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10 ***Counsel for Plaintiffs***

Counsel for Defendant Kashi Company

11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

13 SKYE ASTIANA, MILAN BABIC,
14 TIMOTHY BOLICK, JOE CHATHAM,
15 JAMES COLUCCI, TAMARA DIAZ,
16 MARTHA ESPINOLA, TAMAR LARSEN,
17 MARY LITTLEHALE and KIMBERLY S.
18 SETHAVANISH, on behalf of themselves and
19 all others similarly situated,

18 Plaintiffs,

19 vs.

19 KASHI COMPANY, a California Corporation,

20 Defendant.

Case No. 11 CV 1967 H (BGS)

STIPULATION OF SETTLEMENT

22 This Stipulation of Settlement is made and entered into by and among Plaintiffs Skye Astiana,
23 Milan Babic, Tamara Diaz, Tamar Larsen, and Kimberly S. Sethavanish (“Plaintiffs”), on behalf of
24 themselves and each of the Settlement Class Members, and Defendant Kashi Company (“Defendant”
25 or “Kashi”) (collectively, the “Parties”).
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1 I. RECITALS

2 A. In 2011, the following putative class action complaints were filed against Kashi and
3 other related Defendants in the United States District Court for the Southern District of California:
4 Bates v. Kashi Company, et al., 3:11-cv-1967; Babic v. Kashi Company, 3:11-cv-02816; Espinola v.
5 Kashi Company, 3:11-cv-02629 (initially filed in the United States District Court for the Central
6 District of California (11-cv-8534)); Diaz v. Kashi Company, et al., 11:cv-2256; Chatham v. Kashi
7 Company, et al., 11-cv-2285; Sethavanish, et al. v. Kashi Company, 11-cv-02356 (initially filed in the
8 United States District Court for the Northern District of California (11-cv-4453)); and Baisinger v.
9 Kashi Company, 11-cv-2367 (initially filed in the United States District Court for the Northern
10 District of California (11-cv-4581)) (collectively “the Original Complaints”).

11 B. On November 28, 2011, the Court ordered the consolidation of the related actions.
12 (ECF No. 16 (naming Bates the lead case; ordering consolidation of Diaz, Chatham, Sethavanish and
13 Baisinger cases); see also ECF No. 22 (ordering consolidation of Espinola case); ECF No. 8 in 3:11-
14 cv-2816 (ordering consolidation of Babic case).) On January 18, 2012, the Court appointed the law
15 firms of Stember Feinstein Doyle & Payne, LLC and Faruqi & Faruqi, LLP as interim co-lead
16 counsel. (ECF No. 41.)

17 C. On February 21, 2012, Plaintiffs filed a Consolidated Amended Complaint For
18 Damages, Equitable, Declaratory and Injunctive Relief against Kashi Company, Kashi Sales LLC and
19 Kellogg Company (Case No. 3:11-cv-01967) (the “Consolidated Amended Complaint”), which
20 amended and superseded the above-referenced Original Complaints. (ECF No. 49.)

21 D. In the Consolidated Amended Complaint, which was filed as a putative class action,
22 Plaintiffs allege that they bought certain Kashi food products based, at least in part, on allegedly
23 misleading statements printed on the products’ labels that the products were “All Natural” or
24 “Nothing Artificial.” Plaintiffs allege that, based on the labels, they believed the products contained
25 no synthetic or artificial ingredients and therefore paid a premium price for the products. Plaintiffs
26 further allege that the products that bore the “All Natural” or “Nothing Artificial” labels contained
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1 certain unnatural, synthetic or artificial ingredients. Plaintiffs further allege that they either would
2 not have purchased the products or would have paid less for the products had they known at the time
3 of purchase that the products contained ingredients that were unnatural, synthetic or artificial.

4 E. On April 6, 2012, Defendants filed a motion to dismiss the Consolidated Amended
5 Complaint. (ECF No. 61.) Plaintiffs opposed Defendants' motion to dismiss.

6 F. On July 16, 2012, the Court entered an Order granting in part and denying in part
7 Defendants' motion to dismiss. (ECF No. 79.) The Court dismissed all of Plaintiffs' claims against
8 Kashi Sales, LLC and Kellogg Company. The Court also dismissed Plaintiffs' Magnuson-Moss
9 Warranty Act ("MMWA") causes of action, common law fraud cause of action, and claim for unjust
10 enrichment. The Court denied the remaining portions of Defendants' motion to dismiss the
11 Consolidated Amended Complaint.

12 G. On April 15, 2013, Plaintiffs filed a motion for class certification. (ECF No. 108.)
13 Kashi opposed Plaintiffs' motion for class certification.

14 H. On July 30, 2013, the Court entered an Order granting in part and denying in part
15 Plaintiffs' motion for class certification. (ECF No. 148.) The Court appointed Faruqi & Faruqi, LLP
16 and Feinstein Doyle Payne & Kravec, LLC as co-lead counsel.

17 I. On August 12, 2013, Kashi filed a Petition For Permission To Appeal Under Federal
18 Rule of Civil Procedure 23(f) in the United States Court of Appeals for the Ninth Circuit.

19 J. On October 22, 2013, the Ninth Circuit denied Kashi's petition for permission to
20 appeal the District Court's class certification ruling.

21 K. On October 24, 2013, Kashi filed a motion to modify the Court's July 30, 2013 class
22 certification order. (ECF No. 182.) Plaintiffs opposed Kashi's motion.

23 L. On November 22, 2013, the Court denied Kashi's motion to modify the Court's class
24 certification order. (ECF No. 203.)

