

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

IN RE: COLGATE-PALMOLIVE	)	
SOFTSOAP ANTIBACTERIAL HAND	)	MDL Docket No. 12-md-2320-PB
SOPA MARKETING AND SALES	)	
PRACTICES LITIGATION	)	All Actions
(MDL NO. 2320)	)	
_____	)	

JOINT MOTION  
FOR CERTIFICATION OF SETTLEMENT CLASS, PRELIMINARY APPROVAL OF  
PROPOSED CLASS ACTION SETTLEMENT, APPROVAL OF NOTICE PLAN AND  
NOTICE ADMINISTRATOR AND APPOINTMENT OF LEAD COUNSEL

Pursuant to Federal Rule of Civil Procedure 23 and Local Rule 23.1, plaintiffs Tracy Nieblas, Shari Elstein, Kristina Pearson, Adam Emery and Jeff Dyke, in their individual capacities and as class representatives (“Plaintiffs”), and Defendant Colgate-Palmolive Company (“Defendant”) (collectively, the “Parties”), by and through their respective counsel, file this Joint Motion for Certification of Settlement Class, Preliminary Approval of Proposed Class Action Settlement, Approval of Notice Plan and Notice Administrator and Appointment of Lead Counsel (the “Joint Motion”).

The Parties respectfully request that the Court enter an Order:

(1) conditionally certifying a Settlement Class, pursuant to Fed. R. Civ. P. 23(b)(2), as defined in the proposed Settlement Agreement and Release for settlement purposes only (the “Class”);

(2) granting preliminary approval of the proposed settlement of this class action on the terms set forth in the Settlement Agreement;

(3) approving the proposed Notice Plan and directing that the Class be provided with notice of the pendency of this action and the settlement in the manner proposed by the parties in the Notice Plan;

(4) approving the appointment of the Notice Administrator;

(5) approving the designated Class Representatives, Lead Class Counsel and Case Leadership as set forth in Pretrial Order No. 1(doc. 20) and the Settlement Agreement; and

(6) scheduling a hearing at which the Court will consider final approval of the Settlement, entry of the proposed final judgment and Plaintiffs' Counsels' application for an award of attorneys' fees, costs and expenses.

Attached hereto as Exhibit 1 is the Settlement Agreement entered into between Plaintiffs and Defendant on May 21, 2015. Attached to the Settlement Agreement and Release are the following exhibits:

Exhibit "A" - Order for Preliminary Approval

Exhibit "B" - Summary Notice

Exhibit "C" - Long-Form Notice

WHEREFORE, for the reasons set forth in the Parties' supporting Memorandum, they respectfully request that the Court:

- A. Grant their Joint Motion;
- B. Certify a Settlement Class;
- C. Preliminarily approve the Settlement Agreement; and
- D. Approve the Notice Plan and Notice and appoint a Notice Administrator.

Respectfully submitted,

Dated: May 29, 2015

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on May 29, 2015, she caused this document to be electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of filing to registered counsel of record for each party.

/s/ Lucy J. Karl  
Lucy J. Karl (NH Bar # 5547)

UNITED STATES DISTRICT COURT

DISTRICT OF NEW HAMPSHIRE

IN RE: COLGATE-PALMOLIVE	)	
SOFTSOAP ANTIBACTERIAL HAND	)	MDL Docket No. 12-md-2320-PB
SOAP MARKETING AND SALES	)	
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MEMORANDUM IN SUPPORT OF JOINT MOTION  
FOR CERTIFICATION OF SETTLEMENT CLASS, PRELIMINARY APPROVAL OF  
PROPOSED CLASS ACTION SETTLEMENT, APPROVAL OF NOTICE PLAN AND  
NOTICE ADMINISTRATOR AND APPOINTMENT OF LEAD COUNSEL

I. INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 23 and Local Rule 23.1, plaintiffs Tracy Nieblas, Shari Elstein, Kristina Pearson, Adam Emery and Jeff Dyke, in their individual capacities and as class representatives (“Plaintiffs”), and Defendant Colgate-Palmolive Company (“Defendant”) (collectively, the “Parties”), by and through their respective counsel, submit this Memorandum in support of their Joint Motion for Certification of Settlement Class, Preliminary Approval of Proposed Class Action Settlement, Approval of Notice Plan and Notice Administrator and Appointment of Lead Counsel (the “Joint Motion”). The Parties respectfully request that the Court enter an Order (1) conditionally certifying a Settlement Class, pursuant to Fed. R. Civ. P. 23(b)(2), as defined in the proposed Settlement Agreement and Release (the proposed “Settlement Agreement and Release” is attached to the Joint Motion as Exhibit 1) for settlement purposes only (the “Class”); (2) granting preliminary approval of the proposed settlement of this class action on the terms set forth in the Settlement Agreement; (3) approving the proposed Notice Plan and directing that the Class be provided with notice of the pendency of

this action and the settlement in the manner proposed by the parties in the Notice Plan; (4) approving the appointment of the Notice Administrator; (5) approving the designated Class Representatives, Lead Class Counsel and Case Leadership as set forth in Pretrial Order No. 1(doc. 20) and the Settlement Agreement; (6) scheduling a hearing at which the Court will consider final approval of the Settlement, entry of the proposed final judgment and Plaintiffs' Counsels' application for an award of attorneys' fees, costs and expenses.

“[T]he law generally favors and encourages the settlement of class actions.” *Franks v. Kroger Co.*, 649 F.2d 1216, 1224 (6th Cir. 1981). In deciding whether to preliminarily approve a settlement agreement, the Court must determine whether it has been negotiated at arm's-length and if it is within the range of what is fair, reasonable and adequate. *See Manual for Complex Litigation – Fourth (2004)*, §§21.62-63. “If the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its fairness ... and appears to fall within the range of possible approval, the court should direct that notice under Rule 23(e) be given to the class members of a formal fairness hearing.” *Id.* § 30.41. *See also Scott v. First American Title Ins. Co.*, 2008 WL 4820498 \*3 (D. N.H. Nov. 5, 2008).

For the reasons that follow, the Parties respectfully request that the Court grant their Joint Motion and: (1) certify a Settlement Class; (2) preliminarily approve the Settlement Agreement; and (3) approve the Notice Plan and Notice and appoint a Notice Administrator.

## II. THE ALLEGATIONS AND PROCEDURAL POSTURE OF THE LITIGATION.

### a. The Allegations

Plaintiffs allege that since the product was first marketed on January 1, 1992, Defendant's uniform, extensive and comprehensive nationwide marketing campaign intentionally misrepresented to consumers that washing with Softsoap Antibacterial was more

effective at killing or eliminating germs than washing with other soaps that do not contain triclosan. Specifically, Plaintiffs allege Defendant deceptively and unfairly represented to consumers that using Softsoap Antibacterial provides special health benefits, including but not limited to, statements that the Product is “dermatologist tested,” “clinically proven to eliminate 99% of germs your family encounters,” “offers antibacterial protection,” “kills 99% of common germs,” “Goodbye Germs-Hello World,” and is “America’s most trusted handsoap.”

Consequently, Plaintiffs allege that they and other members of Settlement Class were induced into purchasing a product that they believed provided them with heightened antibacterial protection over regular soap and water or other liquid hand soaps that do not contain triclosan. Plaintiffs allege that, as a result of Defendant’s extensive and substantially uniform marketing, every consumer who purchased the Product was exposed to substantially the same allegedly false and misleading statements. Accordingly, Plaintiffs brought this Action on behalf of themselves and other similarly-situated consumers in their respective states of California, Florida, Illinois, and Nevada seeking to halt Defendant’s alleged dissemination of false and misleading advertising, and to correct the alleged false and misleading perception that Defendant has created in the minds of consumers and obtain redress for the Settlement Class.

b. Procedural Background

Between February 4, 2011 and October 28, 2011, putative class actions were filed in California, Florida, Illinois, and Nevada<sup>1</sup> seeking redress for Defendant’s deceptive and misleading marketing of its Softsoap Antibacterial products (“Softsoap Antibacterial” or the “Product”) that contain the active ingredient triclosan. Triclosan is a chlorophenol that, in certain circumstances, can function as an antibacterial and antifungal agent. By Order dated

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<sup>1</sup> Putative class actions were also filed in New Jersey and South Carolina and were transferred to this Court by the JPML. These claims were voluntarily dismissed.

March 7, 2012, the Judicial Panel on Multidistrict Litigation (“JPML”) transferred these cases to the United States District Court for the District of New Hampshire, *In re Colgate-Palmolive Softsoap Antibacterial Hand Soap Marketing and Sales Practices Litigation*, Case. No. 12-md-2320 (the “MDL”).

1. On June 26, 2012, Plaintiffs in the above referenced actions filed a Consolidated Amended Complaint. On August 8, 2012, Defendant filed a motion to dismiss the Consolidated Amended Complaint. The motion to dismiss was argued on February 22, 2013. On March 18, 2013, the Court denied the motion to dismiss. On June 20, 2013, Plaintiffs filed a Second Consolidated Amended Complaint. Defendant filed its Answer to the Second Amended Consolidated Complaint on July 1, 2013.

The parties engaged in substantial discovery, including interrogatories, requests to admit, document production and depositions. Defendant produced approximately 93,780 pages documents for review. Defendant deposed the five Class Representatives and Plaintiffs’ counsel deposed various employees of Defendant. Plaintiffs’ counsel also consulted with experts in the fields of science, marketing, and economics.

### III. THE MEDIATION AND PROPOSED SETTLEMENT

Since July 2013, the Parties have actively engaged in settlement discussions. Following preliminary discussions and a meeting among counsel, the Parties sought a stay in the case and engaged in mediation with a retired federal judge, The Honorable James M. Rosenbaum, in November 2013. The mediation was unsuccessful, and an amended scheduling order was entered in January 2014. However, in the Spring of 2014, counsel for the Parties restarted settlement discussions. During this time period the parties spoke, met and corresponded. As a result of those discussions, negotiations and meetings, and the efforts of Class Counsel in

prosecuting the Action, the Defendant and the Plaintiffs, in their individual capacities and as Class Representatives, Class Counsel, and counsel for the Defendant, have agreed to settle this Action pursuant to the terms of the Settlement Agreement. On April 28, 2015, Plaintiffs filed a Third Consolidated Amended Complaint to conform the complaint with the terms of the settlement. On May 19, 2015, Plaintiffs filed a Fourth Consolidated Amended Complaint to clarify certain allegations unrelated to the settlement.

Counsel for the Parties negotiated the Settlement Agreement at arm's-length. In so doing, they considered such factors as: (1) the substantial benefits to the Settlement Class under the terms of the Settlement Agreement; (2) the attendant costs, risks and uncertainty of litigation; (3) the distraction and diversion of personnel and resources as a result of continuing this Action; and (4) the desirability of promptly consummating the Settlement Agreement.

The Settlement Class consists of all persons who purchased the Product in the United States from January 1, 1992 up to and including the Notice Date. The primary benefits derived from the Settlement Agreement are injunctive in nature. Specifically, Defendant has agreed to refrain from making three of the five statements challenged as misleading, and agreed to use the ingredient triclosan in its Product only in a manner consistent with final FDA regulations. Defendant ceased manufacturing and marketing the Product in 2011.

The injunctive relief provisions of the Settlement Agreement enjoin Defendant as follows:

- Defendant has no present intention to reintroduce triclosan as an ingredient in its Product; however, to the extent Defendant's intentions change in the future, Defendant will use triclosan only in a manner consistent with final FDA regulations.



