

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into on the date of execution between RADHA GEISMANN, M.D., P.C., and JOHN H. LARY JR., M.D., (collectively, “Plaintiffs”), on behalf of themselves and a class of similarly-situated persons or entities (identified and defined below as the “Settlement Class”), and REXALL, INC. (“Rexall”) and CORPORATE MAILINGS, INC. d/b/a CCG MARKETING SOLUTIONS (“CCG”), including their respective present, former, and/or future agents, insurers, representatives, employees, directors, officers, shareholders, attorneys, parents, subsidiaries, affiliates and assigns (collectively “Defendants”). The parties to this Agreement are collectively referred to as the “Parties” and each individually as a “Party.”

WHEREAS, on behalf of themselves and a putative class of similarly-situated persons or entities, Plaintiffs filed a civil action against Defendants that is now pending in Circuit Court of St. Louis City, Missouri and entitled *Radha Geismann, M.D., P.C. and John H. Lary Jr., M.D. v. Rexall, Inc., and Corporate Mailings, Inc. d/b/a CCG Marketing Solutions*, Cause No. 1822-CC11147, Division 20 (the “Litigation”).

WHEREAS, Plaintiffs’ Class Action Petition in the Litigation (“Petition”) alleges that Defendants violated the Telephone Consumer Protection Act, 47 U.S.C. § 227(b)(1)(C), and related FCC regulations (collectively, the “TCPA”) by faxing purported advertisements without the recipients’ prior express invitation or permission;

WHEREAS, Defendants dispute the allegations in the Petition and maintain that the faxes were not advertisements and that they complied with the TCPA and all applicable laws. Defendants also dispute that Plaintiffs have suffered any injury as a result of any alleged violation, even if one were to have occurred. In addition, Defendants maintain that if the

Litigation were to be litigated, the claims asserted therein would not be appropriate for class treatment;

WHEREAS, without admitting or conceding fault or liability or the validity of Plaintiffs' claims, point of law or point of fact, that Plaintiffs' claims are appropriate for class treatment, or that Plaintiffs or any proposed Settlement Class Member (as defined below) are entitled to any relief as a result of Defendants' alleged conduct, the Parties have agreed to settle all disputes regarding Defendants' faxes to the Settlement Class as provided herein; the Parties are entering into this Agreement to avoid the risk and expense of further litigation, to resolve all disputes that have arisen between them, and to settle any and all claims that do or may exist in the past, present or future;

WHEREAS, through certain fax logs obtained in discovery (the "Fax Logs") and as documented in the Expert Reports of Robert Biggerstaff dated January 12, 2018 and February 7, 2018 (the "Biggerstaff Reports"), Plaintiffs have identified 81,548 error free fax transmissions sent to 73,206 unique fax numbers on or about March 5, 2013; the facsimiles transmitted on or about March 5, 2013 are referred to herein as the "Fax;"

WHEREAS, this Agreement is the result of good faith, arm's-length settlement negotiations that took place over many months; the Parties have engaged in extensive litigation, have exchanged a significant volume of information, have participated in an extensive mediation under the guidance of the Honorable Stuart E. Palmer (Ret.) (the "Mediator"); and because of the extensive written and oral discovery completed, the Parties have had a full and fair opportunity to evaluate the strengths and weaknesses of their respective positions;

WHEREAS, Class Counsel (identified below) have concluded that the terms and conditions of the Agreement (also referred to as the "Settlement") provided herein are fair,

reasonable, and adequate, and in the best interests of the Settlement Class as a means of resolving all disputes between and among the Parties; and

WHEREFORE, the Parties stipulate and agree that, in consideration of the agreements, promises and covenants set forth in this Agreement and subject to the approval of the Court, the claims of the Settlement Class should be and are hereby compromised and fully and finally settled and the Litigation dismissed with prejudice under the following terms and conditions:

1. **Recitals.** The above-described recitals are incorporated herein and made a part hereof.

2. **The Settlement Class and Settlement Class Members.**

a. For settlement purposes only, the Parties hereby stipulate to certification of a

“Settlement Class” defined as:

All persons or entities that were sent, on or about March 5, 2013, a facsimile message stating, in relevant part: “Osteo Bi-Flex Sample Offer” “Dear Partner Physician, We are excited to invite you to join the Osteo Bi-Flex Physician Sampling Program. Registration only takes a few minutes and is free! Please visit our exclusive physician’s only site at www.osteobiflex.com/physiciansampling to register to receive samples of Osteo Bi-Flex to share with your patients.”

Excluded from the Settlement Class are Defendants, members of the judiciary and employees, agents and affiliates of Defendants and all corporate affiliates of Defendants.

b. **“Settlement Class Members”** means all persons or entities who fall within the definition of the Settlement Class and who do not timely submit a valid Request for Exclusion in accordance with Paragraph 8 below. The names, facsimile numbers, and other identifying information of the Settlement Class appear in the Fax Logs.

c. **For Settlement Purposes Only.** This Agreement is entered into for purposes of resolving all disputes between Defendants on the one hand, and Plaintiffs and the Settlement

Class on the other hand. Assertions, statements and representations herein are for settlement purposes only. Defendants dispute that a litigation class properly could be certified on the claims asserted in the Litigation. Solely for purposes of avoiding the expense and inconvenience of further litigation, however, Defendants do not oppose the certification of the Settlement Class for the purposes of this Settlement only. Preliminary certification of the Settlement Class will not be deemed a concession that certification of a litigation class is appropriate, nor would Defendants be precluded from challenging class certification if this Agreement is not finalized or finally approved, or if it is terminated. If for any reason whatsoever the Court does not enter the Final Approval Order or the Agreement does not become Final (as defined below), the certification of the Settlement Class will be void and deemed vacated *nunc pro tunc*, and no doctrine of waiver, estoppel, or preclusion will be asserted in any litigated certification proceedings in any judicial proceeding.

