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27 **UNITED STATES DISTRICT COURT**
28 **CENTRAL DISTRICT OF CALIFORNIA**

29 ENZO FORCELLATI and LISA
30 ROEMMICH, on Behalf of Themselves
31 and all Others Similarly Situated,

32 Plaintiffs,

33 v.

34 HYLAND'S, INC., STANDARD
35 HOMEOPATHIC LABORATORIES,
36 INC., and STANDARD HOMEOPATHIC
37 COMPANY,

38 Defendants.

Case No. 2:12-CV-01983 GHK(MRW)

STIPULATION OF SETTLEMENT

Hon. George H. King

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1 This Stipulation of Settlement is made by and among Enzo Forcellati, and Lisa
2 Roemmich, (the “Class Representatives”), on behalf of themselves and the
3 Settlement Class (defined below), on the one hand, and Hyland’s, Inc., Standard
4 Homeopathic Laboratories Inc., and Standard Homeopathic Company (“Defendants”
5 or “Hyland’s”), on the other.

6 **I. RECITALS**

7 A. On March 8, 2012, Plaintiff Enzo Forcellati commenced a proposed
8 class action against Defendants Hyland’s Inc., and Standard Homeopathic Company
9 entitled *Forcellati v. Hyland’s Inc. et al.* (United States District Court, Central
10 District of California, Case No. 12-cv-1983-GHK) (the “*Forcellati Action*”).
11 Plaintiff Forcellati asserted claims on behalf of himself and a proposed nationwide
12 class of purchasers of (i) Cold ‘n Cough 4 Kids, (ii) Cough Syrup with 100% Natural
13 Honey 4 Kids, (iii) Sniffles ‘n Sneezes 4 Kids, (iv) Cold Relief Strips 4 Kids with
14 Zinc, and (v) Nighttime Cold ‘n Cough 4 Kids for violation of the Magnuson-Moss
15 Warranty Act, 15 U.S.C. § 2301, *et seq.*, unjust enrichment, breach of express
16 warranty, breach of implied warranty, violation of the New Jersey Consumer Fraud
17 Act, N.J.S.A. § 58:8-1, *et seq.*, violation of the Consumer Legal Remedies Act
18 (“CLRA”), California Civil Code § 1750, *et seq.*, violation of the False Advertising
19 Law (“FAL”), California Business & Professions Code §§ 17500 *et seq.*, and
20 violation of the Unfair Competition Law (“UCL”), California Business &
21 Professions Code §§ 17200 *et seq.* Plaintiff Forcellati alleged that Hyland’s made
22 false and misleading statements about its Children’s Cold and Flu Products, such as
23 that the Children’s Cold and Flu Products were “Safe & Effective” for treating cold
24 and flu symptoms and that they were “100% Natural.” Plaintiff Forcellati further
25 alleged that, in fact, the Children’s Cold and Flu Products are no better than a
26 placebo because the homeopathic ingredients in the Products are ultra-diluted.

1 B. On April 23, 2012, Defendants filed a motion to dismiss. On April 30,
2 2012, Plaintiff Forcellati opposed. On June 1, 2012, the Court dismissed Plaintiff's
3 unjust enrichment claim but denied the remaining portions of Defendants' motion.

4 C. On June 15, 2012, Hyland's answered Plaintiff Forcellati's Complaint,
5 denying liability.

6 D. On July 20, 2012, Hyland's removed an action entitled *Roemmich v.*
7 *Hyland's Inc. et al.* from the Superior Court of California, County of Los Angeles to
8 the United States District Court, Central District of California (Case No. 12-cv-6256)
9 (the "*Roemmich Action*").

10 E. On October 15, 2012, the Court ordered that the Forcellati and
11 Roemmich actions be consolidated. The Court further ordered that the parties were
12 to meet and confer to determine the appropriate lead counsel.

13 F. On October 30, 2012, the Class Representatives and Hyland's
14 participated in a full-day in-person mediation with Robert A. Meyer of Loeb & Loeb
15 LLP.

16 G. On October 31, 2012, the parties reported that Bursor & Fisher, P.A.
17 and Faruqi & Faruqi, LLP would serve as co-lead counsel in the consolidated cases.

18 H. On November 8, 2012, the Court ordered that the *Forcellati* and
19 *Roemmich* Actions be consolidated, and appointed Bursor & Fisher, P.A. and Faruqi
20 & Faruqi LLP as co-lead counsel in the *Forcellati* and *Roemmich* Actions (hereafter
21 the "Consolidated Action" or the "Action").

22 I. On December 7, 2012, Plaintiff Enzo Forcellati, and Lisa Roemmich,
23 filed a Consolidated Amended Class Action Complaint that added Lisa Roemmich as
24 a Plaintiff to the Action. In addition to the claims in Plaintiff Forcellati's Complaint,
25 the Consolidated Amended Class Action Complaint also asserted claims for
26 Violation of the Missouri Merchandising Practices Act, Mo. Ann. Stat. §§ 407.010,
27 *et seq.*

1 J. On January 7, 2013, Hyland's filed a motion to dismiss Plaintiffs'
2 prayer for punitive damages in the Consolidated Amended Class Action Complaint.
3 Plaintiffs opposed. On February 14, 2013, the Court denied Hyland's motion.

4 K. On May 9, 2013, the Parties participated in a second full-day in-person
5 mediation with Robert A. Meyer of Loeb & Loeb LLP.

6 L. On September 16, 2013, Plaintiffs filed a motion for class certification.
7 On October 28, 2013, Hyland's opposed Plaintiffs' motion. Pursuant to the Court's
8 December 19, 2013 order, on February 3, 2014, the Parties submitted supplemental
9 briefing on the issue of whether the proposed class was ascertainable.

10 M. On April 9, 2014, the Court certified the following Rule 23(b)(3) class
11 for monetary relief with respect to Plaintiffs' claims for violation of Magnuson-Moss
12 Act, 15 U.S.C. § 2301, *et seq.*, breach of express warranty, breach of implied
13 warranty, violation of the CLRA, violation of the FAL, and violation of the UCL:

14 (a) A nationwide class of all persons in the United States who
15 purchased the following Hyland's products on or after March 8,
16 2008: (i) Cold 'n Cough 4 Kids, (ii) Cough Syrup with 100%
17 Natural Honey 4 Kids, (iii) Sniffles 'n Sneezes 4 Kids, (iv)
18 Cold Relief Strips 4 Kids with Zinc, and (v) Nighttime Cold 'n
19 Cough 4 Kids;

20 (b) A 49-state class of all persons in the United States except for
21 those in California who purchased Hyland's Complete Flu Care
22 4 Kids on or after March 8, 2008.

23 The Court appointed the law firms of Bursor & Fisher, P.A., and Faruqi &
24 Faruqi, LLP as class counsel. The Court appointed Plaintiffs Enzo Forcellati and
25 Lisa Roemmich as Class Representatives. The Court denied Plaintiffs' request to
26 certify a Rule 23(b)(2) class for injunctive relief, and denied certification of
27 Plaintiffs' proposed New Jersey and Missouri subclasses.

1 N. On April 23, 2014, Hyland’s filed a petition for permission to appeal
2 pursuant to Fed. R. Civ. P. 23(f). On May 5, 2014, Plaintiffs filed an answer in
3 opposition to Hyland’s petition. On July 8, 2014, the United States Court of Appeals
4 for the Ninth Circuit denied Hyland’s Fed. R. Civ. P. 23(f) petition.

5 O. On August 4, 2014, the Court issued an Order Re Form and
6 Dissemination of Notice to the Class.

7 P. On September 18, 2014, the claims administrator Kurtzman Carson
8 Consultants (“KCC”) sent notice to class members by email and U.S. Mail.

9 Q. On September 5, 2014, Hyland’s filed a motion for summary judgment.
10 Plaintiffs opposed in a joint brief on that same date. On January 12, 2015, the Court
11 denied Hyland’s motion for summary judgment.

12 R. On March 25, 2015, the Parties participated in full-day in-person
13 settlement conference with the Hon. Jay C. Gandhi, United States Magistrate Judge.

14 S. On October 19, 2015, the Parties participated in a second full-day in-
15 person settlement conference with the Hon. Jay C. Gandhi, United States Magistrate
16 Judge.

17 T. On October 22, 2015, Hyland’s filed an ex parte application to continue
18 the trial, originally set for October 27, 2015, based on the fact that Plaintiffs
19 presented a new case theory in their trial brief and Motions *in Limine*.

20 U. On October 23, 2015, the Court vacated all trial dates to consider
21 Hyland’s request for judicial estoppel, to consider the parties’ Motions in *Limine* and
22 to evaluate Defendants’ objections to deposition exhibits to be used at trial.

23 V. On February 17, 2016, the Court held that Plaintiffs were judicially
24 estopped from changing their theory of the case.

25 W. On January 12, 2016, Plaintiffs Marie Kaatz and Abigail Gagliardi
26 commenced an action entitled *Kaatz v. Hyland’s Inc. et al.* (United States District
27 Court, Southern District of New York, Case No. 7:16-cv-00237-VB) (the “*Kaatz*”
28

1 Action”), as a proposed class action, asserting claims for violation of New York
2 General Business Law §§ 349 and 350, the consumer protection statutes of all fifty
3 states, and the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.*, as well as
4 breach of express warranty, breach of implied warranty of fitness for a particular
5 purpose, negligent misrepresentations, and unjust enrichment. The *Kaatz* Action
6 asserted claims with respect to Hyland’s (i) Baby Teething Gel; (ii) Baby Cough
7 Syrup, (iii) Baby Gas Drops, (iv) Baby Infant Earache Drops, and (v) Baby
8 Nighttime Tiny Cold Syrup. Like Plaintiffs Forcellati and Roemmich, the Plaintiffs
9 in the *Kaatz* Action allege that Defendants’ Products are not effective for relieving
10 symptoms and are not 100% natural. Also like the Plaintiffs in the Consolidated
11 Action, the Plaintiffs in the *Kaatz* Action allege that the Products do not provide any
12 benefits beyond that of a placebo.

13 X. On June 2, 2016, the Court ordered the Parties in the Consolidated
14 Action to participate in a settlement conference with the Hon. Jay C. Gandhi, United
15 States Magistrate Judge.

16 Y. On July 6, 2016, the Parties in the Consolidated Action participated in a
17 third full-day in-person settlement conference with the Hon. Jay C. Gandhi, United
18 States Magistrate Judge.

19 Z. On July 6, 2016, the District Court for the Southern District of New
20 York denied Defendants’ motion to dismiss the Complaint in the *Kaatz* Action, but
21 limited the New York Plaintiffs’ claims under New York General Business Law §§
22 349 and 350, breach of implied warranty of fitness for a particular purpose, negligent
23 misrepresentations, and unjust enrichment to a putative class of New York
24 purchasers.

25 AA. On July 18, 2016, the Parties in the Consolidated Action reached a
26 settlement in the Consolidated Action.

1 BB. On July 20, 2016, Defendants filed an answer to the Complaint in the
2 *Kaatz* Action, denying liability.

3 CC. Following execution of this Stipulation of Settlement, with Defendants'
4 agreement and Court approval, Plaintiffs will file a Second Amended Complaint that
5 brings claims for violation of the Magnuson-Moss Act. 15 U.S.C. § 2301, *et seq.*,
6 breach of express warranty, breach of implied warranty, violation of the Consumer
7 Legal Remedies Act ("CLRA"), California Civil Code § 1750, *et seq.*, violation of
8 the False Advertising Law ("FAL"), California Business & Professions Code §§
9 17500 *et seq.*, and violation of the Unfair Competition Law ("UCL"), California
10 Business & Professions Code §§ 17200 *et seq.* on behalf of: All persons in the
11 United States who purchased the following Hyland's products on or after March 8,
12 2008: (i) Cold 'n Cough 4 Kids, (ii) Cough Syrup with 100% Natural Honey, (iii)
13 Sniffles 'n Sneezes 4 Kids, (iv) Cold Relief Strips 4 Kids with Zinc, (v) Nighttime
14 Cold 'n Cough 4 Kids, (vi) Complete Flu Care 4 Kids, (vii) Baby Teething Gel, (viii)
15 Baby Cough Syrup, (ix) Baby Gas Drops, (x) Baby Infant Earache Drops, and (xi)
16 Baby Nighttime Tiny Cold Syrup.

17 DD. The Class Representatives allege in this Consolidated Action, *inter alia*,
18 that Hyland's deceived customers by representing that products for children and
19 babies are effective at treating illness when, in fact, the ultra-diluted ingredients have
20 no pharmacological effect beyond that of a placebo.

21 EE. Hyland's denies the material allegations made in the Consolidated
22 Action, and denies any and all liability with respect to all facts and claims alleged
23 therein, and further denies that any of the Settlement Class Members (defined below)
24 or anyone has suffered any harm or damage or is entitled to any monetary or relief
25 whatsoever in connection with the Consolidated Action.

26 FF. Class Counsel conducted an examination and investigation of the facts
27 and law relating to the matters in this Consolidated Action, including, but not limited
28

1 to, engaging in discovery, review and analysis of Hyland's documents and data, as
2 well as Hyland's testing of the Settlement Class Products. Class Counsel also
3 evaluated the merits of the Parties' contentions and evaluated this Settlement, as it
4 affects all Parties, including the Settlement Class Members. The Class
5 Representatives and Class Counsel, after taking into account the foregoing, along
6 with the risks and costs of further litigation, including pretrial and trial, represent that
7 they are satisfied that the terms and conditions of this Stipulation of Settlement are
8 fair, reasonable, and adequate, and that the Settlement Agreement set forth herein is
9 in the best interest of the Settlement Class Members.

10 GG. Hyland's, while continuing to deny all allegations of wrongdoing and
11 disclaiming all liability with respect to all claims, considers it desirable to resolve the
12 Consolidated Action on the terms stated herein to avoid further expense,
13 inconvenience and burden and, therefore, has determined that this Settlement on the
14 terms set forth herein is in Hyland's best interests.

15 HH. Substantial settlement negotiations have taken place between the
16 Parties, including five full day mediation sessions, the first two with Robert A.
17 Meyer of Loeb & Loeb LLP, and the final three with the Hon. Jay C. Gandhi, United
18 States Magistrate Judge.

19 In consideration of the covenants and agreements set forth herein, and of the
20 releases and dismissals of claims as described below, and other good and valuable
21 consideration, the receipt and sufficiency of which hereby is acknowledged by each
22 of the Parties, the Class Representatives, on behalf of themselves and the Settlement
23 Class Members, and Hyland's agree to the Settlement described herein, subject to
24 Court approval, under the following terms and conditions:

25 **I. DEFINITIONS**

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28

1 1.1 As used in this Stipulation of Settlement, the following capitalized
2 terms have the meanings specified below. Unless otherwise indicated, defined terms
3 include the plural as well as the singular.