- Defendant shall not use a claim on Labeling and Marketing of the Product that is based on “99%” efficacy without an accompanying disclosure statement that generally describes the testing methods at a level consistent with those appearing on Labeling and Marketing of the Product as of the date of this Settlement Agreement.
- Defendant shall not use the statement “Goodbye Germs – Hello World” on Labeling and Marketing of the Product.
- The terms and requirements of the Injunctive Relief shall expire on the earliest of the following dates: five years following the Effective Date; or the date upon which there are changes to any applicable statute, regulation or other law that Defendant reasonably believes would require a modification to the Labeling and Marketing of the Product required by the Injunctive Relief provisions in order to comply with the applicable statute, regulation or law.
- Plaintiffs, on behalf of themselves and all Settlement Class Members, and Class Counsel agree that this Settlement Agreement does not preclude Defendant from making further changes to the Labeling and Marketing of the Product as Defendant sees fit.

Members of the Settlement Class release their injunctive, declaratory and equitable claims that relate to the distribution, sale, purchase, labeling, packaging, marketing and/or advertising of the Product.

In consideration of the Settlement, Defendant agrees to pay a total of Two Million Dollars (\$2,000,000.00) to satisfy the costs of the Notice Plan and any award of attorneys’ fees, costs and expenses, and any incentive awards payable to Plaintiffs. Monies remaining after payment of these costs, fees and expenses shall be paid by Defendant to Children’s Health Fund,

a 501(c)(3) non-profit organization founded in 1987 to provide health care to the nation's most medically underserved children and adolescents by developing a national network of health care programs; reducing the impact of public health crises on children; and promoting the health and well-being of all children. *See 2013 Form 990 at [www.childrenshealthfund.org/content/financials](http://www.childrenshealthfund.org/content/financials).*

Given the inherent expenses and risks associated with continuing this litigation, including the possibility that class certification could be denied and the difficulty of proving monetary damages, Plaintiffs believe that the aforementioned Injunctive Relief represents a fair, adequate and reasonable settlement for the Settlement Class because it represents the injunctive relief sought in this Action.

#### IV. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS.

This Court must consider whether a class can be preliminarily certified under Rules 23(a) and (b). *See Amchem*, 521 U.S. at 619-21; *Ortiz v. Fibrebaord Corp.*, 527 U.S. 815, 858 (1999). The parties here, in negotiations between them, negotiated a settlement class that can be certified under Rule 23, in light of the applicable standards.

a. Plaintiffs have satisfied the requirements of Rule 23(a).

i. Numerosity is satisfied.

A class action may be maintained only if “the class is so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1); *Scott v. First Am. Title Ins. Co.*, No. 06-cv-286, 2008 WL 1914296, at \*2 (D.N.H. Apr. 28, 2008). “The exact numbers of class members need not be established, ‘particularly where ... only declaratory and injunctive relief is sought.’” *Kenneth R. ex rel. Tri-County CAP, Inc. v. Hassan*, 293 F.R.D. 254, (D.N.H. 2013) (citing *Rolland v. Cellucci*, Civ. No. 98-30208, 1999 WL 34815562, at \*3 (D.Mass. Feb. 2, 1999)).

Rather, the court may draw a reasonable inference as to the class size based on the facts presented to it. *Id.*

Because of the uniformity of Defendant's marketing of the Product, every purchaser of the Product was exposed to substantially the same material misrepresentations since the Product was first marketed on January 1, 1992. Many millions of units were sold. The inability to efficiently identify and serve all Settlement Class Members, the geographic dispersion of Settlement Class Members across the country and the cost of individually litigating the allegations and claims in the Action all weigh in favor of the Court finding that numerosity is satisfied.

ii. Commonality is satisfied.

Plaintiffs and the Settlement Class must share common questions of law or fact. Fed. R. Civ. P. 23(a)(2). "All questions of fact and law need not be common to satisfy the rule." *In re Neurontin Mkg. & Sales Practices Litig.*, 244 F.R.D. 89, 105 (D.Mass 2007). Commonality can be satisfied by a single common legal or factual issue, making it an easily satisfied prerequisite. *In re Sonus Networks, Inc., Sec. Litig.*, Civ. No. 04-10294, 2007 WL 2826622, at \*4 (D.Mass. Sept. 25, 2007).

Here, Plaintiffs and the Settlement Class have a significant common issue. Plaintiffs and members of the Settlement Class were consumers of Softsoap Antibacterial. Plaintiffs and members of the Settlement Class were all subject to Defendant's extensive and substantially uniform marketing of Softsoap Antibacterial, which resulted in the common issues of fact and law as set forth in the Action. Accordingly, the Settlement Class satisfies the commonality requirement.

iii. Typicality is satisfied.

“Rule 23(a)(3) requires proof that plaintiffs’ claims are typical of the class members’ claims.” *Young*, 693 F.3d at 542. Typicality is present when the class representatives’ claims “arise from the same event or practice or course of conduct that gives rise to the claims of other class members, and ... are based on the same legal theory.” *García– Rubiera v. Calderon*, 570 F.3d 443, 460 (1st Cir. 2009) (quoting *In re Am. Med. Sys., Inc.*, 75 F.3d 1069, 1082 (6th Cir. 1996)) (alterations in original). The typicality inquiry allows the court to “align the interests of the class and the class representatives so that the latter will work to benefit the entire class through the pursuit of their own goals.” *In re Bos. Scientific Corp. Sec. Litig.*, 604 F. Supp. 2d 275, 282 (D. Mass. 2009) (quoting *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 311 (3d Cir. 1998)).

Here, Plaintiffs’ claims are typical of the Settlement Class Member’s claims because they arise from Defendant’s same course of deceptive marketing, advertising and sales of Softsoap Antibacterial. Accordingly, Plaintiffs and the Settlement Class Members’ claims are aligned because they arise from the same alleged practices and are based on the same legal theories. Thus, the typicality requirement is satisfied.

iv. Fairness and adequacy is satisfied.

Plaintiffs must “fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). This adequacy inquiry “serves to uncover conflicts of interest between named parties and the class they seek to represent.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997). The First Circuit employs a two-part test in analyzing adequacy: (1) the class representatives’ interests must not conflict with the interests of the class; and (2) class counsel is experienced, qualified and able to vigorously conduct the proposed litigation. *Andrews v.*

*Bechtel Power Corp.*, 780 F.2d 124, 130 (1st Cir. 1985); *In re Bos. Scientific Corp. Sec. Litig.*, 604 F. Supp. 2d at 282.

Here, the Plaintiffs and Settlement Class share common interests because the legal and remedial theories raised by the Plaintiffs are shared with the Class Members. Plaintiffs, like the Settlement Class Members, relied upon and were deceived by Defendants' false and misleading marketing when they purchased the Product. Moreover, no conflicts exist between the Plaintiffs and Settlement Class. In fact, while pursuing their own claims related to the marketing of Softsoap Antibacterial, Plaintiffs have been advocating for the interests of the Settlement Class and the Injunctive Relief will benefit all Settlement Class Members alike.

Additionally, Class Counsel are experienced with class actions and have vigorously advocated for the interests of the Settlement Class throughout this Action and during the negotiation of the Settlement Agreement. Class Counsel have substantial experience certifying, litigating, trying and settling class actions of this kind. Class Counsel have devoted significant time and resources reviewing documents and conducting depositions. The settlement discussions, mediation and subsequent negotiations were intense and occurred over several years. Only after Class Counsel were satisfied that the best recovery had been negotiated for the Settlement Class did the Parties negotiate the payment of attorneys' fees and costs.

Therefore, since there is no conflict among the Plaintiffs and Settlement Class, and because Class Counsel are qualified, experienced and able to pursue this Action, fairness and adequacy have been satisfied.

b. Plaintiffs have satisfied Rule 23(b).

Rule 23(b) describes three types of class actions. Fed. R. Civ. P. 23(b)(1)-(3). "In addition to fulfilling the four prerequisites of Rule 23(a), the proposed class must also meet at

least one of the three requirements listed in Rule 23(b).” *In re Whirlpool Corp. Front- Loading Washer Prods. Liab. Litig.*, 722 F.3d at 850 (citing *Dukes*, 131 S. Ct. at 2550).

Rule 23(b)(2) allows for the certification of class actions that seek declaratory or injunctive relief where “the party opposing the class has acted or refused to act on grounds generally applicable to the class.” Fed. R. Civ. P. 23(b)(2). Unlike Rule 23(b)(3), this prong of Rule 23(b) does not require that common issues of law and fact “predominate,” but only that class members “complain of a pattern or practice that is generally applicable to the class as a whole.” *Walters v. Reno*, 145 F.3d 1032, 1047 (9th Cir. 1998). Moreover, “[e]ven if some class members have not been injured by the challenged practice, a class may nevertheless be appropriate.” *Id.*

Here, Plaintiffs and all members of the Settlement Class assert that they were consumers of Softsoap Antibacterial as marketed by Defendants. Certification of the Settlement Class under Rule 23(b)(2) is proper because the Plaintiffs and all members of the Class complain of the same pattern or practice by Defendant. *See, e.g., Jermyn v. Best Buy Stores, L.P.*, 2012 WL 2505644 \*12 (S.D.N.Y. June 27, 2012); *Redington v. Goodyear Tire & Rubber Co.*, 2008 WL 3981461 (N.D. Ohio Aug. 22, 2008).

## V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT AGREEMENT.

### a. Preliminary approval of class action settlements.

It is well established that the law favors class action settlements. *See In re Relafen Antitrust Litigation*, 231 F.R.D. 52 (D. Mass. 2005); *In re Lupron Mktg. & Sales Practices Litig.*, 228 F.R.D. 75 (D. Mass. 2005). Pursuant to Rule 23(e), “[t]he claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court’s

approval.” Fed. R. Civ. P. 23(e). A settlement must be fair, reasonable, and adequate. *Id.* “When approving a settlement:

[T]he judge is required to scrutinize the proposed settlement to ensure that it is fair to the persons whose interests the court is to protect. Those affected may be entitled to notice and an opportunity to be heard. This usually involves a two-stage procedure. First, the judge reviews the proposal preliminarily to determine whether it is sufficient to warrant public notice and a hearing. If so, the final decision on approval is made after the hearing.”

*Hochstadt v. Boston Scientific Corp.*, 708 F.Supp.2d. 95, 106-107 (D. Mass. 2010) (citing MANUAL FOR COMPLEX LITIGATION (FOURTH) § 13.14 (2004)). Thus, before making a final decision on the ‘approval’ of a settlement, a court must first make a “preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms.” *Id.* at 107. “Ultimately, the more fully informed examination required for final approval will occur in connection with the [final fairness hearing].” *In re M3 Power Razor System Mktg. & Sales Practice Litig.*, 270 F.R.D. 45, 62 (D. Mass. 2010).

A presumption of fairness attaches to a proposed settlement agreement “when the court finds that: (1) the negotiations occurred at arm’s length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected.” *In re Lupron Mktg. & Sales Practices Litig.*, 345 F.Supp.2d 135, 137 (D. Mass. 2004) (citing *In re Gen. Motors Corp. Pick-up Truck Fuel Tanks Products Liab. Litig.*, 55 F.3d 768, 785 (3d Cir. 1995)); see also 4 Herbert B. Newberg & Alba Conte, *Newberg on Class Actions*, §11.41 (4<sup>th</sup> ed. 2011); *Cf. Hochstadt v. Bos. Scientific Corp.*, 708 F. Supp. 2d at 108 (D. Mass. 2010) (evaluating the experience of counsel in preliminary approval process as a factor that contributes to the presumption of fairness); *M. Berenson Co. v. Faneuil Hall Marketplace, Inc.*, 671 F. Supp. 819, 822 (D. Mass. 1987) (“Where, as here, a proposed class

settlement has been reached after meaningful discovery, after arm's length negotiation, conducted by capable counsel, it is presumptively fair.""). Here, all of these factors are met and preliminary approval of the settlement is favored.

- b. The proposed Settlement Agreement is fair, reasonable and adequate, and is **the result of lengthy, arm's-length** negotiations conducted in good faith among experienced counsel.

In this case, experienced attorneys represent the Parties and believe that the Settlement Agreement is a fair and reasonable resolution of the Action. The Parties have litigated Plaintiffs' claims for nearly four years. The litigation has included full briefing of Defendant's motion to dismiss, extensive discovery by both Parties, including review of over 93,000 pages of documents produced by Defendant, and depositions of class representatives and Defendant employees. Plaintiffs' counsel also consulted with experts in the fields of science, marketing, and economics.

Counsel for the Parties have extensive experience in complex litigation and are thoroughly familiar with the factual and legal issues of this Action and the strengths and weaknesses of the Parties' positions. In short, nothing in the course of negotiations or in the substance of the Settlement Agreement raises any doubts as to its fairness. Rather, the arm's-length nature of the negotiations, the critical assistance of Judge Rosenbaum during the mediation, as well as the participation of experienced attorneys throughout the litigation strongly support a finding that the Settlement Agreement is sufficiently fair, reasonable and adequate to justify notice to the Settlement Class and the scheduling of a hearing to consider final approval of the proposed Settlement.

Finally, notice to the Settlement Class has not yet been disseminated and therefore Class Members have not had an opportunity to review the Settlement Agreement. Nonetheless, the



Parties are unaware of any objections to the Settlement Agreement by either the Named Plaintiffs or Settlement Class Members. To the contrary, the Named Plaintiffs have expressed their approval and support of the Settlement. Finally, each Settlement Class Member will have the chance to voice objections, should he/she have any, prior to or at the Final Approval Hearing. For the foregoing reasons, the standards for preliminary approval are met in this case and the Court should grant the present motion.

VI. The Court should approve the Notice Plan and Notice and appoint a Notice Administrator.

In conjunction with preliminarily approving a settlement agreement, a 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).

The notice should be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Int’l Union v. GMC*, 497 F.3d 615, 629-30 (6th Cir. 2007) (internal citations omitted). *See also In re Gen. Tire & Rubber Co. Sec. Litig.*, 726 F.2d 1075, 1086 (6th Cir. 1984) (upholding notice that “described the terms of the settlement, the reasons for [class representatives’ decision to settle], the legal effect of the settlement and the rights of the [class members] to voice their objections”).

While an opt-out class action under Rule 23(b)(3) must meet stringent notice requirements, *see* Fed. R. Civ. P. 23(c)(2)(B), a district court need not provide any notice before certifying a mandatory class action under Rule 23(b)(2). *See* Fed. R. Civ. P. 23(c)(2)(A) (“For any class certified under Rule 23(b)(1) or (2), the court *may* direct appropriate notice to the class.”) (emphasis added). *See also Int’l Union v. GMC*, 497 F.3d at 630.

Furthermore, notice of the Settlement Agreement need not be sent to each individual member of the Settlement Class. *See Johnson v. Midland Credit Management Inc.*, 2012 WL 5996391 (N.D. Ohio Nov. 29, 2012) (citing *Saltzman v. Pella Corp.*, 257 F.R.D. 471, 476 (N.D. Ill. 2009) (citing *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 536-37 (3d Cir. 2004) (Where class members were consumers of a prescription drug, and names and addresses of these consumers were confidential and not available to parties, notice by publication combined with call center and website was sufficient notice to identify class members)); *Macarz v. Transworld Sys., Inc.*, 201 F.R.D. 54, 59 (D.Conn. 2001) (notice by publication used where circumstances “make it impracticable to gain the names and addresses of class members and notify them individually of the action’s pendency”); *Mirfaishi v. Fleet Mortg. Corp.*, 356 F.3d 781, 786 (7th Cir. 2004) (internet notice of settlement was acceptable substitute for individual notice where Defendant had no record of part of a class of customers)).

In this case, the Notice Plan within the Settlement Agreement will employ the following different methods for circulating information to the Settlement Class Members:

- A press release agreed to by the Parties issued to approximately 6,000 U.S. press outlets within 15 days of the Court’s Order granting Preliminary Approval;
- Publication of an advertisement agreed to by the parties in the national edition of USA Today, starting within 15 days of the Court’s Order granting Preliminary Approval;
- A multi-platform Internet banner ad campaign targeting a national audience of “Primary Grocery Shoppers,” “Home & Beauty Shoppers,” and “Hygiene Purchasers,” estimated to provide 68,636,364 impressions, starting within 15 days of the Court’s Order granting Preliminary Approval;

- An active hyperlink to a copy of the Summary Notice published on Class Counsel's websites within 21 days of the Court's Order granting the Joint Motion; and
- A Class Settlement Website established within 21 days of Preliminary Approval that contains the Preliminary Approval Order, the Long-Form Notice, the Settlement Agreement and other relevant information regarding the approval process.

Furthermore, the Parties jointly recommend the Summary Notice and Long-Form Notice, in substantially the forms attached as Exhibits B and C to the Settlement Agreement, to the Court for its approval. The Summary Notice and Long-Form Notice are designed to provide comprehensive and easily understandable notice of the terms of the Settlement Agreement. They apprise the Class of the terms of the settlement, including the equitable benefits derived and the claims being released, as well as their options with respect to the settlement.

Ultimately, the Notice Plan and Notice are "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *See Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

Finally, the Parties jointly propose that the Court appoint Angeion Group as Notice Administrator. Angeion Group will facilitate the notice process by assisting the Parties in the implementation of the Notice Plan.

VII. CONCLUSION.

For the foregoing reasons, the Parties respectfully request that the Court grant their Joint Motion and thereby: (1) certify a Settlement Class; (2) preliminarily approve the Settlement Agreement; and (3) approve the Notice Plan and Notice and appoint a Notice Administrator.

Respectfully submitted,

Dated: May 29, 2015

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*Attorneys for Defendant Colgate-Palmolive  
Company*

CERTIFICATE OF SERVICE

The undersigned certifies that on May 29, 2015, she caused this document to be electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of filing to registered counsel of record for each party.

/s/ Lucy J. Karl  
Lucy J. Karl (NH Bar # 5547)

# **EXHIBIT 1**

## PROPOSED SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement is entered into as of May 21, 2015, by and between Plaintiffs,<sup>1</sup> in their individual capacities and on behalf of the putative Settlement Class, and the Colgate-Palmolive Company (“Defendant”), and is subject to the approval, pursuant to Rule 23 of the Federal Rules of Civil Procedure, of the Court.

### RECITALS

1. WHEREAS, Colgate has manufactured, marketed, promoted and/or sold liquid soap products containing the antibacterial ingredient triclosan using certain Labeling and Marketing claims.

2. WHEREAS, Tracy Nieblas filed a putative class action in Orange County Superior court on February 4, 2011, which Colgate removed to the United States District Court for the Central District of California on March 17, 2011, alleging Colgate misleadingly marketed the Product, and the lawsuit was titled *Nieblas v. Colgate-Palmolive Company et al*, No. 11-cv-00438-JLS-FFM (C.D. Cal.).

3. WHEREAS, Shari Elstein filed a putative class action in United States District Court for the Southern District of Florida on October 19, 2011, alleging Colgate misleadingly marketed the Product, and the lawsuit was titled *Elstein v. Colgate-Palmolive Company*, No. 11-cv-81165-CMA (S.D. FL.).

4. WHEREAS, Kristina Pearson filed a putative class action in United States District Court for the Northern District of Illinois on August 31, 2011, alleging Colgate misleadingly marketed the Product, and the lawsuit was titled *Pearson v. Colgate-Palmolive Company*, No. 11-cv-06086 (N.D. Ill.).

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<sup>1</sup> Capitalized terms shall have the meaning ascribed to them in the Definitions Section I below.

5. WHEREAS, Adam Emery filed a putative class action in United States District Court for the Southern District of Illinois on August 31, 2011, alleging Colgate misleadingly marketed the Product, and the lawsuit was titled *Emery v. Colgate-Palmolive Company*, No. 11-cv-00797-GPM-SCW (N.D. Ill.).

6. WHEREAS, Jeff Dyke filed a putative class action in United States District Court for the District of Nevada on October 28, 2011, alleging Colgate misleadingly marketed the Product, and the lawsuit was titled *Dyke v. Colgate-Palmolive Company*, No. 11-cv-01750-KJD-VCF (D. Nev.).

7. WHEREAS, on March 7, 2012, the Judicial Panel on Multidistrict Litigation (“JPML”) transferred the California, Florida, Illinois, and Nevada Action (“the Action”) to the United States District Court for the District of New Hampshire, *In re Colgate-Palmolive Softsoap Antibacterial Hand Soap Marketing & Sales Practices Litigation*, Case No. 1:12-md-02320-PB (the “MDL”).

8. WHEREAS, on June 26, 2012, Plaintiffs filed a Consolidated Amended Class Action Complaint; on June 20, 2013, Plaintiffs filed a Second Consolidated Amended Class Action Complaint; on April 28, 2015, Plaintiffs filed a Third Consolidated Amended Class Action Complaint; and on May 19, 2015, Plaintiffs filed a Fourth Consolidated Amended Class Action Complaint.

9. WHEREAS, Valerie Donohue, Angela Johnson, Irene Porter, and Jeffrey Rosen, who also initially purported to act as Class Representatives, filed notices of withdrawal as named plaintiffs without prejudice to their statuses as members of any class to be certified.

10. WHEREAS, Class Counsel and counsel for Defendant, following preliminary correspondence and discussions over telephone and email, engaged in mediation with retired



federal judge The Honorable James M. Rosenbaum, and conducted in-person settlement meetings among counsel in Las Vegas in 2013 and Chicago in 2014. As a result of those negotiations, Defendant and Plaintiffs, in their individual capacities and as Class Representatives, Class Counsel, and counsel for Defendant, have agreed to settle this Action pursuant to the provisions of this Settlement Agreement after considering such factors as: (a) the substantial benefits to the Settlement Class under the terms of this Settlement Agreement; (b) the attendant costs, risks, and uncertainty of litigation, including trial and potential appeals; (c) the distraction and diversion of personnel and resources as a result of continuing litigation; and (d) the desirability of consummating this Settlement Agreement promptly.

11. WHEREAS, the Parties and their counsel negotiated attorneys' fees and costs provided for in Section IX below after reaching agreement regarding all material terms of the Settlement, including the Injunctive Relief provisions of Section V below.

12. WHEREAS, Defendant has denied and continues to deny each and every allegation asserted by Plaintiffs in the Action and in the Fourth Consolidated Class Action Complaint, does not admit or concede any actual or potential fault, wrongdoing, or liability in connection with any facts or claims that have been or could have been alleged herein, and has denied that the Action satisfies the requirements to be tried as a class action under Federal Rule of Civil Procedure 23.

13. WHEREAS, this Settlement Agreement is a product of sustained, arm's-length settlement negotiations and the Parties believe that this Settlement Agreement is fair, reasonable, and adequate because, among other things: (1) it provides for certification of a Settlement Class; and (2) it provides substantial Injunctive Relief to the Settlement Class in exchange for Settlement Class Members' Release of certain Claims.

14. WHEREAS, the Parties intend to seek Court approval of this Settlement Agreement as set forth below.

15. The signatories to this Settlement Agreement agree that the recitals set forth herein are contractual in nature and form a material part of this Settlement Agreement.

### TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the foregoing recitals, without (a) any admission or concession on the part of Plaintiffs of the lack of merit of the Action or the Claims asserted in the Fourth Consolidated Class Action Complaint, or (b) any admission or concession of fault, wrongdoing, or liability or the lack of merit of any defense whatsoever by Defendant, it is hereby stipulated and agreed by the undersigned, on behalf of Plaintiffs, the Settlement Class, Class Counsel, Defendant, and counsel for Defendant, that the Action and all Claims of the Settlement Class be settled, compromised, and dismissed on the merits and with prejudice as to Defendant, subject to Court approval as required by Federal Rule of Civil Procedure 23, on the terms and conditions set forth herein:

#### I. DEFINITIONS

16. When used in this Settlement Agreement, unless otherwise specifically indicated, the following terms shall have the meanings set forth below:

a. “Action” means the claims asserted in The Fourth Consolidated Class Action Complaint.

b. “California Action” means *Nieblas v. Colgate-Palmolive Company et al*, No. 11-cv-00438-JLS-FFM (C.D. Cal.).

c. “Claim” and “Claims” mean all claims, demands, Action, suits, causes of action, allegations of wrongdoing and liabilities asserted by Plaintiffs, or that could have been

asserted by Plaintiffs, individually and as Class Representatives, in the Fourth Consolidated Class Action Complaint.

d. “Class Counsel” shall mean, collectively, interim lead counsel and the Plaintiffs’ Executive Committee, listed here:

Lucy J. Karl  
NH Bar No. 5547  
SHAHEEN & GORDON, P.A.  
107 Storrs Street, P.O. Box 2703  
Concord, New Hampshire 03302  
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R. Seth Crompton  
HOLLAND LAW FIRM, LLC  
300 North Tucker Boulevard, Ste. 801  
St. Louis, Missouri 63101  
Telephone: (314) 241-8111  
Facsimile: (314) 241-5554  
eholland@allfela.com

e. “Class Representative” means one or more of the Plaintiffs, as individual claimant(s) who seek(s) to represent the Settlement Class for purposes of this Settlement Agreement.

f. “Class Settlement Website” means the Internet website to be established by the Notice Administrator, as part of the Notice Plan as set forth in Section IV, below.

g. “Colgate” means the Colgate-Palmolive Company.

h. “Court” or “District of New Hampshire” means the United States District Court for the District of New Hampshire, where this Action is pending.

i. “Days,” unless specified as “business days,” means all calendar days, including Saturdays, Sundays, and legal holidays, but if the last day of a period is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

j. “Effective Date” means the date on which all appellate rights with respect to the Final Approval Order and Judgment have expired or have been exhausted in such a manner as to affirm the Final Approval Order and Judgment, and when no further appeals are possible, including review by the United States Supreme Court.

k. “Final Approval Hearing Date” means the hearing date set by the Court for the final approval of the Settlement Agreement.

l. “Final Approval Order and Judgment” or “Final Judgment” shall have the meaning assigned in Section VII of the Settlement Agreement.

m. “Florida Action” means *Elstein v. Colgate-Palmolive Company*, No. 11-cv-81165-CMA (S.D. FL.).

n. “Illinois Action” means *Pearson v. Colgate-Palmolive Company*, No. 11-cv-06086 (N.D. Ill.) and *Emery v. Colgate-Palmolive Company*, No. 11-cv-00797-GPM-SCW (N.D. Ill.).

o. “Injunctive Relief” means the injunctive relief to which the Parties have agreed to in Section V, below.

p. “Labeling” means the labeling of the Product.

q. “Lead Class Counsel” shall be the firm or firms appointed by the Court as lead counsel in the Action for purposes of prosecuting approval of the Settlement Agreement.

r. “Long Form Notice” means the longer form of notice to the Settlement Class under the Notice Plan, as further described in Section IV, below.

s. “Marketing” or “Marketed” means the advertising, marketing, and promotion of the Product, including but not limited to print, television, radio and Internet

advertising, promotional circulars, and point-of-sale displays and merchandising, except as would constitute Labeling.

t. “Nevada Action” means *Dyke v. Colgate-Palmolive Company*, No. 11-cv-01750-KJD-VCF (D. Nev.).

u. “Notice” means the forms of notice, attached as Exhibits B and C, or such other form as may be approved by the Court, as applicable, which informs the Settlement Class Members of: (i) the certification of the Action for settlement purposes; (ii) the dates and locations of the Final Approval Hearing Date; and (iii) the elements of the Settlement Agreement.

v. “Notice Administrator” means Angeion Group.

w. “Notice Date” means the first date upon which the Class Notice is disseminated.

x. “Notice Plan” means the plan for providing Notice of this Settlement to the Settlement Class Members, as set forth in Section IV below.

y. “Objection Date” means the date by which Settlement Class Members must file any written objection or opposition to the Settlement Agreement or any part or provision thereof in the Court, as set forth in Section IV below.

z. “Parties” means Plaintiffs and Defendant, each a “Party.”

aa. “Person” or “Persons” means all persons and entities (including, without limitation, natural persons, firms, corporations, limited liability companies, joint ventures, joint stock companies, unincorporated organizations, agencies, bodies, associations, partnerships, limited liability partnerships, trusts, and their predecessors, successors, administrators, executors, heirs and assigns).

bb. “Plaintiffs” means Tracy Nieblas in her individual capacity and as Class Representative, Shari Elstein, in her individual capacity and as Class Representative, Kristina Pearson, in her individual capacity and as Class Representative, Adam Emery in his individual capacity and as Class Representative, and Jeff Dyke, in his individual capacity and as Class Representative.

cc. “Preliminary Approval” and “Preliminary Approval Order” mean the Court’s Order Certifying a Settlement Class, Preliminary Approval of Proposed Settlement, Approving and Directing Notice Plan, Appointing Notice Administrator, and Appointing Class Counsel and Lead Class Counsel, in substantially the same form as Exhibit A.

dd. “Product” means liquid hand soap products containing the antibacterial ingredient triclosan that Colgate has manufactured, marketed, promoted and/or sold during the period covered by the Action.

ee. “Released Claims” shall be construed as broadly as possible to effect complete finality over this litigation involving Labeling and Marketing of the Product and shall mean those Claims that the Settlement Class Members are releasing, as set forth in Section VI below.

ff. “Released Parties” shall be defined and construed as broadly as possible to effectuate a complete and comprehensive release of the Released Claims, and shall mean Defendant, as well as its respective past, present, and future predecessors, successors, and assigns; the past, present, and future, direct and indirect, parents, subsidiaries, divisions, corporate affiliates, and associates of any of the above; and the past, present, and future members, principals, partners, officers, directors, trustees, control persons, employees, agents, attorneys, shareholders, advisors, insurers and representatives of the above; and any and all

entities and individuals that are alleged to have handled, distributed, purchased for resale and/or redistribution, supplied, manufactured and/or sold or offered for sale the Product.

gg. “Releasing Parties” shall include Plaintiffs and all Settlement Class Members, and each of their respective heirs, executors, representatives, agents, legal representatives, assigns, and successors.

hh. “Settlement Agreement” means this Settlement Agreement and Release, including its Exhibits.

ii. “Settlement Class” or “Settlement Class Members” means the Class as defined in Section III below.

jj. “Summary Notice” means the shorter form of the notice to the Settlement Class under the Notice Plan, as further described in Section IV below.

## II. MOTION FOR PRELIMINARY APPROVAL

17. Within 14 days after the signing of this Settlement Agreement, Class Counsel shall file with the Court a Joint Motion for Certification of Settlement Class, Preliminary Approval of Proposed Class Action Settlement, Approval of Notice of Plan and Notice Administrator and Appointment of Lead Counsel that seeks entry of an order substantially similar to the proposed order attached hereto as Exhibit A, which would, for settlement purposes only:

- a. conditionally certify a Settlement Class under Federal Rule of Civil Procedure 23(b)(2) composed of the Settlement Class Members;
- b. preliminarily approve this Settlement Agreement;
- c. approve the proposed Notice Plan and Notice in forms substantially similar to those attached hereto as Exhibits B and C;



- d. appoint the Notice Administrator; and
- e. appoint Lead Class Counsel.

### III. CERTIFICATION OF SETTLEMENT CLASS

18. For purposes of settlement only, and upon the express terms and conditions set forth in this Settlement Agreement, Plaintiffs and Defendant agree to seek certification of a mandatory Settlement Class in the Action pursuant to Federal Rule of Civil Procedure 23(b)(2) as follows:

- a. The Settlement Class shall consist of all persons who purchased the Product in the United States from January 1, 1992, up to and including the Notice Date.
- b. Defendant and their officers, directors, employees, and agents are excluded from the Settlement Class definition;
- c. Persons who are neither citizens nor residents of the United States or its territories are excluded from the Settlement Class definition; and
- d. Any Judge or Magistrate presiding over the Action and members of their families are excluded from the Settlement Class definition.

#### 19. No Right to Opt Out

Because the Settlement Class is being certified as a mandatory class under Federal Rule of Civil Procedure 23(b)(2) and the predominant issue is injunctive relief, Settlement Class Members shall not be permitted to opt out of the Settlement Class.

#### 20. Class Certified for Settlement Purposes Only

a. Defendant's agreement to seek a Settlement Class under Federal Rule of Civil Procedure 23(b)(2) is for settlement purposes only.

b. Nothing in this Settlement Agreement shall be construed as an admission by Defendant that this Action or any similar case is amenable to class certification for trial purposes. Furthermore, nothing in this Settlement Agreement shall prevent Defendant or Plaintiffs from opposing or supporting class certification or seeking vacatur of any order conditionally certifying a Settlement Class if final approval of this Settlement Agreement is not obtained, or not upheld on appeal, including review by the United States Supreme Court, for any reason.

#### IV. SETTLEMENT CLASS NOTICE AND OBJECTION DATE

21. Because this Settlement Agreement contemplates certification of a class comprised of Settlement Class Members under Federal Rule of Civil Procedure 23(b)(2), individual notice is not required and will not be sent by the Parties. Plaintiffs, Defendant, and the Notice Administrator have developed a Notice Plan, as detailed below. The Parties will recommend to the Court this Notice Plan, which will be administered by an experienced and highly qualified Notice Administrator.

##### 22. Notice Plan

a. The Notice Plan will employ the following different methods for circulating information about the settlement to Settlement Class Members:

(i) A press release agreed to by the Parties issued to approximately 6,000 U.S. press outlets within 15 days of the Court's Order granting Preliminary Approval;

(ii) Publication of an advertisement agreed to by the parties in the national edition of USA Today, starting within 15 days of the Court's Order granting Preliminary Approval;

(iii) A multi-platform Internet banner ad campaign targeting a national audience of “Primary Grocery Shoppers,” “Home & Beauty Shoppers,” and “Hygiene Purchasers,” estimated to provide 68,636,364 impressions, starting within 15 days of the Court’s Order granting Preliminary Approval;

(iv) An active hyperlink to a copy of the Summary Notice published on Class Counsel’s web sites within 21 days of the Court’s Order granting Preliminary Approval;

(v) A Class Settlement Website established within 21 days of Preliminary Approval that contains the Preliminary Approval Order, the Long-Form Notice, the Settlement Agreement, and other relevant information regarding the Court-approval process;

b. Until the Notice Administrator terminates the Class Settlement Website in accordance with paragraph 24, an active hyperlink to the Summary Notice shall be maintained on Lead Class Counsel’s website; and

c. The Long-Form Notice and Summary Notice will be made available in English and Spanish on the Class Settlement Website.

## 23. Court Appointment and Retention of Notice Administrator

a. At the Preliminary Approval hearing, the Parties will propose that the Court appoint Angeion Group as Notice Administrator. The Notice Administrator will facilitate the notice process by assisting the Parties in the implementation of the Notice Plan.

## 24. Class Settlement Website

a. The Notice Administrator will create and maintain the Class Settlement Website, to be activated within 21 days of Preliminary Approval. The Notice Administrator’s

responsibilities will also include securing an appropriate URL, such as [www.SoftSoapAntibacterialClassActionSettlement.com](http://www.SoftSoapAntibacterialClassActionSettlement.com).

b. The Class Settlement Website will post the settlement documents and case-related documents such as the Settlement Agreement, the Long-Form Notice, and the Preliminary Approval Order. In addition, the Class Settlement Website will include procedural information regarding the status of the Court-approval process, such as an announcement of the Final Approval Hearing Date, when the Final Approval Order and Judgment has been entered, and when the Effective Date has been reached.

c. The Class Settlement Website will terminate (be removed from the Internet) and no longer be maintained by the Notice Administrator after (i) six (6) months from the date of its creation (i.e., the launch of the Class Settlement Website), or (ii) thirty (30) days after either (a) the Effective Date of the Settlement or (b) the date on which the Settlement Agreement is terminated or otherwise not approved by a court, whichever is later. The Notice Administrator will then transfer ownership of the URL to Defendant.

#### 25. Long-Form Notice

The Parties have agreed that they will jointly recommend the Long-Form Notice, substantially in the form attached as Exhibit C, to the Court for approval. The Long-Form Notice is designed to provide comprehensive and easily understandable notice of the terms of the Settlement Agreement. The Long-Form Notice shall be posted on the Class Settlement Website as provided by paragraph 24.

#### 26. Summary Notice and Publication Program

The Parties have agreed that they will jointly recommend the Summary Notice, substantially in the form attached as Exhibit B, to the Court for approval. The Summary Notice

is designed to provide the Settlement Class Members material information about the class-action settlement and direct them to the Long-Form Notice posted on the Class Settlement Website. As stated in paragraph 22, the Summary Notice (or an active hyperlink to the Summary Notice) will be placed on Class Counsel's websites. The Summary Notice (or the hyperlink) will be removed from the websites after (i) 6 months from the date of its creation (i.e., placement on the website) or (ii) 30 days after either (a) the Effective Date of the Settlement or (b) the date on which the Settlement Agreement is terminated or otherwise not approved by a court, whichever is later.

#### 27. CAFA Notice

The Parties agree that the Notice Administrator shall serve notice of the settlement (via Federal Express) that meets the requirements of CAFA, 28 U.S.C. § 1715, on the appropriate federal and state officials no later than 10 days after the filing of this Settlement Agreement with the Court.

#### 28. Costs

The cost of the above Notice Plan (with the exception of notice provided on Lead Class Counsel's website) shall be paid by Defendant as part of the \$2 million fund described in paragraph 36.

#### 29. Objection Date

The Objection Date shall be 60 days after the date of Preliminary Approval.

### V. INJUNCTIVE RELIEF PROVISIONS

30. Subject to the terms and conditions of this Settlement Agreement, Plaintiffs and Defendant have agreed to move jointly for the Court to enter, as part of the Final Approval Order and Judgment, an injunction applicable to Defendant. The injunctive relief provision of the Final Approval Order and Judgment shall enjoin Defendant as follows:

a. Defendant has no present intention to reintroduce triclosan as an ingredient in its Product, but to the extent that changes in the future, Defendant will use triclosan only in a manner consistent with final FDA regulations.

b. Defendant shall not use a claim on Labeling and Marketing of the Product that is based on “99%” efficacy without an accompanying disclosure statement that generally describes testing methods at a level consistent with those appearing on Product Labels as of the date of this Settlement Agreement.

c. Defendant shall not use the statement “Goodbye Germs – Hello World” on Labeling and Marketing of the Product.

d. The terms and requirements of the Injunctive Relief shall expire on the earliest of the following dates: (a) five years following the Effective Date; or (b) the date upon which there are changes to any applicable statute, regulation, or other law that Defendant reasonably believes would require a modification to the Labeling and Marketing of the Product required by the Injunctive Relief provisions in order to comply with the applicable statute, regulation, or law.

e. Plaintiffs and Class Counsel agree, on behalf of themselves and all Settlement Class Members, that this Settlement Agreement does not preclude Defendant from making further changes to Labeling and Marketing of the Product as Defendant sees fit.

## VI. RELEASE

31. Upon the Effective Date, the Releasing Parties forever release and discharge all injunctive, declaratory, or equitable Claims that have been brought, could have been brought, are currently pending, or are ever brought in the future, by any Settlement Class Member against Released Parties, in any forum in the United States (including their territories and Puerto Rico),

whether known or unknown, asserted or unasserted, under or pursuant to any statute, regulation or common law, that relate in any way to the distribution, sale, purchase, labeling, packaging, Marketing or advertising of the Product and all equitable Claims for relief, of whatever type or description arising or that may have arisen as a result of, or relate in any way to any of the facts, acts, events, transaction, occurrences, courses of conduct, representations, omissions, circumstances or other matters referenced in any Claim raised (including, but not limited to, any Claim that was raised against Defendant) in the Action and/or the Fourth Consolidated Class Action Complaint.

32. Upon the Effective Date, each of the Plaintiffs, in his or her individual capacity, shall forever release and discharge all Claims that have been brought, could have been brought, are currently pending, or are ever brought in the future, by him or her against Released Parties, in any forum in the United States (including their territories and Puerto Rico), whether known or unknown, asserted or unasserted, under or pursuant to any statute, regulation or common law, that relate in any way to the distribution, sale, purchase, labeling, packaging, Marketing or advertising of the Product, including all Claims for any damages or injuries, of whatever type or description arising or that may have arisen as a result of, or relate in any way to any of the facts, acts, events, transaction, occurrences, courses of conduct, representations, omissions, circumstances or other matters referenced in any Claim raised (including, but not limited to, any Claim that was raised against Defendant) in the Action and/or the Fourth Consolidated Class Action Complaint.

33. After entering into this Settlement Agreement, Plaintiffs or the Settlement Class may discover facts other than, different from, or in addition to, those that they know or believe to be true with respect to the Released Claims. Plaintiffs and the Settlement Class Members

expressly waive and fully, finally, and forever settle and release any known or unknown, suspected or unsuspected, contingent or noncontingent injunctive, declaratory, or equitable Claim, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such other, different, or additional facts.

34. No default by any Person in the performance of any covenant or obligation under this Settlement Agreement or any order entered in connection therewith shall affect the dismissal of the Action, the res judicata effect of the Final Approval Order and Judgment, the foregoing releases, or any other provision of the Final Approval Order and Judgment; provided, however, that all other legal and equitable remedies for violation of a court order or breach of this Settlement Agreement shall remain available to all signatories to this Settlement Agreement.

#### VII. ENTRY OF FINAL APPROVAL ORDER AND JUDGMENT

35. The Parties shall jointly seek entry by the Court of a Final Approval Order and Judgment as soon as is practical that includes provisions:

- a. granting final approval of this Settlement Agreement, and directing its implementation pursuant to its terms and conditions;
- b. ruling on Class Counsel's application for attorneys' fees, costs, and expenses, including incentive awards for Plaintiffs;
- c. enjoining Defendant according to the specific terms in Section V above;
- d. discharging and releasing the Released Parties, and each of them, from the Released Claims;
- e. permanently barring and enjoining all Releasing Parties from instituting, maintaining, or prosecuting, either directly or indirectly, any lawsuit that asserts Released Claims;



f. directing that, as to Defendant, this Action be dismissed with prejudice and without costs;

g. stating pursuant to Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing that the Final Approval Order and Judgment is a final, appealable order; and

h. reserving to the Court continuing and exclusive jurisdiction over the Parties with respect to the Settlement Agreement and the Final Approval Order and Judgment.

#### VIII. SETTLEMENT FUND

36. In consideration of the Settlement, Defendant agrees to pay a total \$2 million to satisfy any award of attorneys' fees, costs, expenses, incentive awards payable to Plaintiffs, cost of the Notice Plan, and the cy pres award, if any, described in paragraph 41. The cost of the Notice Plan will be payable by Defendant to the settlement administrator in accordance with their contract following entry of an order granting Preliminary Approval of the Settlement Agreement. These costs shall be Defendant's sole responsibility regardless whether a Final Approval and Order and Judgment is entered. The remainder of Defendant's \$2 million commitment is contingent upon this Settlement reaching the Effective Date, and the remaining sums will be payable on the terms provided for by this Settlement Agreement.

#### IX. ATTORNEYS' FEES, COSTS AND EXPENSES

37. In advance of the Objection Date, Class Counsel shall make an application to the Court for an award of all attorneys' fees, costs, and expenses. Including the cost of the Notice Plan, this application shall not exceed \$2,000,000 in the aggregate, to be paid by Defendant. Defendant shall not oppose or object to the application by Class Counsel for attorneys' fees,

costs, and expenses in an amount up to \$2 million, including the cost of the Notice Plan, in the aggregate.

38. The award shall include all fees, costs, and expenses for Class Counsel and Lead Class Counsel, and any and all Plaintiffs' and Settlement Class Members' counsel (and their employees, consultants, experts, and other agents) who may have performed work in connection with this Action or the other Action. The award shall include incentive awards payable to Plaintiffs in the amount of \$2,500.00 (two thousand five hundred dollars). Regardless of the number of attorneys sharing in the Court's award of attorneys' fees, costs, and other expenses, Defendant shall not be required to pay any award that exceeds, in the aggregate and inclusive of the cost of the Notice Plan, \$2 million.

39. Lead Class Counsel shall distribute attorneys' fees and costs to Class Counsel, according to an allocation determined by agreement among Lead Class Counsel and Class Counsel. In no event will any dispute over such allocation impair the effectiveness of this Settlement Agreement. Under no circumstances will Defendant be liable to Plaintiffs, Lead Class Counsel, or Class Counsel, for any additional sums under this Settlement Agreement.

40. If any request for an award of attorneys' fees, costs, and expenses is finally approved by the Court and upheld on any appeal, then Defendant shall use best efforts to pay the award via electronic transfer to Lead Class Counsel within seven (7) business days after the Effective Date.

#### X. DISTRIBUTION OF CYPRES

41. Any amount remaining from the \$2 million described in paragraph 36 of this Settlement Agreement after an award of attorneys' fees, costs, expenses, incentive awards payable to Plaintiffs, and cost of the Notice Plan, shall be paid by Defendant to Children's Health

Fund. Defendant shall use best efforts to pay such amounts within 30 business days after the Effective Date.

#### XI. MODIFICATION, TERMINATION, AND EFFECT OF SETTLEMENT

42. In the event the terms or conditions of this Settlement Agreement, other than terms pertaining to the attorneys' fees, costs, and expenses provided for in Section IX above, are materially modified by any court, either Party in its sole discretion to be exercised within 14 days after such a material modification may, but is under no obligation to, declare this Settlement Agreement null and void. For purposes of this paragraph, material modifications shall be limited to any modifications to the definitions of the Settlement Class, Released Claims, Releasing Parties, or Released Parties. In the event that a Party exercises its option to withdraw from and terminate this Settlement Agreement, then the Settlement proposed herein shall become null and void and shall have no force or effect, the Parties shall not be bound by this Settlement Agreement, and the Parties will be returned to their respective positions existing immediately before the execution of this Settlement Agreement. Notwithstanding the foregoing, in the event this Settlement Agreement is not approved by any court, or the Settlement set forth in this Settlement Agreement is declared null and void, or in the event that the Effective Date does not occur, each Party shall bear its own attorneys' fees and costs and Defendant's payment obligations shall cease.

43. The failure of the Court or any appellate court to approve in full the request by Class Counsel for attorneys' fees, costs, and other expenses shall not be grounds for Plaintiffs, the Settlement Class, or Class Counsel, to cancel or terminate this Settlement Agreement, and shall not be deemed a material modification under the terms of paragraph 42.

44. If this Settlement Agreement is terminated pursuant to its terms, disapproved by any court (including any appellate court), and/or not consummated for any reason, or the Effective Date for any reason does not occur, the order certifying the Class for purposes of effectuating this Settlement Agreement, and all preliminary and/or final findings regarding that class certification order, shall be automatically vacated upon notice of the same to the Court, this Action shall proceed as though the Class had never been certified pursuant to this Settlement Agreement and such findings had never been made, and this Action shall return to the procedural status quo as of the date this Settlement Agreement was executed in accordance with this paragraph. Class and Defendant's Counsel shall not refer to or invoke the vacated findings and/or order relating to class settlement in the event this Settlement Agreement is not consummated and any of the Action are later litigated and contested by Defendant under Rule 23 of the Federal Rules of Civil Procedure.

## XII. MISCELLANEOUS

### 45. Best Efforts to Obtain Court Approval

a. Plaintiffs, Defendant, and counsel for all Parties, agree to use their best efforts to obtain Court approval of this Settlement Agreement, subject, however, to the Parties' rights to terminate the Settlement Agreement under Section XI, above.

### 46. No Admission

a. This Settlement Agreement, whether or not it shall become final, and any and all negotiations, communications, and discussions associated with it, shall not be:

(i) offered or received by or against any Person as evidence of, or be construed as or deemed to be evidence of, any presumption, concession, or admission by a Party of the truth of any fact alleged by Plaintiffs or defense asserted by Defendant, of

the validity of any Claim that has been or could have been asserted in this Action or the other Action, or the deficiency of any defense that has been or could have been asserted in this Action or the other Action, or of any liability, negligence, fault or wrongdoing on the part of Plaintiffs or Defendant;

(ii) offered or received by or against any Person as a presumption, concession, admission or evidence of the violation of any state or federal statute, law, rule, or regulation or of any liability or wrongdoing by Defendant, or of the truth of any of the Claims, and evidence thereof shall not be directly or indirectly, in any way, (whether in the Action, or in any other action or proceeding), except for purposes of enforcing this Settlement Agreement and the Final Approval Order and Judgment, including, without limitation, asserting as a defense the release and waivers provided herein;

(iii) offered or received by or against any Person as evidence of a presumption, concession, or admission with respect to a decision by any court regarding the certification of a class, or for purposes of proving any liability, negligence, fault, or wrongdoing, or in any way referred to for any other reason as against Defendant, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Settlement Agreement; provided, however, that if this Settlement Agreement is approved by the Court, then the signatories to the Agreement may refer to it to enforce their rights hereunder; or

(iv) construed as an admission or concession by Plaintiffs, the Settlement Class or Defendant that the consideration to be given in this Settlement

Agreement represents the relief that could or would have been obtained through trial in the Action.

47. Administrative Costs

a. Except as provided in Sections IV (Notice), and IX (Attorneys' Fees, Costs, and Expenses), above, each of Plaintiffs and Defendant shall be solely responsible for his, her, or its own costs and expenses.

48. Taxes

a. Class Representatives and Class Counsel shall be responsible for paying any and all federal, state, and local taxes due on any payments made to them pursuant to the Settlement Agreement.

49. Public Statements

a. Except in connection with any proceeding or court filing, or as expressly provided in the Notice Plan described in Section IV, above, or as expressly authorized in writing by Defendant or their counsel, Plaintiffs and Class Counsel will not issue any press releases or communicate with any third party, including the media, regarding the Settlement or the Action, without prior approval of Defendant. If Plaintiffs or Class Counsel receive an inquiry from any third party, they should refer to the Class Notice, refer to the Fourth Consolidated Class Action Complaint, or refer to the Court file. Plaintiffs and Class Counsel agree not to make disparaging public statements about Defendant, Defendant's employees, Defendant's products, the Product, or Defendant's counsel. Plaintiffs and Class Counsel are free to respond in a truthful and non-disparaging manner to Class Member inquiries regarding the Action and/or the Settlement Agreement. Class Counsel are free to state they served as legal counsel in this lawsuit and discuss the terms of the Settlement Agreement on their firm websites, biographies, or similar

Marketing materials, and in connection with speaking engagements and future applications to serve as interim-class or lead counsel, or as otherwise required by law.

b. In connection with any proceedings in any court, Plaintiffs and Class Counsel will not make any representations concerning this Settlement Agreement that are inconsistent with the positions taken by Plaintiffs and Class Counsel in the Action.

c. Defendant shall be permitted to make any statement regarding the Settlement or the Action without prior approval from Plaintiffs or Class Counsel, provided such statements do not disparage Class Counsel or the value of the Settlement Agreement. The Parties further acknowledge Defendant has legitimate business interests that might prompt it to make additional affirmative statements, or respond to public statements, concerning the Product, the Action, or the Settlement Agreement. Defendant agrees not to make disparaging public statements about Plaintiffs or Class Counsel or about the strength or validity of the Class Action in a general or specific manner.

#### 50. Complete Agreement

This Settlement Agreement is the entire, complete agreement of each and every term agreed to by and among Plaintiffs, the Settlement Class, Defendant, and Class Counsel. In entering into this Settlement Agreement, no party to the Agreement has made or relied on any warranty or representation not specifically set forth herein. This Settlement Agreement shall not be modified except by a writing executed by all the parties hereto. No extrinsic evidence or parole evidence shall be used to interpret this Settlement Agreement. Any and all previous agreements and understandings between or among one or more of the Parties to this Settlement Agreement regarding the subject matter of this Agreement, whether written or oral, are superseded and hereby revoked by this Agreement. The parties to this Settlement Agreement

expressly agree that the terms and conditions of this Agreement will control over any other written or oral agreements.

**51. Headings for Convenience Only**

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

**52. Severability**

In the event that any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Settlement Agreement shall continue in full force and effect without said provision, subject, however, to the parties' rights to terminate the Agreement under Section XI, above.

**53. No Party Is the Drafter**

None of the Parties to this Settlement Agreement shall be considered the primary drafter of this Settlement Agreement or any provision hereof for the purpose of any rule of interpretation or construction that might cause any provision to be construed against the drafter.

**54. Binding Effect**

This Settlement Agreement shall be binding according to its terms upon, and inure to the benefit of Plaintiffs, the Settlement Class, Defendant, the Releasing Parties, the Released Parties, as defined in Section I above, and any additional successors and assigns.

**55. Authorization to Enter Settlement Agreement**

Each of the undersigned Class Counsel represents and warrants that he or she is fully authorized to conduct settlement negotiations with counsel for Defendant on behalf of the Settlement Class and the respective Plaintiffs and Class Representatives, and to enter into, and to execute, this Settlement Agreement on behalf of the Settlement Class, the respective Plaintiffs



and Class Representatives, and his co-Class Counsel, if any, subject to Court approval pursuant to Federal Rule of Civil Procedure 23(e).

56. Execution in Counterparts

The Parties may execute this Settlement Agreement in counterparts, and the execution of counterparts shall have the same effect as if all parties had signed the same instrument.

Facsimile signatures shall be considered as valid signatures. This Settlement Agreement shall not be deemed executed until signed by Class Counsel and Defendant.

57. Settlement Notice

Except for the Notice Plan, as provided for in Section IV above, all other notices or formal communications under this Settlement Agreement shall be in writing and shall be given (i) by hand delivery; (ii) by registered or certified mail, return receipt requested, postage prepaid; or (iii) by Federal Express or similar overnight courier to counsel for the Party to whom notice is directed at the following addresses:

For Plaintiffs and Settlement Class:

Lucy J. Karl  
NH Bar No. 5547  
SHAHEEN & GORDON, P.A.  
107 Storrs Street, P.O. Box 2703  
Concord, New Hampshire 03302  
Telephone: (603) 225-7262  
Facsimile: (603) 225-5112  
lkarl@shaheengordon.com

For Defendant:

Shon Morgan  
QUINN EMANUEL URQUHART & SULLIVAN, LLP  
865 S. Figueroa Street, 10th Floor  
Los Angeles, California 90017

Counsel may designate a change of the person to receive notice or a change of address, from time to time, by giving notice to all Parties in the manner described in this Section.

58. Governing Law

a. Without regard to principles of conflicts of laws, this Settlement Agreement shall be governed by and interpreted in accordance with Federal law and, to the extent that resort must be had to State law, by the laws of the State of New York.

b. The Court shall retain continuing and exclusive jurisdiction over the Parties with respect to the Settlement Agreement and the Final Approval Order and Judgment.

59. Interpretation

As used in this Settlement Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others wherever the context so indicates.

60. Confidentiality

All proprietary or confidential documents or information that have been previously provided to Class Counsel or Plaintiffs, as of the Effective Date of this Agreement, including under the Stipulated Protective Order entered in the MDL, shall be destroyed, as provided for in that Order, with certification of the destruction to be provided to the producing party within sixty (60) days of the Effective Date.

IN WITNESS WHEREOF, the Parties hereto, through their fully authorized representatives, have executed this Settlement Agreement as of the date first herein written.

[remainder of page intentionally left blank]

**Class Counsel**

By: Lucy J. Karl Date: May 21, 2015

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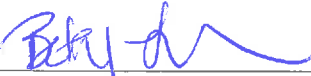
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jchaikin@yourlawyer.com

*Lead Class Counsel*

**Defendant**

COLGATE-PALMOLIVE COMPANY

By:  Date: 5/21/15  
Name: Betsy Fishbone  
Title: VP, HR, Litigation Compliance

**Defendant's Counsel**

By:  Date: 5/28/15

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# EXHIBIT A

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

IN RE: COLGATE-PALMOLIVE	)	
SOFTSOAP ANTIBACTERIAL HAND	)	MDL Docket No. 12-md-2320-PB
SOPA MARKETING AND SALES	)	
PRACTICES LITIGATION	)	All Actions
(MDL NO. 2320)	)	
_____	)	

[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION  
SETTLEMENT

In this Action,<sup>1</sup> Plaintiffs, in their individual capacities and on behalf of all others similarly situated (the “Settlement Class”), assert Claims against Defendant Colgate-Palmolive Company. Defendant has denied each of the Claims asserted against it in this Action and denies any and all liability. Plaintiffs maintain that the Claims have merit and that a class should be certified in this Action.

This Court has now been presented with a Joint Motion for Certification of Settlement Class, Preliminary Approval of Proposed Class Action Settlement, Approval of Notice Plan and Notice Administrator and Appointment of Lead Counsel dated May 29, 2015. The Settlement Agreement was negotiated and consented to on behalf of the Parties, and it resolves the Claims against Defendant arising out of the Action. Notice of the proposed settlement has been served on the appropriate federal and state officials pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

Having considered the terms of the Settlement Agreement in light of the issues presented by the pleadings, the record in this case, the complexity of the proceedings, and the absence of any evidence of collusion between Plaintiffs and Defendant, and being preliminarily satisfied that the Settlement Agreement is fair, reasonable, and consistent with applicable laws; and being satisfied that the proposed Notice of Class Action Settlement is adequate and sufficiently

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<sup>1</sup> Capitalized terms shall have the meaning ascribed to them in the Definitions section of the Settlement Agreement.



informative as to the terms and effect of the proposed settlement and the conditional certification of the Settlement Class, IT IS ORDERED THAT:

1. This Court has jurisdiction over the subject matter of the Action pursuant to 28 U.S.C. § 1332(d). This Court also has jurisdiction over all Parties to the Action, including all members of the Class, as defined in Paragraph 3, below.
2. For the sole purpose of determining whether the proposed settlement embodied in the Settlement Agreement should be approved as fair, reasonable, and adequate and whether this Action should be dismissed with prejudice as to Defendant, a Settlement Class is preliminarily and conditionally certified under Rule 23(b)(2) of the Federal Rules of Civil Procedure, as follows:
  - a. The Settlement Class shall consist of all persons who purchased the Product in the United States from January 1, 1992, up to and including the Notice Date;
  - b. Defendant and their officers, directors, employees, and agents are excluded from the Settlement Class definition;
  - c. Persons who are neither citizens nor residents of the United States or its territories are excluded from the Settlement Class definition; and
  - d. Any Judge or Magistrate presiding over the Action and members of their families are excluded from the Settlement Class definition.
3. The Settlement Agreement is preliminarily and conditionally approved as a fair, reasonable, and adequate compromise of the risks of the Action, subject to further consideration at the Final Approval Hearing. Plaintiffs and Defendant are authorized and directed to take all actions that may be required prior to final approval by the Court of the proposed settlement and compromises set forth in the Settlement Agreement.
4. The Summary Notice attached as Exhibit B to the Settlement Agreement and the Long Form of Notice of Class Action Settlement (the "Long Form Notice") attached as Exhibit C to the Settlement Agreement are approved. Dissemination of the Class Notice as set forth in the Notice Plan satisfies the requirements of due process and the Federal Rules of Civil Procedure. The Summary Notice and Long-Form Notice will be published in accordance with the terms of the Notice Plan set forth in the Settlement Agreement. Non-substantive changes may be made to the Summary Notice and Long-Form Notice by agreement of Plaintiffs and Defendant without further order of this Court.
5. Angeion Group is appointed as the Notice Administrator.
6. Solely for purposes of the proposed settlement, Tracy Nieblas, Shari Elstein, Kristina Pearson, Adam Emery and Jeff Dyke are designated as Class Representatives of the Settlement Class.