3. **Representation of the Settlement Class.** The Parties agree that, for purposes of the Settlement only, Plaintiffs Radha Geismann, M.D., P.C. and John H. Lary Jr., M.D. will be appointed as the “Class Representatives,” and attorneys Max G. Margulis of Margulis Law Group and Brian J. Wanca of Anderson + Wanca will be appointed as “Class Counsel.”

4. **Settlement Administrator.** The Parties have agreed on Kurtzman Carson Consultants (“KCC”) as the settlement and claims administrator (“Settlement Administrator”), subject to Court approval. Except as provided in Paragraph 16, the cost and expenses of the Settlement Administrator are to be paid exclusively from the Settlement Fund established by Defendants pursuant to Paragraph 6 below.

5. **Preliminary Approval of this Agreement and the Settlement.** Plaintiffs will move the Court for the entry of an order preliminarily approving this Agreement and the

Settlement. Attached hereto as Exhibit 1 is a proposed “Order Preliminarily Approving Settlement, Certifying Settlement Class, and Authorizing Notice To The Settlement Class” (the “Preliminary Approval Order”) and appointing Radha Geismann, M.D., P.C., and John H. Lary Jr., M.D. as the Class Representatives and attorneys Max G. Margulis of Margulis Law Group and Brian J. Wanca of Anderson + Wanca as Class Counsel. The Preliminary Approval Order shall also appoint KCC as the Settlement Administrator.

6. **The Settlement Fund.** Defendants will establish a Settlement Fund in the maximum amount of \$20,700,000.00 to resolve the claims of Plaintiffs and the Settlement Class. The Settlement Fund shall be used to pay the Attorneys’ Fees and Expenses awarded by the Court (as set forth in Paragraph 10 of this Agreement), Incentive Awards awarded by the Court (as set forth in Paragraph 9 of this Agreement), Approved Claims submitted by Settlement Class Members (as set forth in Paragraph 12 of this Agreement), and the costs of administration as charged by the Settlement Administrator (as set forth in Paragraphs 4 and 8(a) of this Agreement). Defendants are not required to place all or any portion of the Settlement Fund into a separate bank account. Defendants will not relinquish control of any money until payments are due. Defendants shall retain any portion of the Settlement Fund that is not paid for Approved Claims (as defined below) of Settlement Class Members, to the Class Representatives, to Class Counsel or the Settlement Administrator. In no event will CCG be required to contribute more to the Settlement Fund than the amount set forth in a separate agreement between CCG and the Rexall Entities. The Rexall Entities will contribute to the Settlement Fund in an amount consistent with the separate agreement between CCG and the Rexall Entities. Defendants are not responsible for any payment or obligation other than those specified in this Agreement.

7. **Effective Date.** The “**Effective Date**” of this Agreement means the first date by which all of the following events shall have occurred: (a) the Court has entered the Final Approval Order and Judgment substantially in the form of Exhibit 4 attached hereto; and (b) the Final Approval Order and Judgment have both become Final. “**Final**” means the latest of the following events: (i) the expiration of three (3) days after the time to file a motion to alter or amend a judgment has passed without any such motion having been filed; (ii) the expiration of the time in which to file an appeal has passed without any appeal having been taken; and (iii) the resolution of any appeal in a manner that does not reverse or vacate the Final Approval Order and Judgment in a manner that would interfere with the consummation of the Settlement substantially in accordance with the terms and conditions of this Agreement without any material change thereto. However, any proceeding or order, or any appeal pertaining solely to any request or portion of an order or judgment regarding an award of Attorneys’ Fees and/or Expenses to Class Counsel, and/or Incentive Awards to Plaintiffs, will not in any way delay or preclude the Final Approval Order and Judgment from becoming Final. This provision does not restrict Plaintiffs’ ability to appeal the award of Attorneys’ Fees, Expenses and/or Incentive Awards.

8. **Settlement Administration/Class Notice/Right to Request Exclusion/Right to Object/Submission of Claims by Settlement Class Members.**

a. **Administration Costs.** All costs and expenses of administering the Settlement and providing Class Notice in accordance with the terms of this Agreement and as set forth in the Preliminary Approval Order shall be paid from the Settlement Fund, except as provided in Paragraph 16.

b. **Class Notice.** Within twenty-one (21) days after the entry of the Preliminary Approval Order, direct notice of the Settlement (“Class Notice”) will be issued to

the Settlement Class as identified in the Fax Logs, which Fax Logs will be supplied to the Settlement Administrator along with the Biggerstaff Reports. The Parties will request that the Court approve a postcard notice “Notice of Class Action and Proposed Settlement with Attached Claim Form” in the form attached hereto as Exhibit 2, and request approval to send it via U.S. Mail. The Settlement Administrator shall set up a page within the active cases portion of its website that will contain the complaint and fax, this Agreement, the long form Class Notice and Claim Form (attached hereto as Exhibit 3), and other information as agreed by the Parties. A link to the website will be included in the Class Notice.

c. **The Fax Logs and the Biggerstaff Reports** may not be used by Class Counsel or the Settlement Administrator for any purpose other than for providing Class Notice, and responding to inquiries by Settlement Class Members of their rights, and otherwise effectuating the terms of this Agreement. Class Counsel agrees to destroy the Fax Logs and the Biggerstaff Reports and any copies within their possession within ninety (90) days after all payments have been made pursuant to this Agreement. After all payments have been made pursuant to this Agreement, the Settlement Administrator will destroy the Fax Logs and the Biggerstaff Reports and any copies within its possession consistent with its document retention policies and standard industry practices.

d. **Right to Request Exclusion from Settlement.** Any person or entity in the Settlement Class has the right to request to be excluded from the Settlement (a “Request for Exclusion”). To be valid, any Request for Exclusion must (i) be in writing, (ii) list the name of the person or entity requesting exclusion, along with the street address, and fax number, (iii) identify the name and number of the Litigation (*i.e.*, *Radha Geismann, M.D., P.C., et al. v. Rexall, Inc., et al.*, Cause No. 1822-CC11147, Division 20), (iv) be physically signed by the

person or entity requesting exclusion, (v) contain a clear statement requesting exclusion from the Settlement (such as, “I request to be excluded from the proposed class action settlement in this matter,” “Exclude me from the Rexall class action settlement,” or the like), and (vi) be mailed to the Settlement Administrator, postmarked no later than eighty-one (81) days from the date of the Court Ordered Preliminary Approval of Class Settlement (the “Exclusion Deadline”). A Request for Exclusion that does not include all of the foregoing information, that is sent to an address other than that designated in the Class Notice, or that is not postmarked within the time specified will be invalid, and the person or entity making the request will remain a Settlement Class Member and shall be bound by this Agreement if approved by the Court. No person or entity in the Settlement Class may request to be excluded through a “mass” or “class” request for exclusion.

e. Any person or entity in the Settlement Class who timely and properly exercises his, her or its right to be excluded from the Settlement and to be excluded from the definition of Settlement Class Member by submitting a valid and timely Request for Exclusion (i) will not be bound by any orders or judgment entered in the Litigation, (ii) will not be bound by this Agreement and will not gain any rights under this Agreement, (iii) will not be entitled to receive a payment from the Settlement Fund or to any other relief under this Agreement, and (iv) will not be entitled to object to this Agreement.

f. **Right to Object to Settlement.** Any person or entity in the Settlement Class who does not submit a valid and timely Request for Exclusion has the right to file an objection (“Objection”) to all or any portion of this Agreement and the Settlement with the Court, and to request that the Court deny Final Approval of this Agreement and the Settlement. The Objection must be submitted in writing to the Clerk of the Circuit Court of the City of St.

Louis, Missouri, 10 N. Tucker Blvd, St. Louis, MO 63101. The Objection must either be e-filed, filed in-person with the Clerk, or postmarked no later than eighty-one (81) days from the date of the Court Ordered Preliminary Approval of Class Settlement (the “Objection Deadline”), and copies must be served on counsel for all Parties at the addresses for Notices set forth in Paragraph 18 below. The Objection must include (i) the full name, fax number(s), current street address of the Settlement Class Member and, if applicable, any attorney(s) representing or advising them in connection with the Objection, (ii) the name and number of the Litigation (*i.e.*, *Radha Geismann, M.D., P.C., et al. v. Rexall, Inc., et al.*, Cause No. 1822-CC11147, Division 20), (iii) a statement of all reasons why the objecting Settlement Class Member believes the Court should not approve all or any portion of the Agreement and the Settlement, (iv) copies of any documents the objecting Settlement Class Member wants the Court to consider, (v) a statement indicating whether the objecting Settlement Class Member intends to appear at the final fairness hearing (either personally, or through counsel), and (vi) a list of all other objections the objecting Settlement Class Member or his attorney has made within the last five (5) years.

g. Any Settlement Class Member who fails to timely submit a written Objection to the Court and the Parties in accordance with the terms of Subparagraph (f) above: (i) will not be permitted to object to this Agreement at the final fairness hearing, (ii) will be deemed to have waived his, her or its objections, (iii) will be forever barred from making any such objections in the Litigation or any other lawsuit or proceeding, and (iv) will be foreclosed from seeking any review of the Court’s final approval of this Agreement, by appeal or other means.

h. **Right to Submit Claims.** Settlement Class Members who desire to receive a monetary payment from the Settlement Fund must submit a claim form (“Claim Form”)

by fax or mail to the Settlement Administrator. The deadline for Settlement Class Members to submit Claim Forms is eighty-one (81) days from the date of the Court Ordered Preliminary Approval of Class Settlement (the “Claims Deadline”). In order to receive a share of the Settlement Fund, a Settlement Class Member’s Claim Form must be determined to be an “Approved Claim” (as defined below). No Claim Form shall be determined to be an Approved Claim unless it is postmarked or faxed to the Settlement Administrator by the Claims Deadline. Any Claim Form that is not timely submitted (by fax header or postmark) shall be denied, and no money will be received by a Settlement Class Member submitting an untimely Claim Form.

i. **Claims Process/Approved Claim Determinations.** The Settlement Administrator shall apply the terms of this Agreement and the requirements set forth in the Claim Form. An “Approved Claim” means a Claim Form submitted by a Settlement Class Member to the Settlement Administrator that is: (i) received by the Settlement Administrator or postmarked or faxed on or before the Claims Deadline; (ii) fully and truthfully completed by a Settlement Class Member with all information requested in the Claim Form, and in accordance with the instructions set forth on the Claim Form (the name and facsimile number provided by the Settlement Class Member must substantially match the information in the Fax Logs); (iii) signed by the Settlement Class Member; and (iv) approved by the Settlement Administrator pursuant to the provisions of this Agreement as a valid claim eligible to receive payment from the Settlement Fund under the Agreement and the Final Approval Order. No Claim Form will be approved unless the Settlement Administrator can positively determine that the claimant is identified in the Fax Logs as having been successfully sent the Fax. Any Claim Form submitted that does not meet the requirements of this Agreement shall not be eligible to be deemed an Approved Claim. The Settlement Administrator also shall employ reasonable procedures to

screen claims for abuse, fraud, or duplication, and shall deny Claim Forms where, in the judgment of the Settlement Administrator, there is sufficient evidence of abuse, fraud, or duplication. The Settlement Administrator shall have the right to request reasonable additional information from the Parties or any Settlement Class Member who submits a Claim Form as necessary to exercise its duties. The Parties, the Released Parties (defined below), and their respective counsel shall have no responsibility or liability whatsoever for the Settlement Administrator's conduct, omissions, or actions. No decisions by the Settlement Administrator shall be deemed to constitute a finding, admission, or waiver by any of the Parties as to any matter of fact or law, nor shall any decisions by the Settlement Administrator be deemed as evidence having any collateral effect on any claim hereunder or in any other proceeding or before any other forum or authority. Further, such decisions shall not be submitted to or admissible in any other proceeding or before any other forum or authority.

j. **Parties' Right to Challenge Claims.** The Parties have the right to challenge Claim Forms submitted by purported Settlement Class Members. Within thirty (30) days following the Claims Deadline, the Settlement Administrator shall provide to counsel for the Parties a list of Approved Claims and a list of Claim Forms that have been rejected, including the reason for the rejection. Upon any Party's request that must be made within seven (7) days following the Parties' receipt of such lists, the Settlement Administrator will provide copies of all Claim Forms that it receives to counsel for the Parties, along with its recommendation as to whether or not each Claim Form is determined to be an Approved Claim. If there is any question related to such documentation and/or determination, either Party may request the Settlement Administrator to provide additional documentation, which request must be made within seven (7) days of receipt of the Parties' receipt of the Claim Forms and the Settlement Administrator's

recommendation. Defendants' Counsel, and Class Counsel shall each have the right to challenge the acceptance or rejection of a Claim Form submitted by purported Settlement Class Members. Any such challenge must be made within seven (7) days after the Settlement Administrator has provided the requested documentation to the Parties' Counsel. The Settlement Administrator shall follow any agreed decisions of Defendants' Counsel and Class Counsel regarding any challenged claims. To the extent Defendants' Counsel and Class Counsel are not able to agree on the disposition of a challenge, the mediator, Hon. Stuart E. Palmer, shall resolve any disputes concerning claims for which counsel cannot reach an agreement. The decision of Judge Palmer shall be final.

9. **Incentive Awards.** Class Counsel will apply to the Court for Class Representatives to be awarded \$29,000.00 (\$4,000 for Radha Geismann, M.D., P.C. and \$25,000 for John H. Lary Jr., M.D.) (the "Incentive Awards") from the Settlement Fund for representing the Settlement Class. Defendants will not oppose this request or appeal the Court's grant of such an award. The amounts awarded by the Court will be set forth in the Final Approval Order and Judgment and paid exclusively from the Settlement Fund.

10. **Attorneys' Fees and Expenses.**

a. Class Counsel will request an award for reasonable attorney's fees in an amount not to exceed one-third of the Settlement Fund (\$6,900,000.00) ("Attorneys' Fees"), plus reasonable out-of-pocket litigation expenses not to exceed \$65,000.00 ("Expenses") (collectively, "Attorneys' Fees and Expenses"). (Costs of Settlement Administration is not included in this amount.) Defendants will not take any position on this request. The amounts awarded by the Court will be set forth in the Final Approval Order and Judgment and paid exclusively from the Settlement Fund. Except for any amounts awarded by the Court pursuant to

this Paragraph or except as otherwise expressly provided in this Agreement, each Party will bear his, her or its own attorneys' fees, costs, and expenses incurred in connection with the Litigation.

b. Class Counsel Option to Receive Attorneys' Fees Payments in the Future/Hold Harmless/Indemnification. The Parties acknowledge the option of each of Class Counsel to elect to receive his law firm's share of the Attorneys' Fees awarded by the Court in the future in the form of periodic payments in lieu of a lump sum payment. This is solely for convenience of Class Counsel and does not provide Class Counsel with any ownership interest in any portion of the Settlement Fund other than the right to receive the fee payments in the future as specified in relevant assignment documents to be completed prior to the receipt of fees by Class Counsel. It does not impact Defendants' rights or obligations under this Agreement in any way and Defendants shall not have any further obligation with respect to the payment of Attorneys' Fees after making the payments to the Settlement Administrator as required in this Agreement. Such an election under this Paragraph would not change the time for any payments due to the Settlement Fund by Defendants or the amount of such payments. The Settlement Administrator will disburse the Attorneys' Fees awarded by the Court from the Settlement Fund in a timely manner as directed by Class Counsel. Defendants' obligation to fund the Settlement Fund ends with its payment to the Settlement Administrator. Defendants take no responsibility for the Settlement Administrator's or any third-party designee's actions after such payment is made. Class Counsel agree not to sue regarding, and to defend, indemnify or otherwise hold Defendants harmless from, any claims that might arise from Class Counsel's election of its option under this paragraph, including, but not limited to, any claims involving taxes or involving negligent or willful conduct by the Settlement Administrator or any third-party designee with respect to the funds at issue.