4 1.2 “Action” or “Consolidated Action” shall mean the class action lawsuit
5 entitled *Forcellati et al. v. Hyland’s, Inc. et al.*, Case No. 2:12-CV-01983
6 GHK(MRW) pending in the United States Central District of California, which
7 encompasses the higher-numbered action *Roemmich v. Hyland’s Inc. et al.*, Case No.
8 12-CV-6256.

9 1.3 “Claim Deadline” means 120 days after the Notice Date, by which
10 Settlement Class Members must submit a claim to obtain the Class Benefit described
11 in III of this Stipulation of Settlement.

12 1.4 “Claim Form” means the form substantially in the form attached hereto
13 as Exhibit A to be submitted by Class Members seeking to recover the Class Benefit
14 described in this Stipulation of Settlement in Section III. The format of the Claim
15 Form may be modified by the Court in the Preliminary Approval Order, substantially
16 in the form attached hereto as Exhibit B, or to meet the requirements of the
17 Settlement Administrator

18 1.5 “Claimant” means a Class Member who submits a claim for cash as
19 described in Section III of this Settlement Agreement.

20 1.6 “Class Benefit” has the meaning set forth in Section III below.

21 1.7 “Class Counsel” means Bursor & Fisher, P.A., Vozzolo LLC, and
22 Faruqi & Faruqi, LLP.

23 1.8 “Class Notice” means the Court-approved “Notice of Class Action
24 Settlement,” which includes the Long Form Notice, the Short Form Notice, and the
25 Publication Notice.

26 1.9 “Class Representatives” means Enzo Forcellati, and Lisa Roemmich.
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1 1.10 “Court” means the United States District Court, Central District of
2 California.

3 1.11 “Defendants’ Counsel,” or “Defense Counsel” means the law firm of
4 Norton Rose Fulbright US LLP.

5 1.12 “Fairness Hearing” means the hearing that is to take place after entry of
6 the Preliminary Approval Order, the Notice Date, and the Claim Deadline for
7 purposes of: (a) determining the fairness, adequacy, and reasonableness of the
8 Settlement Agreement; and (b) ruling upon an application by Class Counsel for a Fee
9 and Expense Award and Plaintiffs’ Incentive Awards. The Parties shall request that
10 the Court schedule the Fairness Hearing for a date that is in compliance with the
11 provisions of 28 U.S.C. § 1715(d).

12 1.13 “Fee and Expense Award” means the amount awarded to Class Counsel
13 by the Court for attorneys’ fees, costs, and expenses.

14 1.14 “Final Settlement Approval Date” means the date that is 30 days after
15 service of notice of entry of the Settlement Approval Order and Final Judgment on
16 the Parties and all objectors to the Settlement Agreement, if any, without any appeal
17 being taken, or if an appeal or request for review has been taken, the date on which
18 the Settlement Approval Order and Final Judgment has been affirmed by the court of
19 last resort to which an appeal or request for review has been taken and such
20 affirmance is no longer subject to further appeal or review, or the date of denial of
21 review after exhaustion of all appellate remedies.

22 1.15 “Incentive Award(s)” means any award sought by application to and
23 approved by the Court that is payable to the Class Representatives.

24 1.16 “Long Form Notice” means the notice (substantially in the form
25 attached hereto as Exhibit C) to be sent by email to all class members for whom
26 email addresses are identified, and to be sent via regular mail to all class members
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1 for whom the Parties do not have a valid email address but do have a mailing
2 address.

3 1.17 “MSRP” means Hyland’s average suggested retail price for the
4 Settlement Class Products during the Settlement Class Period as follows:

5 (i) Cold ‘n Cough 4 Kids	
6 (ii) Cough Syrup with 100% Natural 7 Honey	
8 (iii) Sniffles ‘n Sneezes 4 Kids	
9 (iv) Cold Relief Strips 4 Kids with Zinc	
10 (v) Nighttime Cold ‘n Cough 4 Kids	
11 (vi) Complete Flu Care 4 Kids	
12 (vii) Baby Teething Gel	
13 (viii) Baby Cough Syrup	
14 (ix) Baby Gas Drops	
15 (x) Baby Infant Earache Drops	
16 (ix) Baby Nighttime Tiny Cold Syrup	

17 1.18 “Notice Date” means 30 days following the Preliminary Approval
18 Order.

19 1.19 “Notice of Missing or Inaccurate Information” means the notice sent by
20 the Claims Administrator to a Claimant who has submitted a Claim Form with
21 inaccurate, disqualifying, incomplete, or missing information that is required for the
22 Claimant to be considered eligible for the Class Benefit.

23 1.20 “Objection Deadline” means the date, to be set by the Court, by which
24 Settlement Class Members must file objections, if any, to the Settlement Agreement
25 in accordance with Section VI of this Stipulation of Settlement. The Parties shall
26 request that the Court set an Objection Deadline 120 days after the Notice Date.
27

1 1.21 “Opt-Out Date” means the date, to be set by the Court, by which a
2 Request for Exclusion must be sent to the Settlement Administrator for a Class
3 Member to be excluded from the Settlement Class. The Parties shall request that the
4 Court set an Opt-Out Date 120 days after the Notice Date.

5 1.22 “Parties” means Enzo Forcellati, Lisa Roemmich on the one hand, and
6 Hyland’s, Inc., Standard Homeopathic Laboratories Inc., and Standard Homeopathic
7 Company on the other.

8 1.23 “Preliminary Approval” means that the Court has entered an order
9 preliminarily approving the terms and conditions of this Stipulation of Settlement,
10 including the manner of providing and content of Class Notice to Settlement Class
11 Members.

12 1.24 “Preliminary Approval Date” means the date on which the Court enters
13 the Preliminary Approval Order.

14 1.25 “Preliminary Approval Order” means the Court’s order, substantially in
15 the form attached hereto as Exhibit B, preliminarily approving the Settlement
16 Agreement set forth in this Stipulation of Settlement and approving the Settlement
17 Notice Plan.

18 1.26 “Proof of Purchase” means receipts, packaging of Settlement Class
19 Products, bottles or other containers of Settlement Class Products, or other
20 documentation from a third-party commercial source reasonably establishing the
21 purchase during the Settlement Class Period of one or more of the Settlement Class
22 Products claimed to have been purchased by the Settlement Class Member.

23 1.27 “Publication Notice” means publication of the Short Form Notice in the
24 National Edition of USA Today once a week for four consecutive weeks, and a
25 Facebook campaign targeting people who have expressed an interest in or “like”
26 pages related to Hyland’s, homeopathy, homeopathic medicine, and wellness as well
27

1 as those people who have expressed an interest in or “like” pages related to
2 parenting.

3 1.28 “Released Claims” means the claims released by the Settlement Class
4 Members, as described in Section VII below, who do not submit a valid Request for
5 Exclusion.

6 1.29 “Released Persons” means Hyland’s Inc., Standard Homeopathic
7 Laboratories Inc., and Standard Homeopathic Company; all of their past and present
8 respective parents, subsidiaries, divisions, affiliates, persons and entities directly or
9 indirectly under its or their control in the past or in the present; all of their respective
10 assignors, predecessors, successors, and assigns; and all past or present partners,
11 shareholders, managers, members, directors, officers, employees, agents, attorneys,
12 insurers, accountants, and representatives of any and all of the foregoing.