7. The Court conditionally approves of and appoints Lucy J. Karl, Richard J. Arsenault, Adam J. Levitt, John R. Climaco, Charles E. Schaffer, and Eric D. Holland as Class Counsel for the purpose of determining whether the proposed settlement embodied in the Settlement Agreement should be approved as fair, reasonable, and adequate and whether this Action should be dismissed with prejudice as to Defendant.
8. In advance of the Objection Date, Class Counsel shall file their motion for attorneys' fees, costs, and expenses. Any motions for incentive awards to Class Representatives shall be filed by the same date. Defendant shall file any response to any motions filed under this paragraph within 14 days.
9. If the proposed settlement is not approved or consummated for any reason whatsoever, then the settlement class certification established by this Order will be vacated, the Class and Defendant will return to the status of the claims, defenses, and class certification immediately prior to May 21, 2015, the date on which the proposed settlement was reached; the proposed settlement and all proceedings conducted in connection therewith shall be stricken from the record and shall be without prejudice to the status quo ante rights of Plaintiffs and Defendant.
10. A Final Approval Hearing shall be held at \_\_\_ a.m./p.m. on \_\_\_\_\_, 2015, for the purpose of determining whether the proposed settlement and compromise set forth in the Settlement Agreement shall be approved finally by the Court and whether final judgment dismissing the Action with respect to Defendant is appropriate. This hearing will be held at the United States District Court for the District of New Hampshire, 55 Pleasant Street Room 110, Concord, NH 03301. At the Final Approval Hearing, the Court will consider and determine:
  - 10.1 whether the proposed settlement is fair, reasonable, and adequate to members of the Class and should be approved by the Court;
  - 10.2 whether the proposed Settlement Class satisfies the applicable prerequisites for class action treatment under Federal Rules of Civil Procedure 23(a) and 23(b)(2) for purposes of the proposed settlement;
  - 10.3 whether the Court should enjoin Defendant according to the specific terms in the Settlement Agreement;
  - 10.4 whether final judgment should be entered, dismissing the Action as to Defendant, on the merits and with prejudice, and to determine whether the release by the Class of the Released Claims, as set forth in the Settlement Agreement, should be provided;
  - 10.5 whether the Court should approve Class Counsel's application for an award of attorneys' fees, expenses, and costs;
  - 10.6 whether the Court should approve any motion for an award of incentive fees for the class representatives; and

10.7 such other matters as the Court may deem appropriate.

11. Any person who wishes to oppose or object to final approval of the settlement and compromise in this Action shall mail an objection letter to stating the person's intention to object to the Settlement in *In re: Colgate-Palmolive Soft Soap Antibacterial Hand Soap Marketing and Sales Practices Litigation*, Case No. 1:12-md-02320-PB. Any objection letters must include the objector's name, address, telephone number, signature, reasons for objecting to the settlement, and a statement of whether the objector or the objector's lawyer will ask to speak at the final approval hearing. Objection letters must be mailed to each of the following four places and postmarked no later than 60 days after the date of Preliminary Approval, or the objection will not be valid and will not be considered by the Court:

Administrator

Angeion Group  
1801 Market Street, Suite 660  
Philadelphia, PA 19103

Court

Office of the Clerk  
United States District Court for the District of  
New Hampshire  
55 Pleasant Street Room 110  
Concord, NH 03301

Lead Class Counsel

Lucy J. Karl  
NH Bar No. 5547  
SHAHEEN & GORDON, P.A.  
P.O. Box 2703  
Concord, New Hampshire 03302-2703  
Telephone: (603) 225-7262  
Facsimile: (603) 225-5112  
lkarl@shaheengordon.com

Defendant's Counsel

Shon Morgan  
QUINN EMANUEL URQUHART &  
SULLIVAN, LLP  
865 S. Figueroa Street, 10th Floor  
Los Angeles, CA 90017

12. Any person who wishes to appear at the Final Approval Hearing, either in person or through counsel, before 60 days following the date of Preliminary Approval, in addition to providing the above information, shall also:
- 12.1 Identify the points the objector wishes to speak about at the hearing;
  - 12.2 Enclose copies of any documents the objector intends to rely on at the hearing;
  - 12.3 State the amount of time the objector requests for speaking at the hearing; and
  - 12.4 State whether the objector intends to have a lawyer speak on his or her behalf.
13. Any lawyer who intends to speak on behalf of an objector at the Final Approval Hearing shall enter a written notice of appearance of counsel with the Clerk of Court no later than

60 days following the date of Preliminary Approval. All properly submitted objections shall be considered by the Court.

14. Any member of the Class who does not object in the manner set forth above shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, adequacy, or reasonableness of the proposed settlement, the Final Approval Order and Judgment to be entered approving the settlement, the Release of Claims, or the attorneys' fees, costs, expenses, or incentive fees requested.
15. All proceedings in the Action, other than such as may be necessary to carry out the terms and conditions of this Order or the responsibilities incidental thereto, are stayed and suspended as between Plaintiffs and Defendant until further order of the Court.
16. The Court may adjourn the Final Approval Hearing, or any adjournment thereof, without any further notice other than an announcement at the Final Approval Hearing, or any adjournment thereof, and may approve the Settlement Agreement with modifications as approved by the parties to the Settlement Agreement without further notice to the Class.
17. The Court retains exclusive jurisdiction over the Action to consider all further matters arising out of or connected with the proposed settlement.

SO ORDERED this \_\_ day of \_\_\_\_\_, 2015.

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The Honorable Judge Paul J. Barbadoro  
United States District Court  
District of New Hampshire

# EXHIBIT B

## LEGAL NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

This notice concerns you and your legal rights if you purchased Colgate-Palmolive Company (“Colgate”) brand liquid hand soap products containing the antibacterial ingredient triclosan that Colgate has manufactured, marketed, promoted, and/or sold in the United States from January 1, 1992 up to and including the date of this notice

### *IN RE: COLGATE-PALMOLIVE SOFT SOAP ANTIBACTERIAL HAND SOAP MARKETING & SALES PRACTICES LITIGATION*

CASE NO. 1:12-md-02320-PB

A settlement has been proposed in a class action lawsuit concerning the labeling and marketing of Colgate-Palmolive Company (“**Colgate**”) **brand liquid hand soap products** containing the antibacterial ingredient triclosan that Colgate has manufactured, marketed, promoted, and/or sold in the United States from January 1, 1992 up to and including the date of this notice.

#### WHAT ARE THE SETTLEMENT TERMS?

Defendants and Plaintiffs have agreed to a settlement that includes changes to the labeling and marketing of Colgate liquid hand soap, such that Defendant will make certain statements and refrain from making other statements on the Product’s labeling and marketing (the “Injunctive Relief”). All Class Members will receive these benefits equally.

#### WHO IS INCLUDED?

This notice applies to you if, in the United States, you purchased Colgate brand liquid hand soap products containing the antibacterial ingredient triclosan. This Notice is just a summary. For more complete information, you should read the Full Notice, which is available at [www.SoftSoapAntibacterialClassActionSettlement.com](http://www.SoftSoapAntibacterialClassActionSettlement.com)

#### WHAT IS THE LAWSUIT ABOUT?

Plaintiffs brought a lawsuit against Defendants for alleged deceptive labeling and marketing of Colgate liquid hand soap. Defendant denies that the liquid hand soap was deceptively labeled or marketed but have agreed to the proposed settlement to resolve this class action.

#### WHAT AM I GIVING UP FOR THIS BENEFIT?

If the settlement is approved by the Court, then you release all injunctive, declaratory, and equitable claims concerning Colgate’s labeling and marketing of its liquid hand soap that were or could have been raised in this lawsuit and you cannot bring another lawsuit asserting such claims. It also means that the Court’s order will apply to you and bind you even if you have objected. For more details on the terms of the release, see [www.SoftSoapAntibacterialClassActionSettlement.com](http://www.SoftSoapAntibacterialClassActionSettlement.com).

#### WHAT ARE MY OPTIONS?

If you are a Class Member, you can object to the settlement and give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter saying that you object to the settlement in *In re: Colgate-Palmolive Soft Soap Antibacterial Hand Soap Marketing and Sales Practices Litigation*, Case No. 1:12-md-02320-PB. Be sure to include your name, address, telephone number, signature and the reasons why you object to the settlement. You must send your objection by first class mail to the Notice Administrator, the Court, and to one of the attorneys for the Settlement Class (“Class Counsel”) and the attorneys for Defendant. A list of the attorneys is provided on the Full Notice, available at [www.SoftSoapAntibacterialClassActionSettlement.com](http://www.SoftSoapAntibacterialClassActionSettlement.com). Your

objection must be postmarked no later than \_\_\_\_\_, 2015 or your objection will not be valid and will not be considered by the Court.

You may ask the Court to speak at the hearing on the approval of the settlement. To do so, you must send a letter saying that it is your “Notice of Intention to Appear” in *In re: Colgate-Palmolive Soft Soap Antibacterial Hand Soap Marketing and Sales Practices Litigation*, Case No. 1:12-md-02320-PB. Include your name, address, telephone number and signature. Your Notice of Intention to Appear must be postmarked no later than \_\_\_\_\_, 2015, and also must be sent to the Clerk of Court, Class Counsel and Defendant’s Counsel at their addresses in the Full Notice. You cannot speak at the hearing if your Notice of Intention to Appear is late.

#### WILL THE COURT APPROVE THE PROPOSED SETTLEMENT?

This Court granted preliminary approval of the Settlement, and will hold a Final Approval Hearing on \_\_\_\_\_, 2015 in the U.S. District Court for the District of New Hampshire, 55 Pleasant Street Room 110, Concord, NH 03301 to consider whether the Proposed Settlement is fair, reasonable, and adequate and to consider Class Counsel’s request for attorneys’ fees, costs, and expenses.

#### WHO REPRESENTS ME?

This Court has appointed Class Counsel to represent the Class. Class Counsel will request the Court award attorneys’ fees, costs, and expenses in an amount to be paid entirely by Defendant not to exceed \$2,000,000 for Class Counsel’s work on this case; the judge may allocate some of that award to Class Representatives for their participation. You may hire your own attorney, if you wish, but you will be responsible for that attorney’s fees and costs.

#### WHERE CAN I OBTAIN MORE INFORMATION?

For more information, you can view the court file in the Clerk’s Office at the courthouse address above or visit the settlement website at [www.SoftSoapAntibacterialClassActionSettlement.com](http://www.SoftSoapAntibacterialClassActionSettlement.com). Please Do Not Contact The Court Or The Clerk Of The Court Concerning This Notice.