c. Class Counsel agrees to indemnify and hold harmless Defendants for any amounts paid by Defendants (including their attorneys' fees and costs) in connection with any federal, state or local tax liabilities, interest or penalties owed or alleged to be owed by Class Counsel as a result of any payments made to Class Counsel or on their behalf pursuant to this Agreement, or as a result of the deferral of any such payments.

11. **Final Approval.** The Preliminary Approval Order shall set forth a date for a final fairness hearing, at which Plaintiffs and Defendants will request that the Court enter a "Final Approval Order and Judgment" in the form attached hereto as Exhibit 4.

12. **Payments to Settlement Class Members who Submit Approved Claims.** Each Settlement Class Member who submits an Approved Claim (each, an "Approved Claimant") is entitled to receive a maximum payment of \$333.67 per fax successfully sent to them as determined by the Fax Logs. Within fourteen (14) days after the Effective Date, Defendants shall fund the Settlement Fund by paying monies sufficient to pay the costs of Settlement Administration, Approved Claims, the Attorneys' Fees and Expenses, and the Incentive Awards approved by the Court in the Final Approval Order and Judgment to the Settlement Administrator. If the total value of the payments for Approved Claims at \$333.67 per fax would exceed the maximum amount of the Settlement Fund minus the other payments required under the Agreement, then the amount paid per Approved Claim shall be reduced *pro rata* to ensure that the total amount paid does not exceed the maximum amount of the Settlement Fund. Payments for the Approved Claims shall be issued by check ("Benefit Checks") within thirty (30) days after the Effective Date, or such other date as the Court may set. Benefit Checks shall be made payable to the Approved Claimant that submitted each Approved Claim, and shall be mailed to those Approved Claimants via first-class mail. All Benefit Checks issued will state on

their face that the check will expire and become null and void unless cashed within ninety (90) days after the date of issuance. In the event any Benefit Checks are not cashed within ninety (90) days after the date of issuance, the funds for such uncashed checks will be returned to Defendants in the manner agreed by Defendants.

13. **Release of Claims.**

a. **“Released Claims”** shall mean any and all claims, liabilities, demands, causes of action, disputes, controversies, contentions, debts, rights, obligations, duties, promises, covenants, damages, losses, penalties, expenses, costs, fees (including attorneys’ fees) or lawsuits of the Releasing Parties (defined below), including any Unknown Claims (defined below), whether accrued or unaccrued, whether fixed or contingent, whether suspected or unsuspected, whether foreseen or unforeseen, whether known or unknown, whether based in common law, statute or other codified law, contract, equity, or of any other type or form, whether under federal, state or local statute, regulation, ordinance or other law, and whether brought in an individual, representative, or any other capacity, of every nature and description whatsoever that were brought in the Litigation or could have been brought in the Litigation arising out of or relating in any way to the Fax, including but not limited to any actual or alleged TCPA violation or violation of any other federal, state or local statute, regulation, ordinance or other law related to faxes or telemarketing, damages, attorneys’ fees, litigation expenses and costs associated with, or potentially recoverable in the Litigation. This release will not release claims related to faxes other than the Fax.

b. **“Released Parties”** means Rexall, Rexall Sundown, Inc., Rexall Sundown 3001, LLC, The Nature’s Bounty Co. (formerly known as NBTY, Inc.), United States Nutrition, Inc. (collectively, the “Rexall Entities”), CCG, entities in which the Rexall Entities or CCG have

a controlling interest, Healthcare Data Experts, SK&A, Odyssey Services, and any other person or entity who sent or otherwise was involved with the Fax, as well as each, any and all of the foregoing's respective predecessors, successors, assigns, parent companies, affiliates, subsidiaries, divisions, holding companies, employees, agents, servants, trustees, contractors, sub-contractors, vendors, lead generators, telemarketers, consultants, buyers, marketing partners, insurers, reinsurers, underwriters, members, managers, directors, officers, attorneys, shareholders, legal or other representatives, and assigns.

c. **“Releasing Parties”** means: (a) Plaintiffs; (b) Settlement Class Members; (c) to the extent that Plaintiffs or a Settlement Class Member is not an individual, all of its present former, and future predecessors, successors, assigns, parents, subsidiaries, and affiliates, and all employees, agents, representatives, consultants, independent contractors, insurers, directors, officers, partners, principals, members, attorneys, and shareholders of any of the foregoing; and (d) to the extent that Plaintiffs or a Settlement Class Member is an individual, any present, former, and future heirs, devisees, beneficiaries, executors, estates, administrators, trustees, representatives, agents, attorneys, partners, successors, predecessors and assigns of each of them, and any other representative of any of the foregoing.

d. **“Unknown Claims”** means claims that could have been raised in the Litigation and that Plaintiffs, any Settlement Class Member, or any of the Releasing Parties, do not know or suspect to exist, which, if known by him, her or it, might affect his, her or its agreement to release the Released Parties or the Released Claims or might affect his, her or its decision to agree, to object or not to object to the Settlement.

e. **Scope of Release.** Upon the Effective Date, all Releasing Parties will be deemed to have, and by operation of the Judgment will have, fully, finally, and forever released, relinquished, and discharged the Released Parties from all Released Claims.

