneys' fees sought are excessive; (3) the opt-out period was not long enough to meaningfully evaluate the settlement; (4) the damages cap for Tier 2 claims is too low; (5) tort-based claims should not be litigated as class actions; and (6) incentive awards to Plaintiffs are excessive. As the Court noted in the final approval hearing, the Court agrees that the attorneys' fees and incentive awards are excessive, and thus has reduced those awards. *See infra*. In addition, the Court considers the length of the opt out period to be adequate for a diligent class member to evaluate their injury and compare it to the benefits that the settlement has to offer. Finally, the Court has considered and overruled elsewhere in this Order arguments similar to the remaining arguments that Bentz makes. The Court therefore overrules this objection.

Thomas Paciorkowski. (ECF No. 217-11.) Paciorkowski objects to the claims process. Specifically, while he did not purchase the product, he used the product, yet the online Tier 1 claim-processing form requires the claimant to enter a purchase date in order to obtain a recovery. Thus, he instead submitted a paper claim and left the "purchase date" blank. Paciorkowski requests that the Court address the dilemma of how users (but non-purchasers) of the product can submit Tier 1 claims without entering a purchase date. It appears, however, that Paciorkowski has solved his own dilemma (i.e., by submitting a paper claim form), and thus it is unclear what further relief he wishes the Court to order. In addition, Paciorkowski concedes that he contacted the settlement administrator about this issue, who instructed him to simply

enter any date into "purchase date" query. This explicit advice should alleviate any concerns Paciorkowski has about submitting incorrect information in the claim forms. The Court therefore overrules this objection.

Luwona Ferguson. (ECF No. 217-11.) It is unclear what Ferguson's objection is. She indicates that she is a former cosmetologist and that she stopped using WEN products and asked Guthy-Renker to stop sending her such products. She asked Guthy-Renker if she could return the WEN products she has, but Guthy-Renker told her to just "hold on to it." Beyond this, however, Ferguson does not state what it is about the settlement that she finds to be objectionable. The Court therefore overrules this objection.

D. Incentive Awards

In the Ninth Circuit, there is no per se rule against incentive awards for class representatives. However, "district courts [should] scrutinize carefully the awards so that they do not undermine the adequacy of the class representatives." *Radcliffe v. Experian Info. Sols. Inc.*, 715 F.3d 1157, 1163 (9th Cir. 2013). In evaluating incentive awards, the court should look to "the number of named plaintiffs receiving incentive payments, the proportion of the payments relative to the settlement amount, and the size of each payment." *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 947 (9th Cir. 2015). *Compare id.* (approving $5,000 incentive awards for nine class representatives with $27.25 million settlement fund), *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 457 (9th Cir. 2000) (approving $5,000 incentive award for two class representatives with $1.725 million settlement fund), *and In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002) (approving $2,000 incentive awards to five named plaintiffs out of a class potentially numbering more than 4 million in a settlement of $3 million), *with Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003) (disapproving incentive awards averaging $30,000 for 29 class representatives with a $14.8 million settlement).

Here, the incentive awards for Henry-McArthur ($5,000) and Rogers ($2,500)

are well within any metric used to determine the adequacy of incentive awards. Moreover, Friedman and Miller have agreed to reduce their incentive awards to $20,000 each. While these two latter awards still border on the threshold for disapproval, *see Staton*, 327 F.3d at 977, the Court is satisfied that their participation in this lawsuit justifies the award. The Court therefore approves these incentive awards.

E. Attorneys' Fees

Class counsel seeks an award of $5.5 million in attorneys' fees, which is a $1 million reduction from the amount they initially sought. "While attorneys' fees and costs may be awarded in a certified class action where so authorized by law or the parties' agreement, courts have an independent obligation to ensure that the award, like the settlement itself, is reasonable, even if the parties have already agreed to an amount." *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011). "Where a settlement produces a common fund for the benefit of the entire class, courts have discretion to employ either the lodestar method or the percentage-of-recovery method." *Id.* at 942. "Because the benefit to the class is easily quantified in common-fund settlements, we have allowed courts to award attorneys a percentage of the common fund in lieu of the often more time-consuming task of calculating the lodestar. Applying this calculation method, courts typically calculate 25% of the fund as the 'benchmark' for a reasonable fee award, providing adequate explanation in the record of any 'special circumstances' justifying a departure." *Id.* However, the Court should not use a "mechanical or formulaic approach [to determining attorneys' fees] that results in an unreasonable reward." *Id.* at 994. Thus, the Court should cross-check a percentage-of-the-fund approach with a lodestar approach in appropriate circumstances. *Id.*

Here, the fee award contemplated by Class Counsel is 20.9% of the total settlement fund, and thus is presumptively reasonable under the percentage-of-recovery calculation. Moreover, having considered (1) the information counsel has

provided regarding the number of hours expended on the litigation and a reasonable hourly rate, (2) arguments of counsel at the final approval hearing, (3) the recovery obtained for the class, and (4) the risk counsel took in pursuing this action, the Court is satisfied that $5.5 million is a reasonable fee to award class counsel.

IV. CONCLUSION

For the reasons discussed, the Court **GRANTS** the Motion for Final Approval of Class Settlement (ECF No. 216) and **GRANTS** the Motion for Attorneys' Fees, Costs, and Incentive Awards (ECF No. 218). The Court **OVERRULES** all Objections to the Settlement. The Court shall enter a modified version of the parties' proposed judgment

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IT IS SO ORDERED.

August 21, 2017

OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE