

C A N A D A

PROVINCE OF QUEBEC

DISTRICT OF MONTREAL

SUPERIOR COURT

(Class Action)

N<sup>o</sup>.: 500-06-000577-110

**YAFFA TEGEGNE**

Petitioner

vs.

**HENKEL CONSUMER GOODS CANADA  
INC. (the successor of which is Henkel Canada  
Corporation)**

-and-

**THE DIAL CORPORATION (the successor of  
which is Henkel Consumer Goods Inc.)**

Respondents

(collectively, the “Parties”)

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**CANADIAN CLASS ACTION SETTLEMENT AGREEMENT**

**Made at Toronto as of the 16th day of October, 2020**

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## RECITALS

A. WHEREAS the Petitioner has alleged that: (i) the Respondents marketed and sold Dial Complete using false or misleading advertisements and representations regarding the hand soap's efficacy at eliminating germs and bacteria; and (ii) Dial Complete contains an amount of triclosan exceeding the maximum amount permitted by Health Canada;

B. AND WHEREAS the Petitioner has alleged that, by reason of these actions, the Respondents have charged consumers a premium price for Dial Complete over and above the cost of regular soap, causing the Petitioner and other members of the proposed class to suffer economic damages;

C. AND WHEREAS the Petitioner asserts various claims in this Action against the Respondents, including claims that the Respondents engaged in unfair, false, misleading or deceptive acts or practices regarding the marketing and sale of Dial Complete;

D. AND WHEREAS the Petitioner is seeking compensatory and punitive damages, as well as injunctive relief to prohibit the Respondents from: (i) continuing the alleged misrepresentations; and (ii) selling Dial Complete with triclosan exceeding 0.3%;

E. AND WHEREAS the Respondents deny all of the allegations in this Action and assert numerous defences to the claims alleged by the Petitioner;

F. AND WHEREAS the Parties have engaged in extensive arms-length settlement negotiations and have now reached an agreement providing for a national, class-wide settlement of this Action and a release of the Released Claims by the Settlement Class;

G. AND WHEREAS the Petitioner and Class Counsel have examined and considered the benefits to be provided to the Class under the Settlement provided for in this Agreement and the claims and defences that could be asserted regarding Dial Complete, and have concluded that the Agreement is in the best interest of the Class, taking into account the risks of litigation, and the length of time required to complete the litigation and any appeals;

H. AND WHEREAS the Respondents have at all times disputed, and continue to dispute, the allegations in the Action and to deny any liability for any of the claims that have or could have been raised regarding Dial Complete, or the marketing and sale of Dial Complete, by the Petitioner or the Class;

I. AND WHEREAS the Respondents nevertheless believe that the comprehensive resolution of the disputed issues relating to Dial Complete, or the marketing and sale of Dial Complete, as provided for in this Agreement will avoid the substantial expense and disruption of continued litigation;

J. AND WHEREAS on January 1, 2018 the Respondent Henkel Consumer Goods Canada Inc. was amalgamated with Henkel Canada Corporation and Henkel Canada Corporation is the successor to Henkel Consumer Goods Canada Inc.;

K. AND WHEREAS on January 1, 2018 the Respondent The Dial Corporation was merged into Henkel Consumer Goods Inc. and Henkel Consumer Goods Inc. is the successor to The Dial Corporation;

L. AND WHEREAS all Parties wish now to compromise their differences and achieve peace with finality on the issues in dispute;

NOW, THEREFORE, in consideration of all of the terms, conditions, covenants, and promises set forth herein, and subject to Court approval, the Parties agree as follows:

## **SECTION 1 – DEFINITIONS**

1.1 **“Action”** means this putative class proceeding file no. 500-06-000577-110 commenced by the Petitioner against the Respondents in the Superior Court of Quebec in the judicial District of Montreal.

1.2 **“Administration Expenses”** means reasonable fees and expenses incurred by the Settlement Administrator for administering the Settlement, including, without limitation, the preparation, translation and publication of notices, the establishment of bilingual telephone and website services and related staffing, the evaluation of Claim Forms, the preparation of status reports to the Parties, the preparation of tax returns for any Settlement bank accounts, and the distribution of Settlement Payments to Eligible Claimants.

1.3 **“Agreement”** means this Canadian Class Action Settlement Agreement and the Recitals and Exhibits hereto.

1.4 **“Authorization and Approval Hearing Order”** means a Court order authorizing this Action for settlement purposes only and approving the Notice of Authorization and Approval Hearing, in the form attached as Exhibit “A”.

1.5 **“Claim”** or **“Claims”** means any and all past, present, future or potential claims of any nature whatsoever, including without limitation any claims, demands, cross-demand, losses, suits, proceedings, payment of obligations, damages, adjustments, executions, offsets, actions, causes of action, costs, defenses, debts, sums of money, assertions of rights, accounts, reckonings, bills, bonds, covenants, contracts, controversies, agreements, promises, expenses (including without limitation court costs, legal fees and disbursements), requests for relief of any kind, statutory or regulatory obligations, judgments or any liabilities of any nature whatsoever, known or unknown, anticipated or unanticipated, fixed or contingent, matured or un-matured, accrued or un-accrued, personal or representative, derivative or subrogated, direct or indirect, and which have been, could have been, or may be asserted by or on behalf of any

person. Claim shall not include any claim for bodily injury allegedly suffered in connection with the Dial Complete.

1.6 “**Claim Deadline**” means 11:59 pm on the date that is 75 Days after the Settlement Approval Order, by which time and date the Claim Form must have been submitted online at the Settlement Website or mailed and postmarked to the Settlement Administrator.

1.7 “**Claim Form**” means a form substantially identical in all material respects to the Claim Form attached hereto as Exhibit “B”, which may be used by Settlement Class Members for submitting a Settlement Claim pursuant to Section 13 of this Agreement.