Upon the Effective Date, Plaintiffs, Settlement Class Members, and the Releasing Parties shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Upon the Effective Date, Plaintiffs, Settlement Class Members, and the Releasing Parties each shall be deemed to have, and shall have, waived any and all provisions, rights and benefits conferred by any law of any state, the District of Columbia or territory of the United States, by federal law, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to Section 1542 of the California Civil Code. Plaintiffs, Settlement Class Members, and the Releasing Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but that it is their intention to finally and forever settle and release the Released Claims, notwithstanding any Unknown Claims they may have, as that term is defined in Paragraph 13(d) above.

Upon entry of the Effect Date, all Releasing Parties are hereby barred from bringing any action against any of the Released Parties for any of the Released Claims.

14. **Releasing Parties Enjoined.** On the Effective Date, all Releasing Parties will be forever barred and permanently enjoined from (a) directly, indirectly, representatively or in any other capacity, filing, commencing, prosecuting, continuing, litigating, intervening in, participating in as class members or otherwise, or receiving any benefits or other relief from any other lawsuit, any other arbitration, or any other administrative, regulatory, or other proceeding against any of the Released Parties, about or involving the Released Claims, and (b) filing, commencing, or prosecuting any other lawsuit as a class action against any of the Released Parties (including by seeking to amend a pending complaint to include class allegations or by seeking class certification in a pending action in any jurisdiction) on behalf of Settlement Class Members if such other lawsuit is based on or arises from the Released Claims.

15. **Cooperation.** Plaintiffs and Defendants agree to cooperate fully with one another to effect the consummation of this Agreement and to achieve the Settlement provided for herein.

16. **Termination of the Agreement.**

a. Any Party shall have the right, but not the obligation, to unilaterally terminate this Agreement (and the Settlement) within fourteen (14) days of any of the following occurrences:

i. the Court rejects, materially modifies, materially amends or changes, or declines to issue a Preliminary Approval Order or a Final Approval Order and Judgment with respect to the Agreement;

ii. an appellate court reverses the Final Approval Order and Judgment, and the Agreement is not reinstated without material change by the Court on remand;

iii. any court deletes or strikes from, or modifies, amends, or changes, the Preliminary Approval Order, the Final Approval Order and Judgment, or the Agreement in a way

that Plaintiffs or Defendants reasonably consider material, unless such modification or amendment is accepted in writing by all Parties;

- iv. the Effective Date set forth in the Agreement does not occur; or
- v. more than five percent (5%) of the Settlement Class opts out.

b. Any of Plaintiffs or Defendants shall also have the right to terminate the Agreement within fourteen (14) days prior to the date for the final fairness hearing set forth in the Preliminary Approval Order.

c. Notwithstanding the foregoing, neither Plaintiffs nor Class Counsel shall have any right to terminate the Agreement in the event the Court declines Plaintiffs' and/or Class Counsel's requests for Attorneys' Fees, Expenses and/or Incentive Awards, or awards less than the amounts sought. However, Plaintiffs shall have the right to appeal the denial of its requests for Attorneys' Fees, Expenses and/or Incentive Awards.

d. In order to exercise his, her, or its right to terminate this Agreement, the terminating Party must timely serve written notice of his, her, or its election to do so, which states the basis for the termination ("Termination Notice"), on counsel of record for all other Parties hereto. A Party's termination of this Agreement is effective only if and when notice of same is timely served on counsel of record for the Parties.

e. In the event this Agreement is terminated, then:

- i. the certification of the Settlement Class and any other judgment or order entered by the Court in the Litigation will be void and deemed vacated, *nunc pro tunc*, and without prejudice to Defendants' right to contest class certification and all other rights and defenses;

ii. the Parties agree to dismiss the Litigation without prejudice and to take all steps necessary to effectuate such dismissal; and

iii. the Parties shall be restored to their respective positions prior to its dismissal *status quo ante* as if this Agreement had never been entered into, except for any provisions of this Agreement that expressly survive termination.

f. Any Party that terminates this Agreement pursuant to Paragraph 16(b) shall be obligated to pay all costs and fees incurred by the Settlement Administrator.

17. **No Appeal of Final Approval Absent Substantive Change.** Plaintiffs and Defendants may not appeal any order or judgment from the court granting Final Approval of this Agreement unless such order or judgment substantively changed this Agreement.

