

No. S078806
Vancouver Registry

In the Supreme Court of British Columbia

Between

LANA WAKELAM

Plaintiff

and

**JOHNSON & JOHNSON, JOHNSON & JOHNSON INC.,
MCNEIL CONSUMER HEALTHCARE CANADA,
NOVARTIS CONSUMER HEALTH CANADA INC./
NOVARTIS SANTE FAMILIALE CANADA INC., WYETH
CONSUMER HEALTHCARE/WYETH SOINS DE SANTE
INC, PFIZER CANADA INC., TRILLIUM HEALTH CARE
PRODUCTS INC., VITA HEALTH PRODUCTS INC., and
PROCTER & GAMBLE INC**

Defendants

BROUGHT UNDER THE CLASS PROCEEDINGS ACT, R.S.B.C. 1996, C. 50

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE MR. JUSTICE)
GRAUER) 12/November/2013
)

ON THE APPLICATION of the plaintiff coming on for hearing at the Courthouse, 800 Smithe Street, Vancouver, BC, on 12/November/2013 and on hearing David G.A. Jones and Julie R. Facchin (in person), lawyers for the plaintiff Lana Wakelam; Diana L. Dorey (in person), lawyer for the defendant Procter & Gamble Inc.; Alexandra Cocks (in person), lawyer for the defendant Vita Health Products Inc.; Sandeep J. Joshi (in person), lawyer for the defendant Trillium Health Care Products Inc.; William McNamara (by telephone), lawyer for the defendant Wyeth Consumer Healthcare/Wyeth Soins De Sante Inc.; David T. Neave (in person), lawyer for the defendants Johnson & Johnson,

Johnson & Johnson Inc., McNeil Consumer Healthcare Canada and Pfizer Canada Inc.; and David Kent (by telephone), lawyer for the defendant Novartis Consumer Health Canada Inc./Novartis Sante Familiale Canada Inc. and on reading the materials filed, including the Settlement Agreement between Lana Wakelam and Procter & Gamble Inc., made as of June 16, 2013 (the "P&G Settlement Agreement");

THIS COURT ORDERS that:

1. except to the extent they are modified by this order, the definitions set out in the P&G Settlement Agreement attached as **Schedule "A"** apply to and are incorporated into this order;
2. the P&G Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class;
3. the P&G Settlement Agreement is approved pursuant to s. 35 of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 and shall be implemented in accordance with its terms;
4. the P&G Settlement Agreement is incorporated by reference to and forms part of this order and is binding upon the representative plaintiff and all Settlement Class Members;
5. upon the Effective Date, each Settlement Class Member shall consent and shall be deemed to have consented to the dismissal as against the Releasees of any Other Actions he, she or it has commenced, without costs and with prejudice;
6. upon the Effective Date, any Other Action commenced in British Columbia by any Settlement Class Member shall be and is hereby dismissed against the Releasees, without costs and with prejudice;
7. this order, including the P&G Settlement Agreement, is binding upon each Settlement Class Member including those persons who are minors or mentally incapable;

8. upon the Effective Date, in accordance with s. 7.1 of the P&G Settlement Agreement, each Releasor forever and absolutely releases the Releasees from the Released Claims;

9. upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in British Columbia or elsewhere, on their own behalf or on behalf of any class or any other person or entity, any action, suit, cause of action, claim or demand against any Releasee or any other person or entity who may claim contribution or indemnity from any Releasee in respect of any Released Claim or any matter related thereto, except for the continuation of the Proceedings against the Non-Settling Defendants. If any action, suit, cause of action, claim or demand by any of the Releasors (including, without limitation, the Proceeding against the Non-Settling Defendants) results in any action, suit, cause of action, claim or demand against the Releasees, then such Releasors shall indemnify and save harmless such Releasees from all resulting liabilities, obligations and costs (including, without limitation, legal fees on a solicitor and own client basis) up to a maximum of \$150,000.