25 M. On October 23, 2013 and December 5, 2013, Class Counsel, Defendant and
26 Defendant's Counsel participated in mediations conducted by the Honorable Howard B. Weiner (ret.)
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1 at which they reached a tentative settlement. Subsequent to those sessions, the Parties engaged in
2 protracted, extensive, and hard-fought settlement negotiations. As a result of those negotiations, the
3 Parties agreed to settle the Litigation pursuant to the terms set forth in this Stipulation of Settlement.

4 N. Based upon Class Counsel's investigation and evaluation of the facts and law relating
5 to the matters alleged in the pleadings, including the completion of all merits discovery in this action
6 and the parties' exchange of trial expert reports on liability and damage issues, Plaintiffs and Class
7 Counsel agreed to settle the Litigation pursuant to the provisions of this Stipulation after considering,
8 among other things: (1) the substantial benefits available to the Class under the terms herein; (2) the
9 attendant risks and uncertainty of litigation, especially in complex actions such as this, as well as the
10 difficulties and delays inherent in such litigation; and (3) the desirability of consummating this
11 Stipulation to provide effective relief to the Class and to end the conduct at issue.

12 O. Kashi has denied and continues to deny each and all of the claims and contentions
13 alleged by Plaintiffs. Kashi has expressly denied and continues to deny all charges of wrongdoing or
14 liability against it arising out of any of the conduct, statements, acts or omissions alleged, or that
15 could have been alleged, in the Litigation.

16 P. Nonetheless, Kashi has concluded that further defense of the Litigation would be
17 protracted and expensive, and that it is desirable that the Litigation be fully and finally settled in the
18 manner and upon the terms and conditions set forth in the Stipulation. Defendant also has taken into
19 account the uncertainty and risks inherent in any litigation. Kashi, therefore, has determined that it is
20 desirable and beneficial to it that the Litigation be settled in the manner and upon the terms and
21 conditions set forth in the Stipulation.

22 Q. This Stipulation effectuates the resolution of disputed claims and is for settlement
23 purposes only.

24 II. DEFINITIONS

25 A. As used in this Stipulation the following capitalized terms have the meanings
26 specified below. Unless otherwise indicated, defined terms include the plural as well as the singular.

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1 1. “Challenged Ingredients” means one of more of the following ingredients:
2 pyridoxine hydrochloride, calcium pantothenate, hexane-processed soy ingredients, ascorbic acid,
3 calcium phosphate, glycerin, monocalcium phosphate, sodium phosphate, potassium bicarbonate,
4 potassium carbonate, sodium acid pyrophosphate, sodium citrate, alpha tocopherol acetate, mixed
5 tocopherols, tocopherol acetate, and/or xanthan gum.

6 2. “Claim Form” means the documents to be submitted by Claimants seeking
7 payment pursuant to this Stipulation that will be available online at the Settlement Website,
8 substantially in the form attached hereto as Exhibit A and discussed in § IV.A.5 of this Stipulation.

9 3. “Claimant” means a Settlement Class Member who submits a claim for
10 payment as described in § IV of this Stipulation.

11 4. “Claims Administration Protocols” means the protocols set forth in the Claims
12 Administration Protocols, attached as Exhibit B.

13 5. “Class” means all California residents who purchased any package of the
14 Products during the Settlement Class Period. Excluded from the Class are: (a) Kashi’s employees,
15 officers and directors; (b) persons or entities who purchased the Products for the purpose of re-sale;
16 (c) retailers or re-sellers of the Products; (d) governmental entities; (e) persons who timely and
17 properly exclude themselves from the Class as provided herein; and (f) the Court, the Court’s
18 immediate family, and Court staff.

19 6. “Class Action Settlement Administrator” means, subject to Court approval,
20 The Garden City Group, Inc., which will provide the Class Notice and administer the claims process.

21 7. “Class Counsel” means, subject to Court approval to represent the Settlement
22 Class, the attorneys appointed as class counsel by the Court’s July 30, 2013 Order (ECF No. 148) and
23 means the following individuals:

24 Joseph N. Kravec, Jr.
25 Wyatt A. Lison
26 Feinstein Doyle Payne & Kravec, LLC
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28 Allegheny Building, 17th Floor
 Pittsburgh, PA 15219
 Telephone: (412) 281-8400

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 Antonio Vozzolo
 Andrea Clisura
 Faruqi & Faruqi, LLP
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2 8. "Class Notice" means, collectively, the "Notice of Class Action Settlement"
3 and the "Publication Notice," substantially in the forms attached hereto as Exhibit C and Exhibit D,
4 respectively, and discussed in § V of this Stipulation, but which may be modified as necessary to
5 comply with the provisions of any order of Preliminary Approval entered by the Court.

6 9. "Class Representatives" means, subject to Court approval, Skye Astiana, Milan
7 Babic, Tamara Diaz, Tamar Larsen and Kimberly S. Sethavanish.

8 10. "Court" means the United States District Court for the Southern District of
9 California.

10 11. "Defendant" means the Kashi Company.

11 12. "Defendant's Counsel" means the following individuals:

12 Dean N. Panos
13 Jenner & Block LLP
14 353 North Clark Street
Chicago, IL 60654-3456
Telephone: (312) 923-2765

15 Kenneth K. Lee
16 Jenner & Block LLP
17 633 West 5th Street, Suite 3500
Los Angeles, CA 90071-2054
Telephone: (213) 239-5100

18 13. "Effective Date" means the date on which all of the conditions of settlement
19 have been satisfied, as discussed in § IX of this Stipulation.

20 14. "Final Judgment" means the "Final Judgment And Order of Dismissal" to be
21 entered by the Court, substantially in the form attached hereto as Exhibit E, which, among other
22 things, fully and finally approves the Settlement and dismisses the Consolidated Amended Complaint
23 with prejudice.