18. **Notices.** Any notices required to be served pursuant to this Agreement shall be addressed as follows:

If to Plaintiffs, Class Counsel, and/or the Settlement Class:

Max G. Margulis
28 Old Belle Monte Rd.
Chesterfield, MO 63017
maxmargulis@margulislaw.com

If to Rexall:

Lauri A. Mazzuchetti
Kelley Drye & Warren LLP
One Jefferson, 2nd Floor
Parsippany, NJ 07054
lmazzuchetti@kelleydrye.com
wsmith@kelleydrye.com
dsuden@kelleydrye.com

If to CCG:

Matthew J. Fedor
Drinker Biddle & Reath LLP
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Florham Park, NJ 07932
matthew.fedor@dbr.com
andrew.vanhouter@dbr.com

19. **Court Submission.** Class Counsel will submit this Agreement and the exhibits hereto, along with such other supporting papers as may be appropriate, to the Court for preliminary approval.

20. **Headings.** Headings contained in this Agreement are for convenience of reference only and are not intended to alter or vary the construction and meaning of this Agreement.

21. **Binding and Benefiting Others.** This Agreement and the Settlement shall be binding upon and inure to the benefit of the Parties, and to their respective present, former, or future agents, insurers, representatives, employees, directors, officers, shareholders, attorneys, parents, subsidiaries, affiliates, successors and assigns.

22. **Warranties.** The Parties each represent, warrant, and agree that, in executing this Agreement, they do so with full knowledge of any and all rights they may have with respect to the claims released in this Agreement, and that they have received independent legal counsel from their attorneys with regard to the facts involved and the controversy herein compromised and with regard to their rights arising out of such facts. Each of the individuals executing this Agreement warrants that he or she has the authority to enter into this Agreement and to legally bind the Party(ies) for which he or she is signing. Plaintiffs represent and warrant that they have not assigned any claim or right or interest relating to any of the Released Claims against the Released Parties to any other person or entity, and that they are fully authorized to release same.

23. **Governing Law.** The contractual terms of this Agreement shall be interpreted and enforced in accordance with the substantive law of the State of Missouri, without regard to its conflict of laws or choice of law provisions.

24. **Mutual Interpretation.** The Parties agree and stipulate that the Settlement was negotiated on an “arm’s-length” basis between parties of equal bargaining power. Class Counsel and Defendants’ counsel have drafted the Agreement jointly. Accordingly, this Agreement is not

one of adhesion, is mutually created, and no ambiguity shall be strictly construed in favor of or against any of the Parties.

25. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument. Facsimile signatures are acceptable for the execution of this Agreement. An electronic or digital copy of an original shall be deemed to be as valid and enforceable as original ink signatures.

26. **Severability.** Subject to the Parties' rights in Paragraph 16, in the event any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions if the Parties and their counsel mutually elect by written stipulation to be filed with the Court within twenty (20) days to proceed as if such invalid, illegal, or unenforceable provisions had never been included in this Agreement.

27. **No Admissions/Use in Other Proceedings.**

a. This Agreement and the Term Sheet are the result of a compromise resolution of disputed claims, defenses, and other issues that are contested. The Parties have entered into this Agreement for purposes of resolving all disputes between Plaintiffs and the Settlement Class on the one hand, and Defendants on the other hand, with respect to the Released Claims and intend the Settlement to be a final and complete resolution of all Released Claims.

b. Regardless of whether the Effective Date occurs or this Agreement is terminated, nothing in this Agreement, the Term Sheet or any act performed or document executed pursuant to or in furtherance of this Agreement, the Term Sheet or the Settlement is, may be deemed to be, or may be used as an admission, concession, or evidence of any liability, fault or wrongdoing

on the part of Defendants, the validity or value of any Released Claims, the truth of any allegations by either party against the other party, the propriety of class certification on a contested basis, or the validity or deficiency of any substantive, procedural or equitable defense that was or could have been asserted by Defendants in the Litigation or in any civil, criminal, or administrative proceeding in any court, administrative agency or other tribunal.

c. If the Effective Date occurs, any Party to this Agreement may file this Agreement and/or the Judgment in any action that may be brought against it in order to support any defense or counterclaim, including without limitation those based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, accord and satisfaction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

d. If this Agreement terminates, it may not be used in any civil, criminal, or administrative proceeding in any court, administrative agency or other tribunal, except to enforce any terms that survive termination.

28. **Confidential Information.** All agreements made and orders entered during the course of the Litigation and any other legal proceedings relating to the confidentiality of information remain in full force and effect.

29. **Written Agreement.** This Agreement shall not be orally modified in any respect and can be modified only by the written agreement of the Parties supported by adequate consideration as confirmed in writing.

30. **Publicity.** The Parties agree there will be no press or media release or statements made regarding this Agreement and/or the Settlement other than the Class Notice set forth in this Agreement and the Preliminary Approval Order. Neither the Parties nor their counsel will initiate contacts with the media or persons or entities in the Settlement Class regarding the Class

Notice or the Settlement. If any Party or attorney is contacted by a member of the press, or other person seeking a comment on the Settlement (other than a person or entity in the Settlement Class), the Party or attorney will refer the inquiring party to the Class Notice, the Preliminary Approval Order and/or the Settlement Administrator. This Paragraph does not prohibit the Parties' counsel from stating that they served as counsel in this litigation. This Paragraph does not prohibit the Parties from disclosing the existence or terms of the Settlement to: (a) the court in this and other actions; (b) the Settlement Class via Class Notice; (c) the Parties' attorneys, accountants, auditors, tax preparers/advisors, financial advisors, financial institutions, current or prospective insurers, current or prospective lenders, and lienholders; or (d) as may be required by law or court order. If this Agreement is approved by the Court, this Paragraph does not prohibit Defendants from disclosing the Agreement in any action that may be brought against any of Defendants in order to support a defense or counterclaim, including without limitation those based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, accord and satisfaction, any other theory of claim preclusion or issue preclusion, or similar defense or counterclaim.