13 1.30 “Request for Exclusion” means the written communication that must be
14 sent to the Settlement Administrator and postmarked on or before the Opt-Out Date
15 by a Settlement Class Member who wishes to be excluded from the Settlement Class.

16 1.31 “Settlement Administrator” means KCC Class Action Services, LLC (or
17 “KCC”) and its successors and assigns.

18 1.32 “Settlement Agreement” means the agreement set forth by the terms of
19 this Stipulation of Settlement.

20 1.33 “Settlement Approval Order and Final Judgment” means an order and
21 judgment issued and entered by the Court, substantially in the form as that attached
22 hereto and made a part hereof as Exhibit D, approving this Settlement Agreement as
23 binding upon the Parties and the Settlement Class Members, entering final judgment,
24 and setting the Fee and Expense Award, to Class Counsel by the Court. The
25 Settlement Approval Order and Final Judgment shall constitute a judgment within
26 the meaning and for purposes of Rule 54 of the Federal Rules of Civil Procedure.
27 The Parties jointly shall request the Court to enter the proposed Settlement Approval
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1 Order and Final Judgment substantially in the form attached hereto and made a part
2 hereof as Exhibit D.

3 1.34 “Settlement Class Members,” “Class Members,” “Class,” or “Settlement
4 Class” means: All persons in the United States who purchased the following
5 Hyland’s products on or after March 8, 2008: (i) Cold ‘n Cough 4 Kids, (ii) Cough
6 Syrup with 100% Natural Honey, (iii) Sniffles ‘n Sneezes 4 Kids, (iv) Cold Relief
7 Strips 4 Kids with Zinc, (v) Nighttime Cold ‘n Cough 4 Kids, (vi) Complete Flu Care
8 4 Kids, (vii) Baby Teething Gel, (viii) Baby Cough Syrup, (ix) Baby Gas Drops, (x)
9 Baby Infant Earache Drops, and (xi) Baby Nighttime Tiny Cold Syrup. Excluded
10 from the Class are: (a) Hyland’s employees, officers and directors, (b) persons or
11 entities who purchased the Products for the purpose of re-sale, (c) retailers or re-
12 sellers of the Products, (d) governmental entities, (e) persons who timely and
13 properly exclude themselves from the Class as provided herein, and (f) the Court, the
14 Court’s immediate family, and Court staff.

15 1.35 “Settlement Class Period” means the period of time from March 8, 2008
16 through the Notice Date.

17 1.36 “Settlement Class Products” means: (i) Cold ‘n Cough 4 Kids, (ii)
18 Cough Syrup with 100% Natural Honey, (iii) Sniffles ‘n Sneezes 4 Kids, (iv) Cold
19 Relief Strips 4 Kids with Zinc, (v) Nighttime Cold ‘n Cough 4 Kids, (vi) Complete
20 Flu Care 4 Kids, (vii) Baby Teething Gel, (viii) Baby Cough Syrup, (ix) Baby Gas
21 Drops, (x) Baby Infant Earache Drops, and (xi) Baby Nighttime Tiny Cold Syrup.

22 1.37 “Settlement Notice and Other Administrative Costs” means all costs and
23 expenses actually incurred by the Settlement Administrator in the publication and
24 sending of Class Notice, establishment of the Settlement Website, and the
25 processing, handling, reviewing, and paying of claims made by Claimants.
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1 1.38 “Settlement Notice Plan” means the Settlement Administrator’s plan to
2 disseminate Class Notice to Settlement Class Members, as described in Section V
3 below.

4 1.39 “Settlement Website” means a website operated and maintained by the
5 Settlement Administrator solely for purposes of making available to the Settlement
6 Class Members the Class Notice, documents, information, and online claims
7 submission process referenced in Sections V and VI, below.

8 1.40 “Short Form Notice” means the notice, subject to Court approval that is
9 substantially in the form attached hereto as Exhibit E, that will be published in the
10 national edition of USA Today once a week for four consecutive weeks.

11 1.41 “Stipulation of Settlement” means this document and its exhibits,
12 attached hereto and incorporated herein, including all subsequent amendments
13 agreed to in writing by the Parties and any exhibits to such amendments.

14 **II. CERTIFICATION OF THE SETTLEMENT CLASS**

15 2.1 The Parties agree, for settlement purposes only, that the Settlement
16 Class shall be certified and proceed as a class action under Federal Rule of Civil
17 Procedure 23(b)(3), with a class consisting of all Settlement Class Members, and
18 with Plaintiffs Forcellati and Roemmich as Class Representatives and with Class
19 Counsel as counsel for the Settlement Class Members.

20 2.2 Any certification of a conditional, preliminary or final Settlement Class,
21 pursuant to the terms of this Stipulation of Settlement, shall not be construed as an
22 admission on the part of Hyland’s that the Settlement Class is appropriate for class
23 treatment under the Federal Rules of Civil Procedure or any similar state or federal
24 class action statute or rule.

25 2.3 In the event that the Court does not preliminarily or finally approve the
26 Settlement Agreement, nothing herein shall be construed to alter the Court’s April 9,
27 2014 certification of the following Rule 23(b)(3) classes: (a) A nationwide class of
28

1 all persons in the United States who purchased the following Hyland's products on
2 or after March 8, 2008: (i) Cold 'n Cough 4 Kids, (ii) Cough Syrup with 100%
3 Natural Honey 4 Kids, (iii) Sniffles 'n Sneezes 4 Kids, (iv) Cold Relief Strips 4 Kids
4 with Zinc, and (v) Nighttime Cold 'n Cough 4 Kids; (b) A 49-state class of all
5 persons in the United States except for those in California who purchased Hyland's
6 Complete Flu Care 4 Kids on or after March 8, 2008.

7 **III. SETTLEMENT CONSIDERATION**

8 3.1 **Class Benefits.** In full, complete, and final settlement and satisfaction
9 of the Consolidated Action and all Released Claims, and subject to all of the terms,
10 conditions, and provisions of this Stipulation of Settlement, Hyland's agrees to
11 provide the following consideration to Settlement Class Members:

12 (a) To each Settlement Class Member who follows the procedures set
13 forth in Section VI of this Stipulation of Settlement and submits a valid Claim Form,
14 Hyland's will pay a full refund of the MSRP or the actual purchase price, as follows:

15 (i) **Without Proof of Purchase.** Claims for a full refund of
16 the MSRP for up to two (2) unit purchases of Settlement Class Products will be paid
17 without requiring proof of purchase.

18 (ii) **With Proof of Purchase.** Claims for a full refund for
19 three (3) or more unit purchases of Settlement Class Products will be paid with proof
20 of purchase to avoid fraudulent claims. Settlement Class Members who submit proof
21 of purchase that reveals the actual price paid for a Settlement Class Product will
22 receive a refund of the actual price paid. If proof of purchase does not reveal the
23 actual price paid for a Settlement Class Product, the Settlement Class Member will
24 be receive a refund of the MSRP for each Settlement Class Product.

25 3.2 **Injunctive Relief.** Hyland's will include a money back guarantee on its
26 website.

1 3.3 **Costs of Class Notice.** Hyland's will pay the costs of the Settlement
2 Administrator.

3 3.4 **Fee and Expense Award.** Hyland's will pay a Fee and Expense
4 Award and Incentive Awards as described in Section IV.