1.8 “**Claims Period**” means the period between the date on which the Notice of Settlement Approval is first published in accordance with the Authorization and Approval Hearing Order and the Claim Deadline.

1.9 “**Claims Process**” means the process that Settlement Class Members must follow to seek relief in accordance with Section 13 of the Agreement.

1.10 “**Class**” means all persons resident in Canada who have purchased Dial Complete in Canada on or before the Class Notice Date.

1.11 “**Class Counsel**” means Consumer Law Group Inc.

1.12 “**Class Counsel Fee**” means the amount of **CAD \$265,000.00**, plus applicable taxes, which amount must be approved by the Court at the Settlement Approval Hearing and is to be paid to Class Counsel on account of all fees, costs and disbursements in connection with this Action, including, without limitation, any future fees, costs or disbursements to be incurred in connection with monitoring the Settlement during the Settlement administration process.

1.13 “**Class Member**” means an individual member of the Class.

1.14 “**Class Notice Date**” means the date that the Notice of Authorization and Approval Hearing is first published in accordance with the Notice Plan.

1.15 “**Common Issue**” means the issue of when Dial Complete was first marketed in Canada.

1.16 “**Court**” means the Superior Court of Quebec.

1.17 “**Day**” means a calendar day, unless otherwise expressly noted.

1.18 “**Defence Counsel**” means the law firm of McMillan LLP.

1.19 “**Dial Complete**” means DIAL COMPLETE® antibacterial soap formulated with the active ingredient triclosan and/or using the “Kills 99.99% of Germs” advertising claim.

1.20 “**Eligible Claimant**” means a Settlement Class Member who has timely submitted a Claim Form deemed valid by the Settlement Administrator.

1.21 “**Excluded Costs**” means any fees, disbursements, costs or expenses incurred by, on behalf of or at the direction of the Petitioner or Class Counsel in: (a) responding to inquiries about the Settlement, this Agreement, or the Action; (b) defending this Agreement or the Settlement against any challenge to it, including any objection by any Class Member or any other person; (c) defending against any challenge to any order or judgment entered pursuant to the Settlement and this Agreement; and/or (d) completing the Claims Process.

1.22 “**Final Order**” means a Settlement Approval Order in respect of which the time to appeal has expired without any appeal having been taken, or in respect of which there has been a final disposition of all appeals without any reversal or amendment of the Settlement Approval Order.

1.23 “**Final Order Date**” means the date on which a Settlement Approval Order becomes a Final Order.

1.24 “**Injunctive Relief**” means the injunctive relief to which the parties have agreed in Section 10 below.

1.25 “**Irrevocable Agreement Date**” means the 17<sup>th</sup> Day after delivery of the Threshold Notification to the Respondents.

1.26 **“Notice of Authorization and Approval Hearing”** means the notice in the form attached hereto as Exhibit “C” which informs the Settlement Class of: (i) the authorization of the Proceedings; (ii) the date and location of the Approval Hearing; (iii) the principal elements of this Settlement Agreement; (iv) the process by which they may opt out of the Proceedings; and (v) the Opt Out Deadline.

1.27 **“Notice of Denied Claim”** means a notice in the form attached hereto as Exhibit “D”.

1.28 **“Notice Plan”** means the plan for providing class-wide notice, attached hereto as Exhibit “E”.

1.29 **“Notice of Settlement Approval”** means the notice in the form attached hereto as Exhibit “F”, which informs the Settlement Class that the Court has approved the Settlement.

1.30 **“Opt-Out Deadline”** means 11:59 pm on the date that is 45 days after the Class Notice Date, by which time and date the Opt-Out Form must have been submitted online at the Settlement Website or mailed and postmarked to the Settlement Administrator.

1.31 **“Opt-Out Form”** means a document in the form attached hereto as Exhibit “G”, or one that strictly complies with Section 5.4 of this Agreement.

1.32 **“Opt-Out List”** means the complete and accurate list compiled by the Settlement Administrator of all Class Members who have timely and validly opted out of the Settlement in accordance with the terms of this Agreement.

1.33 **“Opt-Out Threshold”** means the specific number of opt outs agreed upon pursuant to Section 6.3 that will trigger the Respondents’ right to terminate this Agreement pursuant to Section 6.5.

1.34 **“Petitioner”** means Yaffa Tegegne.

1.35 **“Released Claims”** means any and all past, present, future or potential Claims of any nature whatsoever, including without limitation any claims, demands, cross-demands, losses, suits, proceedings, payment of obligations, damages, adjustments, executions, offsets, actions,



causes of action, costs, defenses, debts, sums of money, assertions of rights, accounts, reckonings, bills, bonds, covenants, contracts, controversies, agreements, promises, expenses (including without limitation court costs, legal fees and disbursements), requests for relief of any kind, statutory or regulatory obligations, judgments or any liabilities of any nature whatsoever, known or unknown, anticipated or unanticipated, fixed or contingent, matured or un-matured, accrued or un-accrued, direct or indirect, that the Petitioner, the Settlement Class, and/or any of the Settlement Class Members ever had, now have, or may later claim to have at any time in the future against the Releasees, whether known or unknown, arising out of or in any way relating to Dial Complete, the marketing and sale of Dial Complete, or the use of Tricolosan in Dial Complete, including without limitation any and all Claims for breach of contract, breach of express or implied warranty, redhibition, rescission, tort, strict liability, products liability, negligence, negligent misrepresentation, violations of the *Competition Act*, violations of federal or provincial consumer protection and other statutory laws, declaratory relief, injunctive relief, unjust enrichment, waiver of tort, and/or fraud. The Released Claims include all known and unknown claims, actions, and causes of action, and this Agreement is expressly intended to cover and include all such claims, actions, and causes of action, for losses or damages of any type. Specifically excluded from this release is any claim for bodily injury allegedly suffered in connection with Dial Complete.