24 15. "Incentive Award" means any award sought by application to and approved by
25 the Court that is payable to the Representative Plaintiffs from the Settlement Fund.
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1 16. “Litigation” means the lawsuit captioned Astiana, et al. v. Kashi Company,
2 Case No. 11-CV-01967 (S.D. Cal.), consisting of the Consolidated Amended Complaint and the
3 Original Complaints.

4 17. “Notice Deadline” is fifty (50) days after the Court enters the Preliminary
5 Approval Order and means the deadline for all notifications discussed in the media plan (attached as
6 Exhibit G).

7 18. “Party” or “Parties” means the Plaintiffs and Defendant in this Litigation.

8 19. “Person” means a natural person, individual, corporation, partnership,
9 association, or any other type of legal entity.

10 20. “Plaintiffs” means the class representatives Skye Astiana, Milan Babic, Tamara
11 Diaz, Tamar Larsen and Kimberly S. Sethavanish, on behalf of themselves and each of the Settlement
12 Class Members.

13 21. “Plaintiffs’ Counsel” means Class Counsel and the following individuals:

14 Behram V. Parekh
15 Heather M. Baker
16 Michael L. Kelly
17 Kirtland & Packard, LLP
18 2041 Rosecrans Avenue, Third Floor
19 El Segundo, CA 90245
20 Telephone: (310) 536-1000

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4 Jason S. Hartley
5 Stueve Siegel Hanson, LLP
6 550 West C Street, Suite 1750
7 San Diego, CA 92101
8 Telephone: (619) 400-5822

8 22. "Preliminary Approval Order" means the "Order Preliminarily Approving
9 Class Action Settlement, Conditionally Certifying the Settlement Class, Providing For Notice and
10 Scheduling Order," substantially in the form of Exhibit F attached hereto, which, among other things,
11 preliminarily approves this Stipulation, certifies the settlement-only class, provides for notification to
12 the Settlement Class and sets the schedule for the Settlement Hearing.

13 23. "Products" means Kashi products labeled as "All Natural" or "Nothing
14 Artificial" and containing any of the Challenged Ingredients. A list of such products is set forth
15 below:

16 GoLean Chewy Chocolate Almond Toffee Protein & Fiber Bars
17 GoLean Chewy Cookies and Cream Protein & Fiber Bars
18 GoLean Chewy Malted Chocolate Crisp Protein & Fiber Bars
19 GoLean Chocolate Malted Crisp Protein & Fiber Bars
20 GoLean Chewy Oatmeal Raisin Cookie Protein & Fiber Bars
21 GoLean Chewy Peanut Butter Chocolate Protein & Fiber Bars
22 GoLean Chocolate Malted Crisp Protein & Fiber Bar
23 GoLean Crunchy! Chocolate Almond Protein & Fiber Bars
24 GoLean Crunchy! Chocolate Caramel Protein & Fiber Bars
25 GoLean Crunchy! Chocolate Peanut Protein & Fiber Bars
26 GoLean Crunchy! Chocolate Pretzel Protein & Fiber Bars
27 GoLean Crunchy! Cinnamon Coffee Cake Protein & Fiber Bars
28 GoLean Oatmeal Raisin Protein & Fiber Bar
GoLean Peanut Butter & Chocolate Protein & Fiber Bar
GoLean Roll! Caramel Peanut Protein & Fiber Bar
GoLean Roll! Chocolate Peanut Protein & Fiber Bar
GoLean Roll! Chocolate Turtle Protein & Fiber Bar
GoLean Roll! Fudge Sundae Protein & Fiber Bar
GoLean Roll! Oatmeal Walnut Protein & Fiber Bar
TLC Baked Apple Spice Soft-Baked Snack Bars
TLC Blackberry Graham Soft-Baked Snack Bars
TLC Cherry Dark Chocolate Chewy Granola Bars