10. this order does not affect any claims or causes of action that any Settlement Class Member has or may have against the Non-Settling Defendants;

11. upon the Effective Date, the Settling Defendant shall have no responsibility or liability relating to the investment, distribution or administration of monies in the Account;

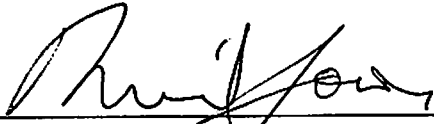
12. Camp Fiorante Matthews Mogerman shall hold the Settlement Amount, plus any accrued interest, in trust for the benefit of the Settlement Class pending distribution to the Settlement Class Members in accordance with a subsequent order of this Court;

13. this order shall be declared null and void on subsequent motion made on notice in the event that the P&G Settlement Agreement is terminated in accordance with its terms;

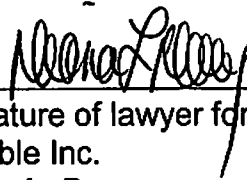
14. upon the Effective Date, the Proceeding is dismissed against the Settling Defendant without costs and with prejudice; and

15. endorsement of this order by counsel for the Non-Settling Defendants is dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT.



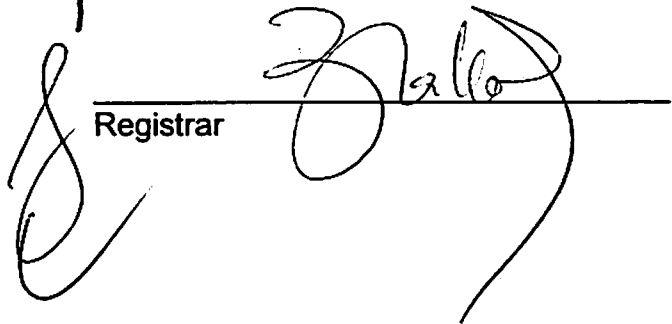
Signature of lawyer for Lana Wakelam
David G.A. Jones



Signature of lawyer for Procter & Gamble Inc.
Diana L. Dorey



By the Court



Registrar

SCHEDULE A

**BRITISH COLUMBIA
CHILDREN'S COUGH AND COLD MEDICINE CLASS ACTION
SETTLEMENT AGREEMENT AND RELEASE**

("SETTLEMENT AGREEMENT")

Made as of June 16, 2013

Between

LANA WAKELAM
(the "Plaintiff")

and

PROCTER & GAMBLE INC.
(the "Settling Defendant")

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RECITALS

WHEREAS:

A. On December 24, 2007, the Plaintiff commenced the Proceeding which alleges that the Settling Defendant made deceptive and/or misleading representations to British Columbia consumers in respect of the distribution and supply of its children's cough and cold medications, in contravention of the BC *Business Practices and Consumer Protection Act* (the "BPCPA"), the *Competition Act* and the common law;

B. the Proceeding was certified as a class proceeding pursuant to the British Columbia *Class Proceedings Act* (the "CPA") against the Defendants including the Settling Defendant by order of Mr. Justice Grauer of the British Columbia Supreme Court made December 22, 2011 (the "Contested Certification");

C. the Defendants, including the Settling Defendant, are appealing the Contested Certification;

D. the Settling Defendant does not admit, through the execution of this Settlement Agreement, any allegation of unlawful conduct alleged in the Proceeding;

E. the Plaintiff and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiff's claims, and having regard to the burdens and expense in prosecuting the Proceeding, including the risks and uncertainties associated with trials and appeals, the Plaintiff and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiff and the class she represents;

F. the Settling Defendant is entering into this Settlement Agreement in order to achieve a final resolution of all claims asserted or which could have been asserted against it by the Plaintiff in the Proceedings, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

G. the Parties therefore wish to, and hereby do, finally resolve, without admission of liability, the Proceeding as against the Settling Defendant;

H. for the purposes of settlement only and contingent on approval by the Court as provided for in this Settlement Agreement, the Parties have consented to certification of the Proceeding as a class proceeding and have consented to a Settlement Class and a Common Issue in the Proceeding solely for the purpose of implementing this Settlement Agreement;

I. the Plaintiff asserts that she is an adequate class representative for the Settlement Class and will seek to be appointed as representative plaintiff in the Proceeding; and

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Proceeding be settled and dismissed on the merits with prejudice as to the Settling Defendant only, without costs as to the Plaintiff, the Settlement Class she seeks to represent or the Settling Defendant, subject to the approval of the Courts, on the following terms and conditions:

SECTION 1 – DEFINITIONS

For the purpose of this Settlement Agreement only, including the Recitals and Schedules hereto the following definitions apply:

- (1) ***Account*** means an interest bearing trust account at a Canadian Schedule 1 bank in British Columbia under the control of Camp Fiorante Matthews Mogergerman for the benefit of Settlement Class Members.
- (2) ***Administration Expenses*** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by or on behalf of the Plaintiff, for the final approval of this Settlement Agreement, including the costs of notices pursuant to section 10 and the costs of administration but excluding Class Counsel Fees.
- (3) ***Children's Cough Medicine*** means cough medicine supplied, offered, manufactured, produced, advertised, marketed, sold or promoted by the Settling Defendant for use by children under the age of six years old containing one or more of the following groups of drugs:
 - (a) Antihistamines such as brompheniramine maleate, chlorpheniramine maleate, dexbrompheniramine maleate, clemastine hydrogen fumarate,

diphenhydramine hydrochloride, diphenylpyraline hydrochloride, doxylamine succinate, pheniramine maleate, phenyltoloxamine citrate, promethazine hydrochloride, pyrilamine maleate, and triprolidine hydrochloride;

- (b) Antitussives such as dextromethorphan, dextromethorphan hydrobromide, and diphenhydramine hydrochloride;
 - (c) Expectorants such as guaifenesin; and/or
 - (d) Decongestants such as ephedrine hydrochloride/sulfate, phenylephrine hydrochloride/sulphate, and pseudoephedrine hydrochloride/sulphate.
-
- (4) ***Claims Administrator*** means the person or entity appointed by the Court to administer the Settlement Agreement.
 - (5) ***Class Counsel*** means Camp Fiorante Matthews Mogerman.
 - (6) ***Class Counsel Fees*** include the fees, disbursements, costs, interest, GST/HST and other applicable taxes or charges of Class Counsel.
 - (7) ***Class Period*** means December 24, 1997 to December 21, 2011.
 - (8) ***Common Issue*** in the Proceeding means: Did the Settling Defendant engage in deceptive acts or practices contrary to the BPCPA in the solicitation, offer, advertisement and promotion of Children's Cough Medicine during the Class Period?
 - (9) ***Court*** means the Supreme Court of British Columbia.
 - (10) ***Defendants*** means the entities named as defendants in the Proceeding as set out in Schedule A.
 - (11) ***Distribution Protocol*** means the plan for distributing and claiming the Settlement Amount and accrued interest, in whole or part, as approved by the Court.
 - (12) ***Effective Date*** means the date when the Final Order has been received from the Court approving this Settlement Agreement.

- (13) ***Final Order*** means a final judgment or final approval order entered by the Court in respect of the certification of the Proceeding as a class proceeding and the approval of this Settlement Agreement once the time to appeal such judgment or order (or the time to seek leave to appeal such judgment or order) has expired without any appeal being taken, or if an appeal from the judgment or order is taken, the affirmation of such final judgment or approval order in its entirety, without modification, by the court of last resort to which an appeal of such final judgment or approval order may be taken.
- (14) ***Non-Settling Defendant*** means a Defendant that is not a Settling Defendant.
- (15) ***Opt-Out Deadline*** means the date which is sixty (60) days after the date on which the notice of certification is first published.
- (16) ***Other Actions*** means actions or proceedings, other than the Proceeding, relating to Released Claims commenced by a Settlement Class Member either before or after the Effective Date.
- (17) ***Parties*** means the Plaintiff, Settlement Class Members and the Settling Defendant.
- (18) ***Plaintiff*** means Lana Wakelam;
- (19) ***Proceeding*** means British Columbia Court File No. S078806 (Vancouver Registry).
- (20) ***Released Claims*** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, in law, under statute, or in equity, that Releasers, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to any conduct in British Columbia during the Class Period, in respect of the solicitation, offer, advertisement and promotion of Children's Cough Medicine. However, nothing herein shall be construed to release any claims arising from any personal injury or death relating to Children's Cough Medicine.