5 **IV. CLASS COUNSEL'S FEE AND EXPENSE AWARD AND CLASS**
6 **REPRESENTATIVES' INCENTIVE AWARDS**

7 4.1 **Incentive Awards.** In recognition of the time and effort that the Class
8 Representatives expended in pursuing this Consolidated Action and in fulfilling their
9 obligations and responsibilities as Class Representatives, including responding to
10 discovery, attending their depositions, and preparing to appear at trial, Class Counsel
11 will submit an application for Incentive Awards of \$5,000 to each Class
12 Representative. Any Court-ordered Incentive Award will be paid to the Class
13 Representatives by Hyland's no later than 15 days after the Final Settlement
14 Approval Date.

15 4.2 **Fee and Expense Award.** Class Counsel will make an application to
16 the Court for an Attorneys' Fee and Expense Award in an amount not to exceed \$2.9
17 million, which includes reimbursement of Class Counsel's costs and expenses.

18 (a) Such Class Counsel's Fee and Expense Award shall be paid by
19 wire transfer to Class Counsel, subject to Court approval, as follows: \$750,000
20 within 5 days after Preliminary Approval, and the remainder in quarterly installments
21 over four years from the date of final approval, subject to paragraph 4.2(b) below.
22 The quarterly installments shall be paid on dates to be agreed on by the Parties
23 following entry of the Settlement Approval Order and Final Judgment.

24 (b) The Fee and Expense Award shall be the total obligation of
25 Hyland's to pay for attorneys' fees, costs, and/or expenses of any kind (including,
26 but not limited to, travel, filing fees, court reporter, and videographer expenses,
27 expert fees, and costs, and document review and production costs) related to this
28

1 Consolidated Action or any claims asserted in the Consolidated Action.
2 Notwithstanding the foregoing, if the Final Settlement Approval Order and Final
3 Judgment or any part of it is vacated, overturned, reversed, or rendered void or
4 unenforceable as a result of any appeal, or the Settlement Agreement is voided,
5 rescinded, or otherwise terminated for any other reason, then Class Counsel shall,
6 within 60 days, repay to Hyland's the full amount of the attorneys' fees and costs
7 paid by Hyland's to Class Counsel. Class Counsel shall provide an undertaking
8 satisfactory to Defendants' Counsel and the Settlement Administrator to repay to
9 Hyland's all attorneys' fees and costs paid by Hyland's to Class Counsel if the
10 Settlement is not finally approved or the award of attorneys' fees and expenses is
11 later modified or reversed for any reason. Such undertaking may be in the form of a
12 promissory note or letter of credit acceptable to Defendants and the Settlement
13 Administrator.

14 4.3 Class Counsel shall have the sole and absolute discretion to allocate the
15 Fee and Expense Award amongst Plaintiffs' Counsel and any other attorneys for
16 Plaintiffs. Hyland's shall have no liability or other responsibility for allocation of
17 any such attorney's fees and expenses awarded, and, in the event that any dispute
18 arises relating to allocation of fees, Class Counsel agree to hold Hyland's harmless
19 from, and indemnify Hyland's with respect to, any and all such liabilities, costs, and
20 expenses, including attorneys' fees and costs of such dispute.

21 **V. NOTICE TO THE CLASS AND ADMINISTRATION OF** 22 **SETTLEMENT**

23 5.1 The Class Notice shall conform to all applicable requirements of the
24 Federal Rules of Civil Procedure, the United States Constitution (including the Due
25 Process Clauses), the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and any
26 other applicable law, and shall otherwise be in the manner and form approved by the
27 Court.

1 **5.2 General Notice Terms.** The Class Notice Shall:

2 (a) inform Settlement Class Members that, if they do not exclude
3 themselves from the Class, they may be eligible to receive the relief under the
4 proposed Settlement Agreement;

5 (b) contain a short, plain statement of the background of the
6 Consolidated Action, the Class certification for settlement purposes and the proposed
7 Settlement Agreement;

8 (c) describe the proposed settlement relief outlined in this Stipulation
9 of Settlement;

10 (d) state that any relief to Settlement Class Members is contingent on
11 the Court's final approval of the proposed Settlement Agreement;

12 (e) inform Settlement Class Members of their rights to exclude
13 themselves from the Settlement Class or object to the proposed Settlement
14 Agreement as described in Section VI below.

15 **5.3 Time and Manner of Notice.** Class Notice shall be provided in the
16 manner that Class Notice was provided upon Class Certification in this Consolidated
17 Action, as follows:

18 (a) On or before the Notice Date, which is 30 days following
19 Preliminary Approval, the Settlement Administrator shall cause a copy of the Long
20 Form notice to be sent by email to all class members for whom email addresses are
21 identified;

22 (b) On or before the Notice Date, the Settlement Administrator shall
23 cause a copy of the Long Form notice to be sent by regular mail to all class members
24 for whom the Parties do not have a valid email address but do have a mailing
25 address;

26 (c) On or before the Notice Date, Class Counsel shall cause a copy of
27 the Long Form Notice to be posted on a dedicated website together with links to
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1 important case documents, such as the Preliminary Approval Order, this Stipulation
2 of Settlement, the Consolidated Amended Class Action Complaint, Defendants'
3 Answer to Consolidated Amended Class Action Complaint, and any Second
4 Amended Class Action Complaint;

5 (d) Class Counsel shall have registered www.HylandsLawsuit.com
6 for this purpose, along with several additional domains that will mirror and/or link to
7 that website, including www.HylandsClassAction.com. Class members will be
8 directed to the website by hyperlinks embedded in the email version of the Long
9 Form Notice and by references in both the Long Form and Short Form Notices. The
10 www.HylandsLawsuit.com website will allow Class Members to submit Claim
11 Forms online and will contain information relevant to Class Members, including but
12 not limited to all applicable deadlines, this Stipulation of Settlement, Class Notice, a
13 downloadable Claim Form, all papers filed by the Parties in support of the proposed
14 Settlement Agreement (including Plaintiffs' anticipated motion for a Fee and
15 Expense Award), orders of the Court pertaining to this Stipulation of Settlement, and
16 contact information for the Settlement Administrator for a toll-free telephone
17 number, e-mail, and U.S. mail. The Parties shall use reasonable efforts to agree on
18 all information and documents to be posted on this website and no information shall
19 be posted or provided on the website without the Parties' express approval. The
20 website shall be rendered inactive 90 days after the Final Settlement Approval Date;
21 and

22 (e) Commencing on or before the Notice Date, the Settlement
23 Administrator shall undertake Publication Notice as provided in Section 1.27.

24 **5.4 Notice Period.** The Notice Period shall run for 120 days following the
25 Notice Date. The Long Form and Short Form Notices shall inform Class Members
26 of the Opt-Out Deadline and the Objection Deadline, which will be set by the Court
27 in the Preliminary Approval Order. Any Class Member who does not file a valid and
28

1 timely Request for Exclusion will be bound by the Settlement Agreement set forth in
2 this Stipulation of Settlement and by Final Judgment concluding this Consolidated
3 Action.