1 TLC Cherry Vanilla Soft-Baked Snack Bars
TLC Cranberry Walnut Fruit & Grain Bars
2 TLC Cranberry Walnut Layered Granola Bars
TLC Dark Chocolate Coconut Fruit & Grain Bars
3 TLC Dark Chocolate Coconut Layered Granola Bar
TLC Dark Mocha Almond Chewy Granola Bars
4 TLC Honey Almond Flax Chewy Granola Bars
TLC Honey Toasted 7 Grain Granola Bars
5 TLC All Natural Chewy Granola Bar in Honey Toasted
6 Kashi TLC Crunchy Granola Bar Honey Toasted 7 Grain
TLC Peanut Peanut Butter Chewy Granola Bars
7 TLC Peanutty Dark Chocolate Layered Granola Bar
TLC Pumpkin Pie Fruit & Grain Bars
8 TLC Pumpkin Pecan Layered Granola Bar
TLC Pumpkin Pecan Fruit & Grain Bars
9 TLC Pumpkin Spice Flax Crunchy Granola Bars
10 TLC Raspberry Chocolate Fruit & Grain Bars
TLC Raspberry Chocolate Layered Granola Bar
11 TLC Ripe Strawberry Soft-Baked Snack Bars
TLC Roasted Almond Crunch Crunchy Granola Bars
12 TLC Trail Mix Chewy Granola Bars
7 Grain Waffles
13 Blueberry Waffles
GoLean Blueberry Waffles
14 GoLean Strawberry Flax Waffles
GoLean Original 7 Grain Waffles
15 Berry Blossoms Squares Cereal
GoLean Crisp Toasted Berry Crumble Cereal
16 GoLean Crunch Cereal
GoLean Crunch Honey Almond Flax Cereal
17 Honey Sunshine Squares Cereal
18 Cocoa Beach Granola
Mountain Medley Granola
19 Summer Berry Granola
GoLean Chocolate Shake
20 GoLean Vanilla Shake
GoLean Creamy Instant Hot Cereal Truly Vanilla
21 GoLean Hearty Instant Hot Cereal with Clusters Honey & Cinnamon
22 TLC Country Cheddar Cheese Crackers
TLC Honey Sesame Snack Crackers
23 TLC Original 7 Grain with Sea Salt Pita Crisps
Kashi Pita Crisps Zesty Salsa
24 Kashi TLC Crackers Asiago Cheese
Kashi TLC Crackers Toasted Asiago
25 Kashi TLC Entertainer Cracker - Mediterranean Bruchetta
26 Kashi TLC Crackers Party Mediterranean Bruschetta
Kashi TLC Entertainer Cracker - Stoneground 7 Grain
27 Kashi TLC Crackers Party Stoneground 7 Grain
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1 Kashi TLC Crackers Fire Roasted Vegetable
Kashi TLC Entertainer Cracker - Garlic and Thyme
2 Kashi TLC Entertainer Cracker - Stoneground 7 Grain
Kashi TLC Entertainer Cracker - Original 7 Grain
3 Kashi TLC Crackers Original 7 Grain
Kashi TLC Crackers-Natural Ranch
4 TLC Happy Trail Mix Chewy Cookies
5 TLC Oatmeal Dark Chocolate Chewy Cookies
TLC Oatmeal Raisin Flax Chewy Cookies
6 Kashi Entrée Chicken Florentine
Kashi Chicken Pasta Pomodoro
7 Kashi Entrée Lemongrass Coconut Chicken
Kashi Entrée Mayan Harvest Bake
8 Kashi Entrée Pesto Pasta Primavera
Kashi Entrée Southwest Style Chicken
9 Kashi Entrée Spicy Black Bean Enchilada
10 Kashi Tuscan Veggie Bake
Kashi Pizza Caribbean Carnival
11 Kashi Pizza 5 Cheese & Tomato
Kashi Pizza Margherita
12 Kashi Pizza Margherita – Thin Crust
Kashi Pizza Margherita – Stone-Fired Thin Crust
13 Tomato Garlic Cheese Stone-Fired Thin Crust Pizza
Kashi Pizza Mexicali Black Bean
14 Kashi Pizza Mushroom Trio & Spinach
Kashi Pizza Mushroom Trio & Spinach – Thin Crust
15 Kashi Pizza Basil Pesto
Kashi Pizza Basil Pesto – Stone-Fired Thin Crust
16 Kashi Pizza Roasted Garlic Chicken
Kashi Pizza Roasted Vegetable
17 Kashi Pizza Roasted Vegetable – Thin Crust
18 Heart to Heart Honey Oat Waffles
Heart to Heart Honey Toasted Oat Cereal
19 Heart to Heart Instant Oatmeal Apple Cinnamon
Heart to Heart Instant Oatmeal Golden Maple
20 Heart to Heart Instant Oatmeal Raisin Spice
Heart to Heart Oat Flakes & Blueberry Clusters Cereal
21 Heart to Heart Blueberry Cereal
22 Heart to Heart Roasted Garlic Whole Grain Crackers
Heart to Heart Warm Cinnamon Oat Cereal
23 Heart to Heart Original Whole Grain Crackers

24 24. “Released Claims” shall be construed as broadly as possible to effect complete
25 finality over this Litigation, and means, with the exception of claims for personal injury, any and all
26 actions, claims, demands, rights, suits, and causes of action of whatever kind or nature that arose
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1 during the Settlement Class Period against the Released Persons, including damages, costs, expenses,
2 penalties, and attorneys' fees, known or unknown, suspected or unsuspected, in law or equity arising
3 out of or relating to Kashi's packaging, marketing, distribution or sale of food products labeled as
4 "All Natural" or "Nothing Artificial", which have been asserted by the Class in the Plaintiff's
5 Consolidated Amended Complaint or in any of the Original Complaints.

6 25. "Released Persons" shall be defined and construed broadly to effectuate a
7 complete and comprehensive release, and means and includes Kashi and its past and present direct
8 and indirect corporate parents (including without limitation Kellogg Company), subsidiaries and
9 affiliates (including without limitation Kashi Sales, LLC), joint-ventures, partners, members,
10 divisions, distributors, wholesalers, retailers, re-sellers, licensors, suppliers, officers, directors,
11 employees, shareholders, agents, attorneys, administrators, successors, predecessors, insurers,
12 spokespersons, public relations firms, advertising and production agencies and assigns of all such
13 persons or entities.

14 26. "Settlement Class Member(s)" or "Member(s) of the Settlement Class" means
15 a member of the Class who has not been properly excluded from the Class.

16 27. "Settlement Class Period" means the period from August 24, 2007 up to and
17 including May 1, 2014.

18 28. "Settlement Fund" means the common fund discussed in § IV.A.2 of this
19 Stipulation.

20 29. "Settlement Hearing" means the hearing(s) to be held by the Court to consider
21 and determine whether the proposed settlement of this Litigation as contained in this Stipulation
22 should be finally approved as fair, reasonable, and adequate, and whether the Judgment approving the
23 settlement contained in this Stipulation should be entered. The Parties shall ask the Court to schedule
24 a date for the Settlement Hearing 120 days after the Court enters the Preliminary Approval Order.

25 30. "Settlement Website" means the website to be created for this settlement that
26 will include information about the Litigation and the settlement, relevant documents and electronic
27 and printable forms relating to the settlement, including the Claim Form which can be submitted
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1 online or printed and mailed. The Settlement Website shall be activated no later than seven (7) days
2 after the Court enters the Preliminary Approval Order.

3 31. "Stipulation" means this Stipulation of Settlement, including its attached
4 exhibits (which are incorporated herein by reference), duly executed by Class Counsel and counsel
5 for Defendant.