# EXHIBIT C



IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW HAMPSHIRE

*IN RE: COLGATE-PALMOLIVE SOFT SOAP ANTIBACTERIAL HAND SOAP  
MARKETING & SALES PRACTICES LITIGATION*

CASE NO. 1:12-md-02320-PB

TO ALL PERSONS WHO PURCHASED LIQUID HAND SOAP PRODUCTS CONTAINING THE ANTIBACTERIAL INGREDIENT TRICLOSAN THAT COLGATE HAS MANUFACTURED, MARKETED, PROMOTED, AND/OR SOLD IN THE UNITED STATES FROM JANUARY 1, 1992 UP TO AND INCLUDING THE DATE OF THIS NOTICE.

READ THIS NOTICE CAREFULLY. YOUR LEGAL RIGHTS MAY BE AFFECTED.

A settlement has been proposed in a class action lawsuit concerning the labeling and marketing of Colgate-Palmolive Company (“Colgate”) brand liquid hand soap products containing the antibacterial ingredient triclosan that Colgate has manufactured, marketed, promoted, and/or sold in the United States from January 1, 1992 up to and including the date of this notice. This settlement resolves that lawsuit in its entirety. It avoids costs and risks from continuing the lawsuit; provides injunctive relief to the Settlement Class, and releases the Defendant, Colgate, from certain liabilities. Your legal rights are affected whether you act or do not act. These rights and options—and their deadlines—are explained in this Notice.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

Object	Write to the Court about why you do not like the settlement.
Go to a Hearing	Ask to speak in Court about the fairness of the settlement.
Do Nothing	If the settlement is approved by the Court, then you cannot bring a new lawsuit for injunctive, declaratory, or equitable relief challenging Colgate labeling and marketing. You will release all injunctive, declaratory, or equitable relief claims that this settlement resolves.

BASIC INFORMATION

Does this Notice apply to me?

This notice applies to you if, in the United States from January 1, 1992 up to and including the date of this notice, you purchased Colgate brand liquid hand soap products containing the antibacterial ingredient triclosan that Colgate has manufactured, marketed, promoted, and/or sold (the “Product”). This notice does not apply to you if you only purchased any other product manufactured, marketed, distributed, or sold by Defendant.

What is this lawsuit about?

Plaintiffs Tracy Nieblas, Shari Elstein, Kristina Pearson, Adam Emery, and Jeff Dyke in their individual capacities and as Class Representatives, on behalf of themselves and other individuals who purchased the Product, brought a class action lawsuit against the Defendant for alleged deceptive labeling and marketing of the Product. The Court in charge of this case is the United States District Court for the District of New Hampshire, and the case is *In re: Colgate-Palmolive Soft Soap Antibacterial Hand Soap Marketing and Sales Practices Litigation*, Case No. 1:12-md-02320-PB (the “MDL”).

Defendant denies that they did anything wrong and believes they would have prevailed at trial, while Plaintiffs believe Plaintiffs would have prevailed at trial.

Why is this a class action?

In a class action, one or more persons called Class Representatives sue for all individuals with similar claims. All of those individuals are Class Members; together, they are called a Class. The Court decides the fairness, reasonableness, and adequacy of the settlement for all Class Members.

Why is there a settlement?

The Court did not decide which side was right. There was no trial. Plaintiffs and Defendant agreed to the settlement to avoid the costs and risks of a trial.

WHO IS IN THE SETTLEMENT

How do I know if I am part of the settlement?

The Court decided that the following individuals are Class Members: All persons who purchased the Product in the United States from January 1, 1992 up to and including the date of this Notice, except Defendant’s officers, directors, employees, and agents .

THE SETTLEMENT BENEFITS

What benefits does the settlement provide?

The settlement provides that Defendant will make certain statements and refrain from making other statements on the Product’s labeling and marketing (the “Injunctive Relief”). All Class Members will receive this benefit equally. Specifically, Defendant has no present intention to reintroduce triclosan as an ingredient in its Product, but to the extent that changes in the future, Defendant will use triclosan only in a manner consistent with final FDA regulations. Additionally, Defendant shall not use a claim on labeling and marketing of the Product that is based on “99%” efficacy without an accompanying disclosure statement that generally describes testing methods at a level consistent with those appearing on Product labels as of May 19, 2015. Finally, Defendant shall not use the statement “Goodbye Germs – Hello World” on labeling and marketing of the Product.

What am I giving up in exchange for this benefit?

If the settlement is approved by the Court, then you cannot bring a new lawsuit against Defendant to seek changes to Defendant's labeling and marketing of the Product raising the injunctive, declaratory, or equitable claims that were raised in this action or that could have been raised in this action. It also means that the Court's order will apply to you and bind you even if you have objected and even if you have another claim, lawsuit, or proceeding pending against Defendant. You will release Defendant from all injunctive, declaratory, or equitable claims that this settlement resolves. For more details on the terms of the release, please see the Attachment to this Notice of Class Action Settlement and the "More Information" section below.

Can I exclude myself from the settlement?

Because the Injunctive Relief will benefit all Class Members equally, you cannot exclude yourself from the Settlement Class or this settlement.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with all or some part of the settlement.

How do I tell the Court that I object to the settlement?

If you are a Class Member, you can object to the settlement and give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter saying that you object to the Settlement in *In re: Colgate-Palmolive Soft Soap Antibacterial Hand Soap Marketing and Sales Practices Litigation*, Case No. 1:12-md-02320-PB. Be sure to include your name, address, telephone number, signature and the reasons why you object to the settlement. You must mail the objection to the following four places and it must be postmarked no later than \_\_\_\_\_, 2015, or your objection will not be valid and will not be considered by the Court.

Objections – Soft Soap Notice

Administrator

Angeion Group  
1801 Market Street, Suite 660  
Philadelphia, PA 19103

Court

Office of the Clerk  
United States District Court for the District of  
New Hampshire  
55 Pleasant Street Room 110  
Concord, NH 03301

Lead Class Counsel

Lucy J. Karl  
NH Bar No. 5547  
SHAHEEN & GORDON, P.A.

Defendant's Counsel

Shon Morgan  
QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

P.O. Box 2703  
Concord, New Hampshire 03302-2703  
Telephone: (603) 225-7262  
Facsimile: (603) 225-5112  
lkarl@shaheengordon.com

865 S. Figueroa Street, 10th Floor  
Los Angeles, CA 90017

### THE LAWYERS REPRESENTING YOU

The Court has approved the request of the following law firms to represent you and the other Class Members: SHAHEEN & GORDON, P.A.; NEBLETT, BEARD & ARSENAULT; GRANT & EISENHOFER P.A.; CLIMACO, WILCOX, PECA, TARANTINO & GAROFOLI CO., L.P.A.; LEVIN, FISHBEIN, SEDRAN & BERMAN; and HOLLAND LAW FIRM, LLC. These lawyers are called Class Counsel. If you want to be represented by your own lawyer, you may hire one at your expense.

#### How will the lawyers be paid?

Class Counsel will request the Court for an award of attorneys' fees, costs, and expenses in an amount to be paid entirely by Defendant. The Court will decide whether to award such fees, costs, and expenses and how much to award.

#### What benefits will the Class Representatives receive from the settlement?

The Class Representatives will receive the same benefits as Class Members, but may get an additional benefit if the Court approves any motions that may be brought for incentive awards to compensate the Class Representatives for their time and to provide incentives for persons in the future to act as Class Representatives. Those motions must be filed by \_\_\_\_\_, 2015. Any incentive awards will be paid by Defendant and not by Class Members.

#### Are there any limits on the award of attorneys' fees, costs, and expenses or Class Representative incentive awards?

Any awards of attorneys' fees, costs, or expenses to Class Counsel or of incentives for Class Representatives will be paid by Defendant, not by Class Members. Such awards must be approved by the Court. Under the Settlement Agreement, Defendant's total liability for all attorneys' fees, costs, and expenses of Class Counsel, including Class Counsel's employees, consultants, experts, and other agents who may have performed work in connection with this action, and for all incentive awards for Class Representatives, cannot exceed \$2,000,000. Defendant has agreed that they will not oppose any motions for such fees, costs, expenses and incentive awards provided that cumulatively the requested awards do not exceed \$2,000,000.

## THE COURT'S HEARING TO APPROVE THE SETTLEMENT

### When and where will the Court hold its hearing?

The Court will hold a hearing to decide whether to approve the settlement. You may attend and you may ask to speak at the hearing, but you do not have to do so. The Court will hold the hearing at \_\_\_\_\_ AM/PM on \_\_\_\_\_, 2015, at the United States District Court for the District of New Hampshire, 55 Pleasant Street Room 110, Concord, NH 03301. At the hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections that were received by the deadline, the Court will consider them. If you submit a timely objection, the Court will also listen to you speak at the hearing, if you so request.

### Do I have to attend the hearing?

No. If you send an objection, then you can, but are not obligated, to come to Court to discuss it. You may also pay your own lawyer to attend or discuss your objection, but that is not necessary.

### May I speak at the hearing?

You may ask the Court to speak at the hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear" in *In re: Colgate-Palmolive Soft Soap Antibacterial Hand Soap Marketing and Sales Practices Litigation*, Case No. 1:12-md-02320-PB. Include your name, address, telephone number, and signature. Your Notice of Intention to Appear must be postmarked no later than \_\_\_\_\_, 2015, and must be sent to the Clerk of Court, Lead Class Counsel, and Defendant's Counsel at their addresses above. You cannot speak at the hearing if your Notice of Intention to Appear is late.

## MORE INFORMATION

### How can I get more information?

This Notice summarizes the proposed settlement. More details are in a Settlement Agreement filed with the Court. You may examine the Court's file in the Clerk's Office at the United States District Court for the District of New Hampshire, 55 Pleasant Street Room 110, Concord, NH 03301, for more complete information about the details of the lawsuit and the proposed settlement. You also may visit the website of the Notice Administrator at [www.SoftSoapAntibacterialClassActionSettlement.com](http://www.SoftSoapAntibacterialClassActionSettlement.com).

## ATTACHMENT TO NOTICE OF CLASS ACTION SETTLEMENT

### TERMS OF RELEASE

Upon the Effective Date, Plaintiffs and Settlement Class Members forever release and discharge all Released Claims against Released Parties.

“Released Claims” are injunctive, declaratory, or equitable claims, and all claims whatsoever of the Plaintiffs in their individual capacities, that have been brought, could have been brought, are currently pending, or are ever brought in the future, by any Settlement Class Member against Released Parties, in any forum in the United States (including their territories and Puerto Rico), whether known or unknown, asserted or unasserted, under or pursuant to any statute, regulation or common law, that relate in any way to the distribution, sale, purchase, labeling, packaging, marketing or advertising of the Product and all equitable Claims for relief, of whatever type or description arising or that may have arisen as a result of, or relate in any way to any of the facts, acts, events, transactions, occurrences, courses of conduct, representations, omissions, circumstances or other matters referenced in any Claim raised (including, but not limited to, any Claim that was raised against Defendant) in this action.

“Released Parties” means Defendant, as well as their respective past, present, and future predecessors, successors, and assigns, the past, present, and future, direct and indirect, parents, subsidiaries, divisions, corporate affiliates, or associates of any of the above; and the past, present, and future members, principals, partners, officers, directors, trustees, control persons, employees, agents, attorneys, shareholders, advisors, insurers and representatives of the above, and any and all entities and individuals that are alleged to have handled, distributed, purchased for resale and/or redistribution, supplied, manufactured and/or sold or offered for sale the Product.

“Effective Date” means the date on which all appellate rights with respect to the Final Approval Order and Judgment have expired or have been exhausted in such a manner as to affirm the Final Approval Order and Judgment, and when no further appeals are possible, including review by the United States Supreme Court.