1.36 **“Releasees”** means the Respondents and their respective present and former parents, subsidiaries, divisions, affiliates, partners, directors, officers, employees, servants, agents, representatives, shareholders, suppliers, distributors, dealers and sales branches, and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of all of the foregoing, together with the underwriters and insurers of any Releasee.

1.37 **“Releasers”** means any and all members of the Settlement Class, any person who may be entitled to make any subrogated, derivative or other claim pursuant to any contract, law or statute based upon any relationship with a Settlement Class Member, any person or organization deemed to be a Releaser by operation of this Agreement, and the respective successors, heirs, beneficiaries, next of kin, executors, administrators and assigns of any of the foregoing.

1.38 “**Respondents**” means Henkel Consumer Goods Canada Inc. and The Dial Corporation and includes their respective successors Henkel Canada Corporation and Henkel Consumers Goods Inc.

1.39 “**Request for Settlement Funds**” means a written request by the Settlement Administrator to the Respondents for delivery of the Settlement Funds, which request includes a list of all Eligible Claimants and the amount of each Eligible Claimant’s Settlement Payment.

1.40 “**Settlement**” means the Settlement provided for in this Agreement.

1.41 “**Settlement Administrator**” means Angeion Group, which has been or will be retained to implement the Notice Plan and administer the Settlement under this Agreement.

1.42 “**Settlement Approval Hearing**” means the hearing by the Court to determine whether this Settlement is fair and reasonable, to approve the Notice of Settlement Approval, and to approve the Class Counsel Fee.

1.43 “**Settlement Approval Hearing Date**” means the date for the Settlement Approval Hearing that is fixed by the Court.

1.44 “**Settlement Approval Order**” means an order approving the Settlement and the Notice of Settlement Approval, in the form attached as Exhibit “H”.

1.45 “**Settlement Claim**” or “**Settlement Claims**” means the timely submission of a fully and properly completed Claim Form(s) to the Settlement Administrator.

1.46 “**Settlement Class**” means all members of the Class who do not validly opt out of this Settlement in accordance with the terms of this Agreement.

1.47 “**Settlement Class Members**” means the members of the Settlement Class, but does not include: (i) any appointees, assignees, claims brokers, claims filing services, claims consultants or third-party claims organizations; (ii) officers, employees and appointees of the Court; (iii) officers, directors, employees, contractors, agents and representatives of the Respondents; or (iv) Class Counsel

1.48 “**Settlement Funds**” means the total sum of all Settlement Payments (plus the amount of all deductions required by Article 1(3) of the Regulation referred to in Section 11.2 of this Agreement) up to a maximum amount of **CAD \$172,000.00**.

1.49 “**Settlement Payment**” means a payment sent via PayPal by the Settlement Administrator to an Eligible Claimant in an amount equal to CAD \$0.36 times the number of bottles of Dial Complete purchased by the Eligible Claimant in Canada before the Class Notice Date up to a maximum of 30 bottles, *subject to the limitations set out in Section 12 and subject to any deduction required by Article 1(3) of the Regulation referred to in Section 11.2 of this Agreement*.

1.50 “**Threshold Notification**” means a notice from the Settlement Administrator to the Parties that includes the Opt-Out List.

1.51 “**Threshold Notification Date**” means the 7th day after the Opt-Out Deadline.

1.52 “**US Settlement Agreement and Release**” means the class action settlement agreement and release dated December 27, 2018 made in the context of litigation styled as, *In Re: Dial Complete Marketing and Sales Litigation* (MDL No. 2263) in the United States District Court for the District of New Hampshire.

1.53 “**Settlement Website**” means a website having the domain name [www.soapsettlement.ca](http://www.soapsettlement.ca).

## **SECTION 2 – PURPOSE OF THIS AGREEMENT**

2.1 The purpose of this Agreement is to memorialize the terms and conditions of the Settlement through and by which the Parties wish to finally and conclusively resolve the matters at issue in the Action, including, without limitation, any and all Released Claims.

2.2 The Parties are entering into this Agreement for the purpose of compromising and settling disputed claims. This Agreement is not an admission of any wrongdoing by the Respondents, or any wrong relating to Dial Complete, or the marketing or sale of Dial Complete, or any other matter alleged in this Action.

2.3 Neither the execution of this Agreement, nor any of its provisions or attachments, nor any action taken pursuant to its terms shall, in this Action or in any other action or proceeding, be construed or considered as evidence of an admission by the Respondents of the validity of any Claim that has or could have been made by the Petitioner, the Class, or any Class Member. The Respondents specifically deny that: (i) they marketed and sold Dial Complete through the use of false or misleading advertisements and representations regarding the hand soap's efficacy at eliminating germs and bacteria; and (ii) that the amount of triclosan in Dial Complete violates Health Canada's Cosmetic Ingredient Hotlist. This Agreement, however, may be admitted as evidence in any action to enforce its terms.

2.4 This Agreement and the Settlement provided for herein, and any proceedings taken pursuant thereto, are not, and should not in any event be, offered, received, or construed as evidence of, a presumption of, concession of, or an admission by any Party whatsoever, including without limitation in respect of any of the following:

- a) the liability or non-liability of any person, including without limitation any Releasee or any Party;
- b) the suitability or unsuitability for authorization of any litigation class whatsoever;
- c) the extent to which any claim against the Releasees could satisfy the requirements for authorization of a litigation class if authorization were contested; or
- d) the making of any alleged misrepresentation or omission in any statement or written document approved or made by any Releasee or Party.

2.5 Notwithstanding section 2.4, reference may be made to this Agreement and the Settlement provided for herein in such proceedings as may be necessary to effectuate the provisions of this Agreement, as further set forth in this Agreement.

### **SECTION 3 – AUTHORIZATION FOR SETTLEMENT PURPOSES**

3.1 For the purposes of implementing this Agreement, and for no other purpose, the Respondents consent to the conditional authorization of the Class, as set forth in the Settlement Approval Order, on the terms and conditions of this Agreement.

3.2 Neither the authorization of a Class pursuant to the terms of this Agreement nor the statement of the Common Issue shall constitute, or be construed as, an admission on the part of the Respondents that this Action, or any other proposed class action, is appropriate for authorization as a litigation class under any applicable law, or that the Common Issue or any other common issue is appropriate for authorization on a contested basis in this Action or on any basis in any other proceeding.

#### **SECTION 4 – REQUIRED EVENTS**

4.1 Upon execution of this Agreement, the Petitioner will seek Court approval of the Notice of Authorization and Approval Hearing. If said notice is issued without amendment, as soon as practicable thereafter the Settlement Administrator will arrange for publication of the Notice of Authorization and Approval Hearing in accordance with the Notice Plan and Class Counsel will publish it on its own website.

4.2 The Respondents will ensure that this Agreement, as well as the Exhibits and relevant notices, are translated into French prior to the filing of the application to approve the Notice of Authorization and Approval Hearing. In the event of any conflict between the French and English versions of this Agreement or any Exhibit, however, the English version shall prevail.

4.3 The Petitioner shall forthwith after the Irrevocable Agreement Date move before the Court for the Settlement Approval Order. Said Application will be served by Class Counsel on the *Fonds d'aide aux actions collectives* in accordance with the provisions of the *Quebec Code of Civil Procedure*, the *Act respecting the Fonds d'aide aux actions collectives* and the *Regulation of the Superior Court in Civil Matters* in sufficient time before the hearing.

4.4 The Parties agree that the Notice of Authorization and Approval Hearing, the Notice of Settlement Approval and the Notice Plan to be implemented pursuant to this Agreement are reasonable, constitute the best notices and notice plan practicable under the circumstances, and constitute due and sufficient notice of the Settlement and the other matters set forth in said notices to all persons entitled to receive notice, and fully satisfy the requirements of the *Code of Civil Procedure* and Canadian natural justice.

## **SECTION 5 – OPTING OUT**

5.1 Any member of the Class who wants to be excluded from the Settlement Class must deliver to the Settlement Administrator a properly completed Opt-Out Form by the Opt-Out Deadline. Opt-Out Forms will be made available by the Settlement Administrator on the Settlement Website by the Class Notice Date. Opt-Out Forms may be completed online and submitted electronically to the Settlement Administrator, or mailed to the Settlement Administrator at the address provided in the Notice of Authorization and Approval Hearing.

5.2 Any election to opt out must be exercised individually by a Class Member, not as or on behalf of a group, class, or subclass, not by any appointees, assignees, claims brokers, claims filing services, claims consultants or third-party claims organizations, except that an election to opt out may be submitted by a Class Member's counsel on an individual basis.

5.3 Any Class Member who does not submit a properly completed Opt-Out Form before the Opt-Out Deadline shall be deemed to be a member of the Settlement Class upon the expiry of the Opt-Out Deadline.

5.4 To exercise the Opt-Out right set forth in this Section 5, the Settlement Class Member must deliver a properly completed Opt-Out Form strictly in accordance with this Agreement. The Opt-Out Form must:

- a) contain the name of the Action and court file number;
- b) contain the Class Member's full name and current address;
- c) identify the name and address of the Class Member's counsel, if any;
- d) declare that the Class Member purchased Dial Complete;
- e) declare that the Class Member wants to be excluded from the Settlement Class; and
- f) be signed by the Class Member.

5.5 An Opt-Out Form will not be effective unless it is:

- a) sent by regular mail to the Settlement Administrator and postmarked by the Opt-Out Deadline; or
- b) submitted electronically through the Settlement Website and received by the Settlement Administrator by the Opt-Out Deadline.

5.6 Any Class Member who elects to opt out of the Settlement Class pursuant to Section 5 shall not be a Settlement Class Member and shall not be entitled to relief under this Agreement.

5.7 To the extent that the running of any statute of limitations, prescription period, or any other defense of lapse of time, has been suspended by operation of law as to a Class Member's Claim, the same will continue to be suspended as to any Class Member who opts out of the Settlement until 30 Days after the Settlement Administrator's receipt of the relevant Opt-Out Form, or for such longer period as the law may provide without reference to this Agreement.

5.8 Any Class Member who wishes to object to the Settlement must comply with the rules for objection set out in the Notice of Authorization and Approval Hearing

## **SECTION 6 – TERMINATION**

6.1 Subject only to Section 15.1, unless the Petitioner and the Respondents shall agree otherwise in writing, this Agreement shall be automatically terminated and shall become null and void, and no obligation on the part of any of the Parties will accrue, if: (i) the Court declines to issue the Authorization and Approval Hearing Order without amendment; (ii) the Court declines to issue the Settlement Approval Order without amendment; or (iii) the Settlement Approval Order does not become a Final Order.

6.2 The Respondents may also terminate this Agreement, in accordance with Section 6, if the Opt-Out Threshold is exceeded.

6.3 The Parties hereby confirm that they have agreed upon an Opt-Out Threshold and that the Opt-Out Threshold is confirmed in a separate document executed by Class Counsel and Defence Counsel. That document shall be delivered to the Court under seal, and shall be

treated by the Parties and the Court as strictly confidential and shall not be disclosed to any person other than the Parties and their respective Counsel.

6.4 Promptly after the Opt-Out Deadline, and in any event no later than the Threshold Notification Date, the Settlement Administrator shall deliver the Threshold Notification to Class Counsel, the Respondents and Defence Counsel.

6.5 The Respondents may elect to terminate the Agreement, in their sole and absolute discretion, if the Opt-Out Threshold is exceeded.

6.6 If the Respondents elect to exercise their right to terminate this Agreement, then the Respondents shall deliver written notice of termination to Class Counsel no later than 14 days after delivery of the Threshold Notification.

6.7 If the Respondents do not deliver a notice of termination within 14 days after receiving the Threshold Notification, this Agreement shall become fully effective and irrevocable on the Irrevocable Agreement Date.

6.8 If the Settlement is terminated automatically under Section 6.1 or by the Respondents pursuant to Section 6.5, the Respondents shall bring an application before the Court for an order:

- a) declaring the Agreement to be null and void and of no force or effect; and,
- b) setting aside the Authorization and Approval Hearing Order and the Settlement Approval Order on the basis of the termination of the Agreement.

6.9 The following terms shall apply in the event that this Agreement is automatically terminated pursuant to Section 6.1 or in the event that this Agreement is terminated by the Respondents pursuant to Section 6.5:

- a) No person or party shall be deemed to have waived any rights, claims or defences whatsoever by virtue of this Agreement, and without limiting the generality of the foregoing, the Releasees shall be deemed to have expressly reserved their right to



oppose the authorization of the Action and to argue, without limitation, that there are no common issues.

- b) Any prior authorization of the Action as a class proceeding, including the definition of the Class and the statement of the Common Issue, shall be without prejudice to any position that any person or Party may later take on any issue in the Action or any other litigation.
- c) With the exception of this Section 6.9, this Agreement shall have no further force and effect, shall not be binding on any person or Party and shall not be used as evidence or otherwise in any litigation or other proceeding, and the legal position of each Party shall be the same as it was immediately prior to the execution of this Agreement and each party may exercise its legal rights to the same extent as if this Agreement had never been executed.
- d) Without limiting the generality of the foregoing, the releases and the bar of claims provided for in Sections 7 and 16 shall be null and void and of no force and effect whatsoever.
- e) Notice of the termination shall be published on the Settlement Website within 72 hours of the termination.

## **SECTION 7 – CLAIMS BAR**

7.1 No Releasor or any legally authorized representative of a Releasor may file, commence, prosecute, intervene in, or participate as a plaintiff, claimant, or class member in any other lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction based on, relating to, or arising out of the Released Claims.

7.2 No Releasor or any legally authorized representative of a Releasor may file, commence, or prosecute any lawsuit or administrative, regulatory, arbitration, or other proceeding as a class action on behalf of any other person (including by seeking to amend a pending complaint to include class allegations or seeking class authorization in a pending action), based on, relating to, or arising out of the Released Claims.

7.3 No Releasor or any legally authorized representative of a Releasor may attempt to effect an opt out of a class of individuals in any lawsuit or administrative, regulatory, arbitration, or other proceeding based on, relating to or arising out of the Released Claims.

7.4 No Releasor may now or hereafter institute, continue, maintain or assert, either directly or indirectly, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any person who may claim contribution or indemnity, or any other claim over for relief from any Releasee in respect of any Released Claim or any matter related thereto.

7.5 Any proceeding against any Releasee related to the Released Claims shall be immediately dismissed and the Parties shall request any court in which such claim is or has been commenced to order the immediate dismissal of the same.

## **SECTION 8 - SETTLEMENT ADMINISTRATION**

8.1 The Settlement Administrator shall perform all of the functions of the Settlement Administrator under this Agreement.

8.2 Before the Class Notice Date, the Settlement Administrator shall establish a toll-free telephone number that Settlement Class Members can call and which contains recorded answers to frequently asked questions. This toll-free service shall be provided in both English and French.

8.3 Before the Class Notice Date, the Settlement Administrator shall establish the Settlement Website and publish on the Settlement Website: (i) the Agreement; (ii) the Authorization and Approval Hearing Order; (iii) the Notice of Authorization and Approval Hearing; and (iv) the Opt-Out Form.

8.4 On or before the Authorization and Approval Hearing, the Respondents will deliver to Class Counsel a signed acknowledgement by the Settlement Administrator in which it accepts and attorns to the exclusive jurisdiction of the Court in respect of any matter related to the enforcement of this Settlement Agreement.

8.5 The Settlement Administrator shall process any and all Opt-Out Forms in accordance with the terms of this Agreement and compile the Opt-Out List. The Settlement Administrator shall thereafter deliver the Threshold Notification, including the Opt-Out List, to Class Counsel and Defence Counsel on or before the Threshold Notification Date.

8.6 Promptly after the issuance of the Settlement Approval Order, the Settlement Administrator shall: (1) publish the Claim Form on the Settlement Website; (2) publish on the Settlement Website the Notice of Settlement Approval; and, (3) send a copy of the Notice of Settlement Approval by email to every Class Member who previously registered their email address on the Settlement Website.

8.7 The Settlement Website and all documents published on the Settlement Website shall be published in both English and French.

8.8 After the Claim Deadline, the Settlement Administrator shall review all Claim Forms received or postmarked before the Claim Deadline and determine whether each is either: (i) valid, as meeting the requirements of this Agreement; or (ii) invalid, as failing to meet the requirements of this Agreement.

8.9 The Settlement Administrator shall thereafter deliver to both the Respondents and Class Counsel: (i) a true and accurate list of all Settlement Class Members who submitted an invalid Claim Form; (ii) a true and accurate list of all Settlement Class Members who submitted a valid Claim Form (i.e. the Eligible Claimants), including the amount of each Eligible Claimant's Settlement Payment and the total sum of all Settlement Payments; and (iii) a Request for Settlement Funds.

8.10 Upon receipt of the Settlement Funds, the Settlement Administrator shall place the Settlement Funds in a Canadian trust account for the purpose of distributing the Settlement Payments to the Eligible Claimants on behalf of the Respondent.