6 B. Other capitalized terms used in this Stipulation but not defined above shall have the
7 meaning ascribed to them in this Stipulation and the exhibits attached hereto.

8 III. CERTIFICATION OF THE SETTLEMENT CLASS

9 Kashi hereby consents, solely for purposes of the settlement set forth herein, to the
10 certification of the Settlement Class, to the appointment of Class Counsel as counsel for the
11 Settlement Class, and to the conditional approval of Plaintiffs as suitable representatives of the Class;
12 provided, however, that if this Stipulation fails to receive Court approval or otherwise fails to be
13 consummated, including, but not limited to, the Judgment not becoming final as provided in § IX.C
14 of this Stipulation, then Kashi retains all rights it had immediately preceding the execution of this
15 Stipulation to object to the maintenance of this Litigation as a class action by Class Counsel, and in
16 that event, nothing in this Stipulation or other papers or proceedings related to the settlement shall be
17 used as evidence or argument by any Party concerning whether the Litigation may properly be
18 maintained as a class action, whether the Class is ascertainable, or whether Class Counsel or the
19 Plaintiffs can adequately represent the Settlement Class Members under applicable law.
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21 IV. SETTLEMENT RELIEF

22 The settlement relief includes cash payments and non-monetary relief.

23 A. Cash Payments

24 1. Class Members' Cash Recovery

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1 a. With Proof of Purchase: Class members may seek reimbursement of
2 \$0.50 per package for every Product purchased during the Settlement Class Period, for which they
3 can present written proof of purchase in the form of a receipt or a retail rewards submission.

4 b. Without Proof of Purchase: Class members may make a claim for
5 every Product for which they submit a valid Claim Form. Class members may seek reimbursement at
6 \$0.50 per package for every Product purchased during the Settlement Class Period, with a maximum
7 recovery of \$25 per household.

8 c. Class Members may obtain relief under both Paragraphs IV.A.1(a), and
9 (b) with the appropriate paper work and subject to the maximum recovery amounts permitted for
10 each type of claim.

11 d. Claimants may seek reimbursement by submitting a Claim Form either
12 by mail or electronically. Each Claim Form will be signed (electronic or manual) under penalty of
13 perjury. The actual amount paid to individual Claimants will depend upon the number of valid
14 claims made. Adequate and customary procedures and standards will be used by the Class Action
15 Settlement Administrator to prevent the payment of fraudulent claims and to pay only legitimate
16 claims.

17 **2. Settlement Fund**

18 a. In accordance with the payment schedule set forth in § IV.A.7, below,
19 Defendant shall pay \$5.0 million, less any costs associated with the Class Action Settlement
20 Administrator paid by Kashi prior to that time, in trust to a third party institution (the “Fund
21 Institution”) to be approved by the Parties to establish an interest bearing, non-reversionary
22 settlement fund for payments made pursuant to this section.

23 b. The Settlement Fund shall be applied to pay in full and in order:
24 (i) any necessary taxes and tax expenses; (ii) all costs associated with the Class Action Settlement
25 Administrator, including costs of providing notice to the Class Members and processing claims and
26 all costs relating to providing the necessary notices in accordance with the Class Action Fairness Act
27 of 2005, 28 U.S.C. § 1715; (iii) any Fee and Expense Award made by the Court to Class Counsel
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1 under § VIII(a); (iv) any Incentive Award made by the Court to the Class Representatives under
2 § VIII(c); and (v) payments to authorized Claimants as allowed by this Stipulation and to be
3 approved by the Court.

4 **3. Settlement Fund: Insufficient or Excess Funds**

5 a. If the total amount of eligible claims exceeds the Settlement Fund, then
6 each claim's award shall be proportionately reduced.

7 b. If after all valid claims (plus other authorized fees, costs and expenses)
8 are paid, money remains in the Settlement Fund, the remaining amount shall be used to
9 proportionately increase the recovery of each eligible claim.

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

11 a. The Class Action Administrator shall send a letter to any applicable
12 Settlement Class Member explaining the rejection of any claim no later than fifteen (15) days after
13 the Effective Date. Settlement Class Members' time to appeal any such rejection decisions shall
14 expire forty-five (45) days after the Effective Date.

15 b. The Class Action Administrator will send payment directly to the
16 eligible Settlement Class Member no later than ninety (90) days after the Effective Date (the "Claims
17 Payment Date").

18 c. Failure to provide all information requested in the Claim Form will not
19 result in nonpayment of a claim. Instead, the Class Action Settlement Administrator will take all
20 adequate and customary steps to determine the Settlement Class Member's eligibility for payment
21 and the amount of payment based on the information contained in the Claim Form or otherwise
22 submitted, the amount of money available to pay all valid claims, and such other reasonably available
23 information from which eligibility for payment can be determined.

24 **5. Claim Form Availability**

25 The Claim Form will be available for downloading and may be completed and submitted
26 online at the Settlement Website, and the Claim Form will be available for downloading on Class
27 Counsel's websites, at Class Counsel's option. The Claim Form may also be requested by calling the
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1 toll-free number provided by the Class Action Settlement Administrator or by writing to the Class
2 Action Settlement Administrator.

3 **6. Eligibility for Cash Payment**

4 a. To be eligible for a cash payment, the Settlement Class Member must
5 timely submit a signed and completed Claim Form containing his or her name and mailing address.
6 The Claim Form will also request an e-mail address for the Settlement Class Member, but an e-mail
7 address will not be required to be eligible for a cash payment. The Settlement Administrator may pay
8 claims that are otherwise valid but untimely filed if there is sufficient money to pay all valid and
9 timely claims in full plus untimely but otherwise valid claims from the Settlement Fund, and payment
10 of any such untimely but valid claims is administratively feasible and otherwise reasonable, taking
11 into account the need to timely pay claims. The determination of the Class Action Settlement
12 Administrator, after consultation with Class Counsel and Defendant’s Counsel, concerning the
13 eligibility and amount of payment shall be final. In the event a Settlement Class Member disagrees
14 with such a determination, the Class Action Settlement Administrator agrees to reconsider such
15 determination, which includes consultation with Class Counsel.