31. **Survival.** This Paragraph and Paragraphs 2(c), 16(e) and (f), 27, 28, and 30 survive any termination of this Agreement.

32. **Taxes.** Plaintiffs, the Settlement Class Members, and Class Counsel, as applicable, are solely responsible for any federal, state or local tax liabilities, interest, or penalties, if any, incurred by any of them as a result of any payments made to any of them or on their behalf pursuant to this Agreement or the Settlement, or as a result of the deferral of any such payments.

33. **Partial Stay of Proceedings in the Litigation.** The Parties agree to stay all proceedings and deadlines in the Litigation except for any proceedings and deadlines necessary to implement this Agreement, including but not limited to the filing of motions for preliminary approval and/or final approval of this Agreement while the Settlement remains pending.

34. **Computing deadlines.** All references to “days” shall be to “calendar” days. When counting days (a) exclude the day of the event that triggers the period; (b) count every day, including intermediate Saturdays, Sundays, and legal holidays; and (c) include the last day of the period, but if the last day 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.

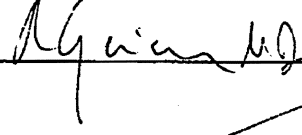
35. **Continuing Jurisdiction.** Without affecting the finality of the final judgment, and unless the Agreement and the Settlement is terminated, the Court shall retain continuing jurisdiction over the Litigation and the Parties, including the Settlement Class Members, the administration and enforcement of this Agreement and the Settlement, and the benefits to the Settlement Class Members hereunder, including for such purposes as supervising the implementation, enforcement, construction, and interpretation of this Agreement, the order preliminarily approving the Settlement, and the Final Approval Order and Judgment, and hearing and determining an application by Class Counsel for an award of fees and expenses. Any dispute or controversies arising with respect to the interpretation, enforcement, or implementation of the Agreement shall be presented by motion to the Court.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the date set forth underneath their respective signatures.

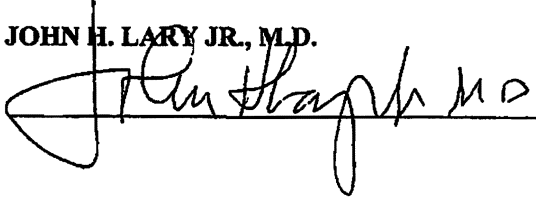
PLAINTIFFS

(on behalf of themselves and the putative Settlement Class)

RADHA GEISMANN, M.D., P.C.



JOHN H. LARY JR., M.D.



CLASS COUNSEL:

MAX G. MARGULIS, on behalf of Plaintiff's Counsel



**MARGULIS LAW GROUP
ANDERSON + WANCA
BELLIN & ASSOCIATES, LLC**

DEFENDANTS

REXALL, INC.

By: _____

Its: _____

**CORPORATE MAILINGS, INC. d/b/a CCG
MARKETING SOLUTIONS**

By: _____

Its: _____

REXALL'S COUNSEL

KELLEY DRYE & WARREN LLP

By: _____

Its: _____

CCG'S COUNSEL

DRINKER BIDDLE & REATH LLP

By: _____

Its: _____

PLAINTIFFS

(on behalf of themselves and the putative Settlement Class)

RADHA GEISMANN, M.D., P.C.

JOHN H. LARY JR., M.D.

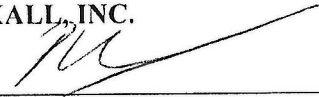
CLASS COUNSEL:

MAX G. MARGULIS, on behalf of Plaintiff's Counsel

**MARGULIS LAW GROUP
ANDERSON + WANCA
BELLIN & ASSOCIATES, LLC**

DEFENDANTS

REXALL, INC.

By: 

Its: STRATIS PHILIPPOS
SVP GENERAL COUNSEL & SECRETARY

**CORPORATE MAILINGS, INC. d/b/a CCG
MARKETING SOLUTIONS**

By: _____

Its: _____

REXALL'S COUNSEL

KELLEY DRYE & WARREN LLP

By: 

Its: Partner

CCG'S COUNSEL

DRINKER BIDDLE & REATH LLP

By: _____

Its: _____

PLAINTIFFS

(on behalf of themselves and the putative Settlement Class)

RADHA GEISMANN, M.D., P.C.

JOHN H. LARY JR., M.D.

CLASS COUNSEL:

MAX G. MARGULIS, on behalf of Plaintiff's Counsel

**MARGULIS LAW GROUP
ANDERSON + WANCA
BELLIN & ASSOCIATES, LLC**

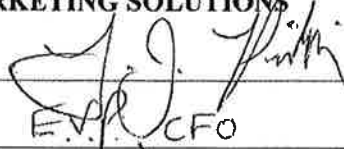
DEFENDANTS

REXALL, INC.

By: _____

Its: _____

**CORPORATE MAILINGS, INC. d/b/a CCG
MARKETING SOLUTIONS**

By:  _____

Its: E.V. CFO _____

REXALL'S COUNSEL

KELLEY DRYE & WARREN LLP

By: _____

Its: _____

CCG'S COUNSEL

DRINKER BIDDLE & REATH LLP

By: Matthew Fedor _____

Its: Partner _____