4 **5.5 Responsibilities of Settlement Administrator.** The Settlement
5 Administrator will help implement the terms of this Stipulation of Settlement. The
6 Settlement Administrator shall be responsible for administrative tasks, including,
7 without limitation, (a) notifying the appropriate state officials about the Settlement
8 Agreement, (b) arranging, as set forth in this Section and in the Preliminary
9 Approval Order, for distribution of Class Notice (in the form approved by the Court)
10 and Claims Forms (in the form approved by the Court) to Settlement Class Members,
11 (c) answering inquiries from Settlement Class Members and/or forwarding such
12 written inquiries to Class Counsel or their designee, (d) receiving and maintaining on
13 behalf of the Court and the Parties any Settlement Class Member correspondence
14 regarding Requests for Exclusion from the Settlement Agreement, (e) posting notices
15 on the Settlement Website, Claim Forms, and other related documents, (f) receiving
16 and processing claims and distributing cash payments to Settlement Class Members,
17 and (g) otherwise assisting with implementation and administration of the Settlement
18 Agreement terms. The actual costs and expenses of the Settlement Administrator
19 will be paid by Hyland's as part of the Settlement Consideration as described in
20 Section III above.

21 **VI. CLASS SETTLEMENT PROCEDURES**

22 **6.1 Settlement Class Member Eligibility Requirements.** To be eligible to
23 receive relief under the Settlement Agreement, Settlement Class Members must
24 submit a claim to the Claims Administrator by completing and certifying the online
25 Claim Form on the Settlement Website or completing, certifying and mailing the
26 Claim Form to the Claims Administrator. The Claim Form must be submitted online
27 or postmarked no later than the Claim Deadline. Claim Forms submitted or
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1 postmarked after the Claim Deadline shall be denied by the Claims Administrator
2 and Hyland's will not be obligated to make any payment on such claims.

3 **6.2 Requirements for Valid Claim Forms.** No Claim Form will be
4 deemed valid unless it is signed in hard copy or in online form by the Settlement
5 Class Member under penalty of perjury, and is postmarked or submitted online on or
6 before the Claim Deadline.

7 **6.3 Review by Claims Administrator.** The Claims Administrator shall
8 review all submitted Claim Forms within a reasonable time to determine each
9 Settlement Class Member's eligibility for relief, and the amount of such relief, if
10 any. Copies of submitted Claim Forms shall be provided to Defense Counsel and to
11 Class Counsel upon request. Settlement Class Members who submit valid Claim
12 Forms shall be entitled to relief as set forth in paragraph 3.1(a) of this Stipulation of
13 Settlement. Settlement Class Members who submit Claims Forms that do not meet
14 the Eligibility Requirements or the Requirements for Valid Claim Forms, as
15 described in this Section VI of this Stipulation of Settlement, shall not be entitled to
16 the relief set forth in paragraph 3.1(a) of this Stipulation of Settlement. The Claims
17 Administrator shall use standard and customary procedures to prevent the payment
18 of fraudulent claims and to pay only legitimate claims.

19 **6.4 Incomplete Claim Forms.** Failure to provide all information requested
20 in the Claim Form will not result in nonpayment of a claim. Instead, the Settlement
21 Administrator will take customary steps to determine whether the Settlement Class
22 Member is eligible for payment and to determine the amount of the payment based
23 on the information contained in the Claim Form or otherwise submitted, or based on
24 other reasonably available information. Claim Forms that omit essential or required
25 information that cannot be identified from reasonably available information shall be
26 returned by the Claims Administrator with a Notice of Missing or Inaccurate
27 Information via email to the Settlement Class Member's email address indicated on
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1 the Claim Form. If the Claims Administrator is unable to return the Claim Form
2 with a Notice of Missing or Inaccurate Information as a result of omitted
3 information, the Claims Administrator will reject that Settlement Class Member's
4 claim, and Hyland's will not be obligated to provide the Class Benefit set forth in
5 paragraph 3.1(a) above.

6 **6.5 Inaccurate Claim Forms.** Claim Forms submitted with inaccurate or
7 disqualifying information shall be returned by the Claims Administrator with a
8 Notice of Missing or Inaccurate Information via email to the Settlement Class
9 Member's email address indicated on the Claim Form. If the Claims Administrator
10 is unable to return the Claim Form with a Notice of Missing or Inaccurate
11 Information as a result of inaccurate information, the Claims Administrator will
12 reject that Settlement Class Member's claim, and Hyland's will not be obligated to
13 provide the Class Benefit set forth in paragraph 3.1(a) above.

14 **6.6 Resubmission of Claim Forms following Notice of Missing or**
15 **Inaccurate Information.** Settlement Class Members whose Claim Forms are
16 returned with a Notice of Missing or Inaccurate Information shall have until the
17 Claim Deadline, or 30 days from when the Notice of Missing or Inaccurate
18 Information was emailed by the Settlement Administrator, whichever is later, to
19 respond to the Notice of Missing or Inaccurate Information with a revised Claim
20 Form that is complete and contains no inaccurate or disqualifying information. If a
21 Settlement Class Member fails to timely respond to the Notice of Missing or
22 Inaccurate Information, or resubmits a Claim Form that is incomplete or inaccurate
23 the Claims Administrator shall reject that Settlement Class Member's Claim Form,
24 and Hyland's will not be obligated to provide the Class Benefit set forth in paragraph
25 3.1(a) above.

26 **6.7 Provision of Class Benefit.** All Settlement Class Members who are
27 eligible and who submit a valid Claim Form shall be sent cash awards, or a letter
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1 explaining the rejection of their Claim Form, within 45 calendar days of the Final
2 Settlement Approval Date. Hyland's shall pay the Settlement Administrator the
3 aggregate value of all cash awards to be distributed to Settlement Class Members no
4 later than 15 calendar days after the Final Settlement Approval Date. All cash
5 awards to Settlement Class Members will be in the form of checks, and such checks
6 will state that they must be redeemed within 180 calendar days of the Final Settlement
7 Approval Date or they will become void.

8 **6.8 Requests for Exclusion.** Any individual who would otherwise be a
9 Settlement Class Member but who does not wish to obtain the Class Benefit or to be
10 bound by the terms of this Stipulation of Settlement must postmark a written Request
11 for Exclusion to the Claims Administrator no later than the Opt-Out Date. The
12 Request for Exclusion must be in writing and include a statement of intention to be
13 excluded from the Settlement Class. Additionally, to be valid, a Request for
14 Exclusion must contain:

15 (a) the name of this lawsuit, *Forcellati v. Hyland's Inc.*, Case No. 12-
16 cv-1983 GHK (MRWx);

17 (b) the individual's name, current address, and telephone number;
18 and

19 (c) the individual's signature.

20 **6.9** Each Request for Exclusion must be submitted individually. Each
21 Request for Exclusion may not be submitted on behalf of more than one individual.
22 So-called "mass" or "class" Requests for Exclusion shall not be allowed.

23 **6.10** Any individual who submits a timely and valid Request for Exclusion
24 will not be bound by this Stipulation of Settlement or have any right to object, appeal
25 or comment thereon.

26 **6.11** At least seven calendar days prior to the Fairness Hearing, Class
27 Counsel shall prepare or cause the Settlement Administrator to prepare a list of the
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1 persons who have excluded themselves in a valid and timely manner from the
2 Settlement Class, and Class Counsel shall file that list with the Court.