8.11 After the Final Order Date, the Settlement Administrator shall promptly: (i) send a Settlement Payment via PayPal to each Eligible Claimant, using the email address provided in the Claim Form; and (ii) send a Notice of Denied Claim to each Settlement Class Member who submitted an invalid Claim Form, using the email address provided in the Claim Form.

8.12 Within 30 Days after the delivery of all Settlement Payments, the Settlement Administrator shall deliver to Defence Counsel and Class Counsel a report setting out: (i) the total number of Claim Forms received or postmarked prior to the Claims Deadline; (ii) the total number of Claim Forms deemed valid; (iii) the total number of Claim Forms deemed invalid; and (iv) the total dollar amount paid to Settlement Class Members pursuant to the Agreement. The Settlement Administrator shall also deliver to Defence Counsel all original Claim Forms deemed valid, as well as those deemed invalid, with a copy set to Class Counsel.

## **SECTION 9 – SUMMARY OF SETTLEMENT RELIEF**

9.1 This Agreement provides two forms of settlement relief: (i) Injunctive Relief; and (ii) Settlement Payments.

## **SECTION 10 – INJUNCTIVE RELIEF**

10.1 Dial shall not re-introduce triclosan as an active ingredient in Dial Complete.

10.2 Dial shall not use an advertising or labelling claim that Dial Complete “Kills 99.99% of Germs” in connection with that product as it was formulated prior to the US Settlement Agreement and Release.

10.3 The terms and requirements of the Injunctive Relief shall expire on the earlier of the following dates: (a) five years following the Final Order Date; or (b) the date upon which there are changes to any applicable statute, regulation, or other law that the Respondents reasonably believe would require modification to the labelling and marketing of Dial Complete in its current formulation required by the Injunctive Relief provisions in order to comply with the applicable statute, regulation, or law.

10.4 This Agreement does not preclude the Respondents from making further changes to the advertising and marketing of Dial Complete as the Respondents see fit, provided that those changes do not conflict with the provisions of the Agreement.

## **SECTION 11 - SETTLEMENTS PAYMENTS**

11.1 An Eligible Claimant is entitled to receive a Settlement Payment. Settlement Payments may be subject to the deduction set out immediately below and the limitations set out in Section 12.

11.2 The Settlement Payment of an Eligible Claimant residing in Quebec is governed by Article 1(3) of the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives*. Any amounts that are payable to the Fonds d'aide aux actions collectives will be deducted from the Settlement Payment owing to a Settlement Class Member. The Settlement Administrator is responsible of collecting the applicable percentage of the Settlement Payment of an Eligible Claimant residing in Quebec and remitting it to the Fonds d'aide aux actions collectives. Said Fonds shall not be entitled to any other payment whatsoever under the terms of this Agreement. Should any other amounts be owed to the Fonds, this Transaction will become null and void.

## **SECTION 12 - LIMITATIONS ON RELIEF**

12.1 If the total amount claimed by all Eligible Claimants exceeds **CAD \$172,000.00**, then each Settlement Payment will be reduced on a *pro rata* basis to ensure that the sum of all Settlement Payments (prior to deductions referred to in Section 11) does not exceed **CAD \$172,000.00**.

12.2 There may be only one Eligible Claimant per household.

## **SECTION 13 – CLAIMS PROCESS**

13.1 Every Settlement Class Member who wishes to receive a Settlement Payment must submit a Claim Form to the Settlement Administrator.

13.2 Claim Forms will be made available to Settlement Class Members by the Settlement Administrator on the Settlement Website following the Settlement Approval Order. Claim

Forms may be completed online and submitted electronically to the Settlement Administrator, or printed from the Settlement Website and mailed to the Settlement Administrator at the address provided in the Notice of Settlement Approval.

13.3 Settlement Class Members are not required to submit proof of purchase. No Settlement Class Member may claim compensation, even with proof of purchase, in respect of more than 30 bottles of Dial Complete.

13.4 All Settlement Claims received or postmarked prior to the Claims Deadline will be considered by the Settlement Administrator and deemed either valid (as meeting the requirements of this Agreement) or invalid (as failing to meet the requirements of this Agreement). All Settlement Claims received or postmarked after the Claims Deadline will be deemed invalid.

13.5 After the Final Order Date, the Settlement Administrator will send each Eligible Claimant a Settlement Payment via PayPal, using the email address provided in their Claim Form. If an Eligible Claimant does not have a PayPal account connected to the email provided in their Claim Form, they must set up such an account in order to accept their Settlement Payment. No Settlement Payments will be delivered to any Eligible Claimant before the Final Order Date.

13.6 All Settlement Payments will be made directly and exclusively to the Eligible Claimant. No Settlement Class Member or Eligible Claimant may assign or otherwise transfer his or her rights under this Agreement.

13.7 Every Settlement Class Member who submits a Claim Form deemed invalid by the Settlement Administrator will receive a Notice of Denied Claim. The Settlement Administrator will not alert Settlement Class Members to deficiencies in their Claim Forms, nor will the Settlement Administrator provide opportunities to cure deficiencies. The Settlement Administrator's decision regarding the validity of a Claim Form is final. There is no right of appeal from the Settlement Administrator's decision regarding the validity of a Claim Form.

13.8 Settlement Class Members who submit Claim Forms that are not postmarked before the Claims Deadline or submitted online before the Claims Deadline will not receive any payment or communication from the Settlement Administrator.

#### **SECTION 14 - RESPONDENTS' PAYMENT OBLIGATIONS**

14.1 Within 15 Days after the Final Order Date and subject to court approval, the Respondents shall pay the sum of **CAD \$500.00** to the Petitioner as an indemnity for disbursements and in full satisfaction of any and all claims asserted by her in the Action. Upon the payment of this amount, the Petitioner shall be deemed to be a Releasor under this Agreement in respect of any matter alleged by them in this Action.