16 b. To be eligible, Claim Forms must be postmarked or submitted online
17 no later than eight (8) days before the Settlement Hearing (the “Claims Deadline”).

18 **7. Funding the Settlement Fund**

19 a. Subject to § IV.A.2, above, Defendant shall fund the Settlement Fund
20 no later than seven (7) days after the Effective Date.

21 **B. Other Relief**

22 a. By the later of (i) 120 days following the Effective Date or (ii)
23 December 31, 2014 (“the Injunctive Relief Effective Date”), Kashi agrees to modify its current
24 labeling and advertising to remove “All Natural” and “Nothing Artificial” from those Products that
25 contain the following Challenged Ingredients: (i) pyridoxine hydrochloride, calcium pantothenate
26 and/or hexane-processed soy ingredients in products labeled “All Natural,” and (ii) pyridoxine
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1 hydrochloride, alpha-tocopheral acetate and/or hexane-processed soy ingredients in products labeled
2 “Nothing Artificial,” unless the ingredients are approved or determined as acceptable for products
3 identified as “natural” by a federal agency or controlling regulatory body. Sales of products
4 manufactured prior to the Injunctive Relief Effective Date shall not constitute a violation of this
5 Stipulation. The injunctive terms and requirements of this Paragraph shall expire three years after the
6 Effective Date.

7 V. NOTICE TO THE CLASS, COMMUNICATIONS WITH SETTLEMENT CLASS
8 MEMBERS AND REDEMPTION OF SETTLEMENT RELIEF

9 A. **Class Notice**

10 The Class Notice shall conform to all applicable requirements of the Federal Rules of Civil
11 Procedure, the United States Constitution (including the Due Process Clauses), model class notices of
12 the Federal Judicial Center and any other applicable law, and shall otherwise be in the manner and
13 form agreed upon by the Parties and approved by the Court. Collectively, the Class Notice shall set
14 forth the following information

15 1. General Terms. The Class Notice shall:

- 16 a. inform Settlement Class Members that, if they do not exclude
17 themselves from the Class, they may be eligible to receive the relief under the proposed settlement;
18 b. contain a short, plain statement of the background of the Litigation, the
19 Class certification and the proposed settlement;
20 c. describe the proposed settlement relief outlined in this Stipulation;
21 d. explain the impact of the proposed settlement on any existing litigation,
22 arbitration or other proceeding; and
23 e. state that any relief to Settlement Class Members is contingent on the
24 Court’s final approval of the proposed settlement.

25 2. Notice of Exclusion, Objection and Other Rights. The Class Notice shall
26 inform Settlement Class Members:
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1 a. that they may exclude themselves from the Class by submitting a
2 written exclusion request postmarked no later than eight (8) days before the date the Court sets for
3 the Settlement Hearing;

4 b. that any Settlement Class Member who has not submitted a written
5 request for exclusion may, if he or she desires, object to the proposed settlement by filing and serving
6 a written statement of objections along with proof of membership in the Class no later than thirty
7 (30) days before the date the Court sets for the Settlement Hearing;

8 c. that any Settlement Class Member who has filed and served written
9 objections to the proposed settlement may, if he or she so requests, enter an appearance at the
10 Settlement Hearing either personally or through counsel;

11 d. that any Judgment entered in the Litigation, whether favorable or
12 unfavorable to the Class, shall include, and be binding on, all Settlement Class Members who have
13 not been excluded from the Class, even if they have objected to the proposed settlement and even if
14 they have any other claim, lawsuit or proceeding pending against Defendant;

15 e. that any Settlement Class Member who has not submitted a timely
16 written request for exclusion may submit a completed and signed Claim Form seeking a cash
17 payment under this settlement that must be postmarked or electronically submitted no later than eight
18 (8) days before the date the Court sets for the Settlement Hearing; and

19 f. of the terms of the release.

20 3. No later than seven (7) days after the Court enters the Preliminary Approval
21 Order, the Class Notice shall be posted on the Settlement Website and, at their option, on the websites
22 of Class Counsel. The Class Notice shall also be sent via electronic mail or regular mail to those
23 Class Members who so request.

24 **B. Publication Notice Deadline**

25 No later than fifty (50) days after the Court enters the Preliminary Approval Order, the Class
26 Action Settlement Administrator will cause to be published in accordance with the media plan,
27 attached as Exhibit G, the Publication Notice, a copy of which is attached as Exhibit D.
28

1 **C. Retention of Class Action Settlement Administrator**

2 Subject to Court approval, The Garden City Group, Inc. shall be retained as the Class Action
3 Settlement Administrator to help implement the terms of the proposed Stipulation. All costs
4 associated with the Class Action Settlement Administrator, including costs of providing notice to the
5 Class Members and processing claims, shall be paid out of the Settlement Fund. Any reasonable
6 costs associated with the Class Action Settlement Administrator incurred and paid prior to the
7 funding of the Settlement Fund will be paid by Kashi, but upon the occurrence of the Effective Date
8 and the triggering of the payments required by Paragraph IV.A above, any such payments will reduce
9 the amount Kashi is obligated to pay to establish the Settlement Fund.
10

11 1. The Class Action Settlement Administrator(s) shall assist with various
12 administrative tasks, including, without limitation, (a) mailing or arranging for the mailing or other
13 distribution of the Class Notice, Claim Forms to Settlement Class Members, and the statement
14 pursuant to § V.A.4, (b) arranging for publication of the Publication Notice, (c) handling returned
15 mail not delivered to Settlement Class Members, (d) attempting to obtain updated address
16 information for Settlement Class Members and for any Class Notice Packages returned without a
17 forwarding address or an expired forwarding address, (e) making any additional mailings required
18 under the terms of this Stipulation, (f) answering written inquiries from Settlement Class Members
19 and/or forwarding such inquiries to Class Counsel or their designee, (g) receiving and maintaining on
20 behalf of the Court and the Parties any Settlement Class Member correspondence regarding requests
21 for exclusion to the settlement, (h) establishing the Settlement Website that posts notices, Claim
22 Forms and other related documents, (i) receiving and processing claims and distributing payments to
23 Settlement Class Members, and (j) otherwise assisting with administration of the Stipulation.