3 **6.12 Objections.** Settlement Class Members shall have the right to appear
4 and present objections as to any reason why the terms of this Stipulation of
5 Settlement and the Settlement Agreement set forth herein should not be given Final
6 Approval. Any objection must be in writing and filed with the Court, with a copy
7 delivered to Class Counsel and Defense Counsel at the addresses set forth in the
8 Class Notice, no later than the Objection Deadline to be set by the Court.
9 Additionally, to be valid, objections must:

10 (a) include the Settlement Class Member's name, current address,
11 and telephone number, or the Settlement Class Member's lawyer's name, current
12 address and telephone number;

13 (b) contain a caption or title that identifies it as an objection to the
14 Settlement Agreement in *Forcellati v. Hyland's, Inc.*, Case No. 12-cv-1983 GHK
15 (MRWx);

16 (c) contain a clear and concise statement of the Settlement Class
17 Member's objection, including the facts supporting the objection and the legal
18 grounds on which the objections is based;

19 (d) whether the Settlement Class Member intends to appear at the
20 Fairness Hearing; and

21 (e) include documents sufficient to establish membership in the
22 Settlement Class such as a verification under oath as to the date and location of their
23 purchase of a Settlement Class Product or a Proof of Purchase as defined herein.

24 **6.13** No Settlement Class Member shall be entitled to be heard at the
25 Fairness Hearing (whether individually or through separate counsel) or to object to
26 the Settlement Agreement, and no written objections or briefs by any Settlement
27 Class Member shall be considered by the Court at the Fairness Hearing unless a
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1 written objection is filed with the Court and delivered to Class Counsel and Defense
2 Counsel by the Objection Deadline.

3 6.14 Class Counsel, on behalf of Plaintiffs and the Settlement Class, and
4 Defense Counsel, on behalf of Hyland's, shall have the right to respond to any
5 objection prior to the Fairness Hearing.

6 6.15 Settlement Class Members who do not request exclusion and who fail to
7 file and timely serve written objections in the manner specified herein shall be
8 deemed to have waived any objections and shall be foreclosed from making any
9 objection (whether by appeal or otherwise) to Final Approval of the Settlement
10 Agreement, and shall be bound, to the extent allowed by law, by the terms of this
11 Stipulation of Settlement.

12 **VII. RELEASES**

13 7.1 **Release by Settlement Class Members.** Effective as of the Final
14 Settlement Approval Date, each and every Settlement Class Member (except any
15 such person who has filed a proper and timely Request for Exclusion) shall release
16 and forever discharge, and shall be forever barred from asserting, instituting or
17 maintaining against any or all of the Released Persons, any and all claims, demands,
18 actions, causes of action, lawsuits, arbitrations, damages, or liabilities whether legal,
19 equitable, or otherwise, relating in any way to the claims asserted or the factual
20 allegations made in the Consolidated Action, including without limitation the
21 allegation that Settlement Class Products' ingredients are ineffective, the allegation
22 that the Settlement Class Products are not all natural, and/or the purchase of any of
23 the Settlement Class Products during the Settlement Class Period (collectively, the
24 "Claims"). With respect to the Claims released pursuant to this paragraph, each
25 Settlement Class Member shall be deemed to have waived and relinquished, to the
26 fullest extent permitted by law, the provisions, rights and benefits of California Civil
27 Code section 1542 (and equivalent, comparable, or analogous provisions of the laws
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1 of the United States of America or any state or territory thereof, or of the common
2 law or civil law). Section 1542 provides that:

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

9 Each and every term of this paragraph shall inure to the benefit of each and all of the
10 Released Persons, and each and all of their respective successors and personal
11 representatives, which persons and entities are intended to be beneficiaries of this
12 paragraph.

13 **7.2 Effectuation of Settlement.** None of the above releases include
14 releases of claims or otherwise affects the rights to enforce the terms of this
15 Stipulation of Settlement.

16 **7.3 No Admission of Liability.** This Stipulation of Settlement and the
17 Settlement Agreement set forth herein reflects, among other things, the compromise
18 and settlement of disputed claims among the Parties, and neither this Stipulation of
19 Settlement nor the releases given herein, nor any consideration therefor, nor any
20 actions taken to carry out the terms of this Stipulation of Settlement, are intended to
21 be, nor may they be deemed or construed to be, an admission or concession of
22 liability, or the validity of any claim, defense, or of any point of fact or law on the
23 part of any party. Hyland's denies the material allegations of the Consolidated
24 Amended Class Action Complaint and any Second Amended Complaint that may be
25 filed in this Consolidated Action following execution of this Stipulation of
26 Settlement. Neither this Stipulation of Settlement, nor the fact of the Settlement
27 Agreement set forth herein, nor the settlement proceedings, nor the settlement
28 negotiations, nor any related document, shall be used as an admission of any fault or
omission by any or all of the Released Persons, or be offered or received in evidence

1 as an admission, concession, presumption, or inference of any wrongdoing or
2 liability by any or all of the Released Persons in any proceeding, other than such
3 proceedings as may be necessary to consummate, interpret or enforce this Stipulation
4 of Settlement.

5 **VIII. SUBMISSION OF THE SETTLEMENT TO THE COURT**

6 8.1 As soon as is practicable following the signing of this Stipulation of
7 Settlement, Class Counsel shall apply to the Court for entry of the Preliminary
8 Approval Order, for the purpose of, among other things:

9 (a) Finding that the Settlement Agreement is within the range of
10 reasonableness and possible Final Approval such that the Class Notice should be
11 provided pursuant to this Stipulation of Settlement;

12 (b) Approving the Class Notice, including the Long Form Notice and
13 Short Form Notice, substantially in the form set forth at Exhibits C and E;

14 (c) Finding that the requirements for certification of the Settlement
15 Class for settlement purposes have been satisfied, appointing Plaintiffs as the
16 representatives of the Class, and their counsel as Class Counsel;

17 (d) Scheduling the Fairness Hearing on a date ordered by the Court,
18 provided in the Preliminary Approval Order, and in compliance with applicable law,
19 to determine whether the Settlement Agreement should be approved as fair,
20 reasonable, and adequate, and to determine whether a Final Order and Final
21 Judgment should be entered;

22 (e) Determining that the Notice of the Settlement Agreement and of
23 the Fairness Hearing, as set forth in this Stipulation of Settlement, complies with all
24 legal requirements, including but not limited to the Due Process Clause of the United
25 States Constitution;

26 (f) Appointing KCC Class Action Services, LLC as the Settlement
27 Administrator;

1 (g) Directing that Class Notice shall be given to the Class as provided
2 in Section V of this Stipulation of Settlement;

3 (h) Providing that Class Members will have until the Claim Deadline
4 to submit a Claim Form;

5 (i) Providing that any objections by an Class Member to the
6 certification of the Settlement Class and the proposed Settlement Agreement set forth
7 in this Stipulation of Settlement, and/or entry of the Final Order and Final Judgment,
8 shall be heard and any papers submitted in support of said objections shall be
9 considered by the Court at the Fairness Hearing only if, on or before the Objection
10 Deadline set by the Court, such objector files with the Court a written objection and
11 notice of the objector's intention to appear, and otherwise complies with the
12 requirements set for in Section VI of this Stipulation of Settlement;

13 (j) Establishing the dates by which the Parties shall file and serve all
14 papers in support of the application for final approval of the Settlement Agreement
15 and/or in response to any valid and timely objections;

16 (k) Providing that all Settlement Class Members will be bound by the
17 Final Order and Final Judgment unless such members of the Settlement Class timely
18 submit a valid Request for Exclusion in the manner set forth in Section VI of this
19 Stipulation of Settlement;

20 (l) Providing that Settlement Class Members who wish to exclude
21 themselves from the Settlement Agreement will have until the Opt-Out Date to
22 submit a valid Request for Exclusion in the manner set forth in Section VI of this
23 Stipulation of Settlement;

24 (m) Directing the Parties, pursuant to the terms and conditions of this
25 Stipulation of Settlement, to take all necessary and appropriate steps to establish the
26 terms and conditions of this Stipulation of Settlement and the Preliminary Approval
27 Order; and

1 (n) Pending the Fairness Hearing, staying all proceedings in the
2 Consolidated Action, other than the proceedings necessary to carry out or enforce the
3 terms and conditions of this Agreement and the Preliminary Approval Order, and
4 enjoining Class Members from bringing or prosecuting any action relating to the
5 Released Claims.