14.2 Within 15 Days after the Final Order Date and subject to Court approval, the Respondents will pay to Class Counsel the Class Counsel Fee. If the Court does not approve the amount of CAD \$265,000.00, plus applicable taxes, as Class Counsel Fee and instead approves an amount less than CAD \$265,000.00, plus applicable taxes, as Class Counsel Fee, then the Respondents shall have no responsibility to pay to Class Counsel the difference between the reduced amount and CAD \$265,000.00, plus applicable taxes. It is understood that any order, ruling or determination made by any Court with respect to Class Counsel Fee shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement, provided the Class Counsel Fee does not exceed **CAD \$265,000.00** plus applicable taxes.

14.3 After the Claims Deadline, and upon receipt of a Request for Settlement Funds from the Settlement Administrator, the Respondents shall forward the Settlement Funds to the Settlement Administrator to be placed in a Canadian trust account for the purpose of funding the Settlement Payments. After the Final Order Date, the Settlement Administrator shall distribute the Settlement Funds on behalf of the Respondents by sending the Settlement Payments via PayPal to the Eligible Claimants.

14.4 Any Settlement Payment due under this Agreement shall be made directly and exclusively to the Eligible Claimant. No Settlement Class Member or Eligible Claimant may assign or otherwise transfer his or her rights under this Agreement. All communications

regarding this Agreement will be sent only to the address for the Settlement Class Member or Eligible Claimant or his or her Counsel.

14.5 The Respondents will pay the Administration Expenses directly to the Settlement Administrator. Neither the Petitioner nor Class Counsel has any responsibility to pay the Administration Expenses, even if: (a) the Settlement is terminated in accordance with Section 6 of this Agreement; (b) the Settlement is not approved by the Court at the Settlement Approval Hearing; or (c) there is no Final Order.

14.6 The Respondents shall not be liable for any Excluded Costs.

## **SECTION 15 - AGREEMENT TO COOPERATE**

15.1 The Petitioner, Class Counsel, and the Respondents will cooperate and take all reasonable actions to effectuate the Settlement and the terms and conditions of this Agreement. If the Court fails to grant the Notice Approval Order or the Settlement Approval Order, then the Petitioner, Class Counsel, and the Respondents will use all reasonable efforts that are consistent with this Agreement to cure any defect identified by the Court. If, despite such efforts, the Court does not grant the Authorization and Approval Hearing Order and the Settlement Approval Order, then this Agreement will be terminated in accordance with Section 6.

## **SECTION 16 – RELEASES**

16.1 The Petitioner and each and every Settlement Class Member, regardless of whether any Settlement Class Member executes and delivers a written release, on behalf of themselves, as well as on behalf of all of their heirs, successors in interest, assigns, transferees and grantees, fully and forever releases, remises, acquits and discharges the Releasees from the Released Claims. By executing this Agreement, the Parties acknowledge that the Action shall be settled pursuant to the terms of the Settlement Approval Order, and all Released Claims shall thereby be conclusively settled, compromised, satisfied, and released as to the Releasees. The Approval Order shall provide for and effect the full and final release, by the Petitioner and all Settlement Class Members, of all Released Claims.



16.2 The Settlement Class Members hereby acknowledge that they are aware that they or their legal counsel may hereafter discover claims or facts in addition to or different from those which they now know or believe to exist with respect to the Released Claims, but that it is still their intention to hereby fully, finally, and forever settle, release, extinguish and waive all of the Released Claims. In furtherance of such intention, the release herein given by the Settlement Class Members to the Releasees shall be and remain in effect as a full and complete general release of the Released Claims notwithstanding any discovery of the existence of any such additional or different claims or facts.

16.3 If any Settlement Class Member brings an action or asserts a claim against any Releasee contrary to the terms of this Agreement, the counsel of record for such Settlement Class Member shall be provided with a copy of this Agreement. If the Settlement Class Member does not within 20 Days thereafter dismiss his or her action and the action or claim is subsequently dismissed or decided in favor of the Releasees, the Settlement Class Member who brought such action or claim shall pay Releasees' reasonable counsel fees and disbursements incurred by Releasees in the defense of such action or claim.

16.4 Except as otherwise provided, nothing in this Agreement shall be construed in any way to prejudice or impair the right of the Respondents or the Respondents' insurers to pursue such rights and remedies as they may have against each other or third parties, who are not Settlement Class Members, under or in connection with any insurance policies.

## **SECTION 17 – NON-DISPARAGEMENT**

17.1 The Parties, Class Counsel and Defence Counsel hereby agree not to disparage each other, Dial brand products, or the compromised claims at issue in the Action or the Settlement.

17.2 No press release or other public statement shall be made by Class Counsel regarding the Settlement without prior written approval from the Respondents. Such approval shall not be unreasonably withheld.

17.3 No press release or other public statement made by Class Counsel shall contain any false or misleading statement in any form regarding the Settlement, or disparage the Respondents or their products, or suggest that the Respondents were found to have violated

any laws, or suggest that the Settlement constitutes as admission of liability, damages, or any other aspect of this Action. For greater clarity, any reference to Dial Complete as being unsafe, or not generally recognized as safe and effective, would constitute disparagement.

17.4 Class Counsel may (but is not obligated to) email the following documents to class members and publish the same on its website, Facebook and Twitter accounts: (a) the Settlement Agreement; (b) the Authorization and Approval Hearing Order; (c) the Notice of Authorization and Settlement Approval Hearing; (d) the Opt-Out Form; (e) the Settlement Approval Order; (f) the Notice of Settlement Approval; and (g) the Claim Form.