24 2. The contract with the Class Action Settlement Administrator shall obligate the
25 Class Action Settlement Administrator to abide by the following performance standards:
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1 a. The Class Action Settlement Administrator shall accurately and
2 neutrally describe, and shall train and instruct its employees and agents to accurately and objectively
3 describe, the provisions of this Stipulation in communications with Settlement Class Members;

4 b. The Class Action Settlement Administrator shall provide prompt,
5 accurate and objective responses to inquiries from Class Counsel or their designee, Defendant and/or
6 Defendant's Counsel.

7 **VI. APPROVAL PROCEDURES AND RELATED PROVISIONS**

8 **A. Preliminary Approval and Settlement Hearing**

9 Promptly after execution of this Stipulation, the Parties shall submit this Stipulation to the
10 Court and shall jointly apply for entry of a Preliminary Approval Order preliminarily approving this
11 Stipulation, providing for the dissemination of the Class Notice, and scheduling a Settlement
12 Hearing.

13 **B. Requests for Exclusion**

14 1. Any potential Settlement Class Member who wishes to be excluded from the
15 Class must mail or deliver a written request for exclusion to the Clerk of the Court, care of the
16 address provided in the Class Notice, postmarked or delivered no later than eight (8) days before the
17 Settlement Hearing, or as the Court otherwise may direct. The written request for exclusion must
18 request exclusion from the Class, must be signed by the potential Settlement Class Member and
19 include a statement indicating that the requester is a member of the Settlement Class. A list reflecting
20 all requests for exclusion shall be filed with the Court by Plaintiffs at or before the Settlement
21 Hearing.

22 2. Any potential Settlement Class Member who does not file a timely written
23 request for exclusion as provided in the preceding § VI.B.1 shall be bound by all subsequent
24 proceedings, orders and the Judgment in this Litigation relating to this Stipulation, even if he or she
25 has pending, or subsequently initiates, litigation, arbitration or any other proceeding against
26 Defendant relating to the Released Claims.

1 VII. RELEASES

2 As of the Effective Date, Plaintiffs and each Settlement Class Member who has not validly
3 excluded himself or herself from the Settlement Class pursuant to §VI.B of this Stipulation, and each
4 of their heirs, guardians, executors, administrators, representatives, agents, attorneys, partners,
5 successors, predecessors-in-interest, and assigns, shall be deemed to have, and by operation of the
6 Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released
7 Claims against the Released Persons. In connection with the Released Claims, each Settlement Class
8 Member shall be deemed as of the Effective Date to have waived any and all provisions, rights, and
9 benefits conferred by § 1542 of the California Civil Code and any statute, rule, and legal doctrine
10 similar, comparable, or equivalent to California Civil Code § 1542, which reads as follows:
11

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

15 VIII. CLASS COUNSEL’S ATTORNEYS’ FEES, COSTS AND EXPENSES AND CLASS
16 REPRESENTATIVE INCENTIVE AWARDS

17 A. The parties agree that Class Counsel may apply for an award of attorneys’ fees and
18 reasonable, actual out-of-pocket expenses from the Settlement Fund not to exceed \$1,250,000 (“Fee
19 and Expense Award”). Subject to the terms and conditions of this Stipulation and any order of the
20 Court, the Fee and Expense Award awarded by the Court to Class Counsel shall be paid out of the
21 Settlement Fund within ten (10) days after the Effective Date. Such payment will be in lieu of any
22 statutory fees Plaintiffs and/or their attorneys might otherwise have been entitled to recover from
Kashi.

23 B. Class Counsel shall allocate and distribute the Court’s Fee and Expense Award among
24 Plaintiffs’ Counsel. Kashi shall have no liability or other responsibility for allocation of any such Fee
25 and Expense Award awarded, and, in the event that any dispute arises relating to the allocation of
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1 fees, Class Counsel agree to hold Kashi harmless from any and all such liabilities, costs, and
2 expenses of such dispute.

3 C. Class Counsel may ask the Court for the award of an Incentive Award from the
4 Settlement Fund to each of the class representatives of \$4,000. Any Incentive Awards approved by
5 the Court shall be paid from the Settlement Fund within ten (10) days after the Effective Date.

6 IX. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION
7 OR TERMINATION

8 A. The Effective Date of this Stipulation shall be the first date after which all of the
9 following events and conditions have been met or have occurred:

10 1. The Court has preliminarily approved this Stipulation and entered the
11 Preliminary Approval Order;

12 2. The Court has entered the Final Judgment; and

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

24 B. If all of the conditions specified in § IX.A of this Stipulation are not met, then this
25 Stipulation shall be canceled and terminated unless Class Counsel and Defendant mutually agree in
26 writing to proceed with this Stipulation.

1 C. In the event that this Stipulation is not approved by the Court or the settlement set
2 forth in this Stipulation is terminated or fails to become effective in accordance with its terms, the
3 Parties shall be restored to their respective pre-settlement positions in the Litigation, including with
4 regard to any agreements concerning tolling and similar agreements, and this entire Stipulation shall
5 become null and void.