6 8.2 At the Fairness Hearing, the Parties shall seek to obtain from the Court a
7 Final Order and Final Judgment. The Final Order and Final Judgment shall, among
8 other things:

9 (a) Find that the Court has personal jurisdiction over all Settlement
10 Class Members, the Court has subject matter jurisdiction over the claims asserted in
11 the Consolidated Action, and that venue is proper;

12 (b) Finally approve the Settlement Agreement pursuant to Rule 23 of
13 the Federal Rules of Civil Procedure;

14 (c) Certify the Settlement Class for settlement purposes only;

15 (d) Find that the Class Notice complied with all laws and
16 requirements, including, but not limited to, the Due Process Clause of the United
17 States Constitution;

18 (e) Incorporate and effectuate the release set forth in the Stipulation
19 of Settlement make the Release effective as of the Final Settlement Approval Date;

20 (f) Authorize the Parties to implement the terms of the Stipulation of
21 Settlement;

22 (g) Enjoin Class Members from bringing or prosecuting any action
23 relating to the Released Claims; and

24 (h) Dismiss the Consolidated Action with prejudice, except that the
25 Court will retain jurisdiction relating to the administration, consummation,
26 enforcement, and interpretation of the Stipulation of Settlement, the Final Order and
27

1 Final Judgment, any final order approving an Attorneys' Fees and Expenses Award
2 and Incentive Awards, and for any other necessary purpose.

3 8.3 The Parties acknowledge that each intends to implement the terms of
4 this Stipulation of Settlement. The Parties shall, in good faith, cooperate and assist
5 with and undertake all reasonable action and steps to accomplish all required events
6 on the schedule set by the Court, and shall use reasonable efforts to implement all
7 terms and conditions of this Stipulation of Settlement. In the event that the Court
8 does not preliminarily or finally approve the Settlement Agreement, the Parties
9 further agree to continue to cooperate in good faith to address any deficiencies raised
10 by the Court in an expeditious manner.

11 8.4 **Effect if Settlement Is Not Approved.** This Stipulation of Settlement
12 was entered into only for purposes of settlement, subject to and without waiver of the
13 Parties' respective rights. If the Court does not enter the Preliminary Approval
14 Order or does not grant final approval, or if the final Settlement Approval Order and
15 Final Judgment is vacated, overturned, reversed, or rendered void as a result of an
16 appeal, the Parties shall be restored to their respective positions immediately
17 preceding execution of this Stipulation of Settlement.

18 **IX. MISCELLANEOUS PROVISIONS**

19 9.1 The Parties agree that the recitals are contractual in nature and form a
20 material part of this Stipulation of Settlement.

21 9.2 This Stipulation of Settlement and its accompanying exhibits set forth
22 the entire understanding of the Parties. No change or termination of this Stipulation
23 of Settlement shall be effective unless in writing and signed by Plaintiffs' Counsel
24 and Hyland's Counsel. No extrinsic evidence or parol evidence shall be used to
25 interpret this Stipulation of Settlement.

26 9.3 All of the Parties warrant and represent that they are agreeing to the
27 terms of this Stipulation of Settlement based upon the legal advice of their respective
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1 attorneys, that they have been afforded the opportunity to discuss the contents of this
2 Stipulation of Settlement with their attorneys and that the terms and conditions of
3 this document are fully understood and voluntarily accepted.

4 9.4 The waiver by any party of a breach of any term of this Stipulation of
5 Settlement shall not operate or be construed as a waiver of any subsequent breach by
6 any party. The failure of a party to insist upon strict adherence to any provision of
7 the Stipulation of Settlement shall not constitute a waiver or thereafter deprive such
8 party of the right to insist upon strict adherence.

9 9.5 The headings in this Stipulation of Settlement are inserted merely for
10 the purpose of convenience and shall not affect the meaning or interpretation of this
11 document.

12 9.6 This Stipulation of Settlement may be executed by facsimile signature
13 and in counterparts, each of which shall be deemed an original and all of which,
14 when taken together, shall constitute one and the same instrument. The date of
15 execution shall be the latest date on which any party signs the Stipulation of
16 Settlement.

17 9.7 This Stipulation of Settlement has been negotiated among and drafted
18 by Class Counsel and Defense Counsel. Plaintiffs, Plaintiffs' Counsel, Class
19 Members, and Defendants shall not be deemed to be the drafter of this Stipulation of
20 Settlement or of any particular provision, nor shall they argue that any particular
21 provision should be construed against its drafter or otherwise resort to the contra
22 proferentem canon of construction. Accordingly, this Stipulation of Settlement
23 should not be construed in favor of or against one party as to the drafter, and the
24 Parties agree that the provisions of California Civil Code § 1654 and common law
25 principles of construing ambiguities against the drafter shall have no application. All
26 Parties agree that counsel for the Parties drafted this Stipulation of Settlement during
27 extensive arm's-length negotiations. No parol or other evidence may be offered to
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1 explain, construe, contradict, or clarify its terms, the intent of the Parties or their
2 counsel, or the circumstances under which this Stipulation of Settlement was made
3 or executed.

4 9.8 Any disagreement and/or action to enforce this Stipulation of Settlement
5 shall be commenced and maintained only in the Court in which this Consolidated
6 Action is pending.

7 9.9 The Parties reserve the right, subject to the Court's approval, to agree to
8 any reasonable extensions of time that might be necessary to carry out any of the
9 provisions of this Stipulation of Settlement.

10 9.10 In the event any one of the provisions contained in this Stipulation of
11 Settlement shall for any reason be held to be invalid, illegal, or unenforceable in any
12 respect, such invalidity, illegality, or unenforceability shall not affect other
13 provisions if Defense Counsel and Class Counsel, on behalf of the Parties, mutually
14 elect to proceed as if such invalid, illegal, or unenforceable provision had never been
15 included in this Stipulation of Settlement.

16 **[Intentionally Left Blank; Signatures on Following Page(s)]**

1 IN WITNESS WHEREOF, the Parties hereto, by and through their respective
2 attorneys, and intending to be legally bound hereby, have duly executed this
3 Stipulation of Settlement as of the date set forth below.

4
5 Dated: August [X], 2016 By: _____
6 Enzo Forcellati

7 Dated: August [X], 2016 By: _____
8 Lisa Roemmich

9 Dated: August [X], 2016 **BURSOR & FISHER, P.A.**
10 By: _____
11 Scott A. Bursor

12 Scott A. Bursor (State Bar No. 276006)
13 L. Timothy Fisher (State Bar No. 191626)
14 Annick M. Persinger (State Bar No. 272996)
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18 **VOZZOLO LLC**
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Dated: August [X], 2016

By: _____
John P. Borneman

Hyland's, Inc.
Standard Homeopathic Laboratories Inc.
Standard Homeopathic Company

Dated: August [X], 2016

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