## **SECTION 18 – ENFORCEMENT OF THIS AGREEMENT**

18.1 The Court shall have continuing jurisdiction over the administration of the Settlement and the enforcement of this Agreement. In the event the Respondents, the Petitioner, Class Counsel, or any Settlement Class Member fails to perform under this Agreement, counsel for the aggrieved party shall give counsel for the other party written notice of the breach. If the alleged breach is not cured to the satisfaction of the aggrieved party within 30 Days, the other party may apply to the Court for relief.

## **SECTION 19 – REPRESENTATIONS AND WARRANTIES**

19.1 Each of the Parties agrees, represents and warrants that:

- a) The Party has had an opportunity to receive independent legal advice from counsel regarding the advisability of making the Settlement, the advisability of executing this Agreement, and the legal and income-tax consequences of this Agreement, and fully understands and accepts the terms of this Agreement.
- b) The Party has not relied upon any statement, representation, omission, inducement, or promise of any other Party (or any officer, agent, employee, representative, or counsel for any other Party) in executing this Agreement, or in making the Settlement provided for herein, except as expressly stated in this Agreement.

- c) The Party has investigated the facts pertaining to the Settlement and this Agreement, and all matters pertaining thereto, to the full extent deemed necessary by that Party and that Party's counsel.
- d) The Party has carefully read, and knows and understands, the full contents of this Agreement and is voluntarily entering into this Agreement after having had the opportunity to consult with, and having in fact consulted with independent counsel.
- e) Each term of this Agreement, under the titles of the various paragraphs, is contractual and not merely a recital.
- f) No portion of the Released Claims that the Petitioner, the Settlement Class, and/or any of the Settlement Class Members ever had, now have, or may later claim to have at any time in the future against the Releasees, whether known or unknown, arising out of or in any way relating to Dial Complete, and no portion of any recovery or settlement to which they may be entitled, has been assigned, transferred, or conveyed by or for Settlement Class Members in any manner, and no person other than Settlement Class Members shall have any legal or equitable interest in the Claims or Settlement Claims referred to in this Agreement but the Settlement Class Members themselves.

## **SECTION 20 – MISCELLANEOUS TERMS**

20.1 Class Counsel and Defence Counsel have negotiated this Agreement at arm's length. If a dispute should later arise regarding any of its terms, no Party shall be deemed to be the drafter of any particular provision of this Agreement.

20.2 This Agreement shall be construed under and governed by the laws of the Province of Quebec.

20.3 Any reference to a "person" in this Agreement includes a corporation or other legal person.

20.4 This Agreement, including all attached Exhibits, shall constitute the entire Agreement between the Parties with regard to the subject matter of this Agreement and shall supersede any previous agreement or understandings between the Parties. The Agreement may not be

changed, modified, or amended except in writing signed by Class Counsel and Defence Counsel and subject to Court approval.

20.5 This Agreement, if approved by the Court, shall be binding upon and inure to the benefit of the Parties, and their representatives, heirs, successors and assigns.

20.6 Any notice, instruction, application for Court approval or application for Court order sought in connection with this Agreement or other document to be given by any Party to any other Party shall be in writing and delivered personally or by facsimile or electronic mail followed by overnight courier, to the following representatives for the Parties:

**FOR RESPONDENTS:**

Scott Maidment, McMillan LLP

Brookfield Place, 181 Bay Street, Suite 4400, Toronto, Ontario, M5J 2T3

Fax: (416) 865-7048

Email: [scott.maidment@mcmillan.ca](mailto:scott.maidment@mcmillan.ca).

**FOR CLASS COUNSEL AND PETITIONER:**

Jeff Orenstein, Consumer Law Group Inc.

1030 Berri St., Suite 102, Montreal, Quebec, H2L 4C3

Fax: (514) 868-9690

Email: [soapsettlement@clg.org](mailto:soapsettlement@clg.org)

20.7 Except as otherwise provided in this Agreement, any filing, submission, Claim, or notice or written communication shall be deemed filed, delivered, submitted, or effective as of the date of its postmark when mailed regular or registered mail, postage prepaid, properly addressed to the recipient, or when delivered to any commercial one-or-two-day courier delivery service properly addressed to the recipient, or when actually received by the recipient, whichever occurs first.

20.8 In the event that any date or deadline set forth in this Agreement falls on a weekend or holiday, such a date or deadline shall be on the first business day thereafter.

20.9 In no event shall the Respondents, Defence Counsel, the Petitioner, any Settlement Class Member, or Class Counsel have any liability for claims of wrongful or negligent conduct by any third party with respect to the implementation of any term of this Agreement.

20.10 The Parties and their respective counsel agree to prepare and execute any additional documents that may reasonably be necessary to effectuate the terms of this Agreement.

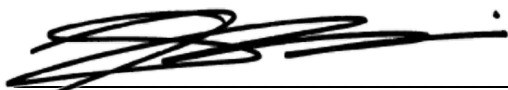
20.11 The Plaintiff agrees that it will not take any steps in the Action, except those reasonably necessary to effectuate the terms of this Agreement, unless and until this Agreement is terminated.

20.12 The Parties may execute this Agreement in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

20.13 The Parties acknowledge that they have required and consented that this Agreement and all related documents be prepared in English; *les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en Anglais*. Nevertheless, if required by the Court, a French translation of this Agreement, all Schedules and Appendices attached hereto, in each case for convenience only, shall be prepared by the Settlement Administrator, the cost of which shall be an Administration Expense.

20.14 The counsel who have executed this Agreement hereby represent and warrant that they have authority to bind their respective clients to this Agreement.

**Executed at the City of Toronto this 16th day of October, 2020**



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**SCOTT MAIDMENT, Counsel for the Respondents**

**Executed at the City of Montreal this 16th day of October, 2020**



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**JEFF ORENSTEIN, Class Counsel and Counsel for the Plaintiff**