6 D. In the event that this Stipulation is not approved by the Court or the settlement set
7 forth in this Stipulation is terminated or fails to become effective in accordance with its terms, any
8 reasonable costs associated with the Class Action Settlement Administrator incurred prior to that time
9 will be paid by Kashi.

10 X. MISCELLANEOUS PROVISIONS

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

15 B. The undersigned counsel represent that they are fully authorized to execute and enter
16 into the terms and conditions of this Stipulation on behalf of their respective clients.

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

24 D. The terms of this Stipulation are and shall be binding upon each of the Parties, their
25 agents, attorneys, employees, successors and assigns, and upon all other Persons claiming any
26 interest in the subject matter through any of the Parties, including any Settlement Class Member.
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1 E. Whenever this Stipulation requires or contemplates that one Party shall or may give
2 notice to the other, notice shall be provided by facsimile, email and/or next day (excluding Sunday)
3 express delivery service as follows:

4 1. If to Plaintiffs, then to:

5 Joseph N. Kravec, Jr.
6 Wyatt A. Lison
7 Feinstein Doyle Payne &
8 Kravec, LLC
9 429 Forbes Avenue
10 Allegheny Building, 17th Floor
11 Pittsburgh, PA 15219
12 Telephone: (412) 281-8400

Nadeem Faruqi
Antonio Vozzolo
Andrea Clisura
Faruqi & Faruqi, LLP
369 Lexington Avenue
10th Floor
New York, NY 10017
Telephone: (212) 983-9330

10 2. If to Defendant, then to:

11 Dean N. Panos
12 dpanos@jenner.com
13 Jenner & Block LLP
14 353 North Clark Street
15 Chicago, IL 60654-3456
16 Telephone: (312) 923-2765
17 Facsimile: (312) 840-7765

16 F. The time periods and/or dates described in this Settlement Agreement with respect to
17 the giving of notices and hearings are subject to approval and change by the Court or by the written
18 agreement of Plaintiffs' Counsel and Defendant's Counsel, without notice to Settlement Class
19 Members. The Parties reserve the right, by agreement and subject to the Court's approval, to grant
20 any reasonable extension of time that might be needed to carry out any of the provisions of this
21 Settlement Agreement.

22 G. All time periods set forth herein shall be computed in business days if seven days or
23 less and calendar days if eight days or more unless otherwise expressly provided. In computing any
24 period of time prescribed or allowed by this Stipulation or by order of the Court, the day of the act,
25 event or default from which the designated period of time begins to run shall not be included. The
26 last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal
27 holiday, or, when the act to be done is the filing of a paper in Court, a day in which weather or other
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1 conditions have made the Office of the Clerk or the Court inaccessible, in which event the period
2 shall run until the end of the next day as not one of the aforementioned days. As used in this
3 subsection, “legal holiday” includes New Year’s Day, Martin Luther King, Jr.’s Birthday,
4 Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans’
5 Day, Thanksgiving Day, Christmas Day and any other day appointed as a holiday by the President or
6 the Congress of the United States.

7 H. The Parties, their successors and assigns, and their attorneys undertake to implement
8 the terms of this Stipulation in good faith and to use good faith in resolving any disputes that may
9 arise in the implementation of the terms of this Stipulation.

10 I. This Stipulation may be amended or modified only by a written instrument signed by
11 Class Counsel and any of Defendant’s Counsel. Amendments and modifications may be made
12 without additional notice to the Settlement Class Members unless such notice is required by the
13 Court.

14 J. The exhibits to this Stipulation are an integral part of the Settlement and are hereby
15 incorporated and made a part of this Stipulation.

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

1 L. The Court shall retain jurisdiction with respect to the implementation and enforcement
2 of the terms of this Stipulation, and all Parties hereto submit to the jurisdiction of the Court for
3 purposes of implementing and enforcing the settlement embodied in this Stipulation.

4 M. This Stipulation shall be deemed to have been executed upon the last date of execution
5 by all of the undersigned.

6 N. This Stipulation may be executed in counterparts, each of which shall constitute an
7 original.

8 IN WITNESS THEREOF, the Parties hereto have caused this Stipulation to be executed by
9 their duly authorized representatives.

10
11 **FOR PLAINTIFFS**

12 Dated: May 2, 2014

FEINSTEIN DOYLE PAYNE & KRAVEC, LLC

13 By: /s/ Joseph N. Kravec, Jr.

14 Joseph N. Kravec, Jr.
15 Wyatt A. Lison
16 Feinstein Doyle Payne & Kravec, LLC
17 429 Forbes Avenue
18 Allegheny Building, 17th Floor
19 Pittsburgh, PA 15219
20 Telephone: (412) 281-8400
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27
28

1 Dated: May 2, 2014

FARUQI & FARUQI, LLP

2

By: /s/ Antonio Vozzolo_____

3

Nadeem Faruqi

4

Antonio Vozzolo

5

Andrea Clisura

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1 **FOR DEFENDANT**

2 Dated: May 2, 2014

JENNER & BLOCK LLP

3 By: /s/ Dean N. Panos

4 DEAN N. PANOS

5 353 North Clark Street
6 Chicago, IL 60654-3456
7 Telephone: (312) 923-2765
8 Facsimile: (312) 840-7765
9 dpanos@jenner.com

10 Kenneth K. Lee (Cal. Bar No. 264296)
11 Kate T. Spelman (Cal. Bar No. 269109)
12 JENNER & BLOCK LLP
13 633 West 5th Street, Suite 3600
14 Los Angeles, CA 90071
15 Telephone: (213) 239-5100
16 Facsimile: (213) 239-5199
17 Email: klee@jenner.com
18 kspelman@jenner.com
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