- (21) **Releasees** means, jointly and severally, individually and collectively, the Settling Defendant and all of its respective present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives; and the predecessors, successors, purchasers, heirs, executors, administrators, trustees and assigns of each of the foregoing, excluding always the Non-Settling Defendants.
- (22) **Releasors** means, jointly and severally, individually and collectively, the Plaintiff and the Settlement Class Members and their respective predecessors, successors, heirs, executors, administrators, trustees, assigns and affiliates.
- (23) **Settlement Agreement** means this agreement and release, including the recitals and schedules.
- (24) **Settlement Amount** means CDN \$150,000.00.
- (25) **Settlement Class** means all persons who:
- (a) purchased Children's Cough Medicine from December 24, 1997 to December 31, 2011 for a child or children under the age of six years old at the time of the purchase; and
 - (b) were resident in British Columbia at the time of such purchase.
- (26) **Settlement Class Member** means a member of the Settlement Class who does not validly opt-out of the Settlement Class in accordance with an order of the Court.
- (27) **Settling Defendant** means Procter and Gamble Inc.

SECTION 2 – SETTLEMENT APPROVAL

2.1 Best Efforts

The Parties shall use their reasonable best efforts to effectuate this settlement and to secure the prompt, complete and final dismissal with prejudice of the Proceeding as against the Settling Defendant.

2.2 Motions for Approval

(1) As soon as practicable, and no later than 60 days after the Settlement Agreement is executed, or by such other date as the parties may agree, the Plaintiff shall bring a motion before the Court for orders approving the notices described in section 10, certifying the Proceeding as a class proceeding solely for settlement purposes and approving this Settlement Agreement.

(2) The Final Order to be submitted to the Court shall be substantially in the form attached hereto as Schedule B.

2.3 Pre-Motion Confidentiality

Until the first of the motions required by section 2.2 is brought, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior written consent of counsel for the Settling Defendant and Class Counsel, as the case may be, except as required for the purposes of financial reporting or the preparation of financial records (including tax returns and financial statements) or as otherwise required by law.

SECTION 3– SETTLEMENT AMOUNT

3.1 Payment of Settlement Amount

(1) The Settling Defendant shall pay the Settlement Amount in full satisfaction of the Released Claims against the Releasees within 30 days of the execution of this Settlement Agreement.

(2) The Settling Defendant shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement.

(3) The Settling Defendant shall pay the Settlement Amount to Camp Fiorante Matthews Mogerman for deposit into the Account. Camp Fiorante Matthews Mogerman shall maintain the

Account as provided for in this Settlement Agreement. Camp Fiorante Matthews Mogergerman shall not pay out all or part of the Settlement Amount, except in accordance with this Settlement Agreement, or in accordance with an order of the Court obtained after notice to the Settling Defendant.

3.2 Taxes and Interest

(1) Except as hereinafter provided, all interest earned on the Settlement Amount shall accrue to the benefit of the Settlement Class and shall become and remain part of the Account.

(2) Subject to section 3.2(3), all taxes payable on any interest which accrues on the Settlement Amount in the Account or otherwise in relation to the Settlement Amount shall be the responsibility of the Settlement Class. Class Counsel shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount shall be paid from the Account. All interest and penalties due with regard to the income earned by the Settlement Amount as a result of a failure to pay taxes or to pay taxes on a timely basis due thereon shall be the sole responsibility of Class Counsel.

(3) The Settling Defendant shall have no responsibility to make any tax or other filings relating to the Account and will have no responsibility to pay tax on any income earned by the Settlement Amount or pay any taxes on the monies in the Account, unless this Settlement Agreement is terminated, in which case the interest earned on the Settlement Amount in the Account shall be paid to the Settling Defendant who, in such case, shall be responsible for the payment of all taxes on such interest.

SECTION 4- DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST

4.1 Distribution Protocol

After the Effective Date, at a time wholly within the discretion of Class Counsel, Class Counsel will seek an order from the Court approving the Distribution Protocol. Before seeking Court approval of the Distribution Protocol, Class Counsel shall work cooperatively with the Settling Defendant regarding the terms of the Distribution Protocol and in particular, the

selection of *cy pres* recipients, if any. If Class Counsel and the Settling Defendant do not agree upon the terms of the Distribution Protocol including the selection of any *cy pres* recipients, Class Counsel may proceed with the application to the Court to approve the Distribution Protocol. The Settling Defendant shall be given notice of and have standing to make submissions at the hearing to approve the Distribution Protocol.

4.2 No Responsibility for Administration or Fees

The Settling Defendant shall not have any responsibility, financial obligations or liability whatsoever with respect to the investment, distribution or administration of monies in the Account including, but not limited to, Administration Expenses and Class Counsel Fees.

SECTION 5 – OPTING-OUT

5.1 Procedure

- (1) A person may opt-out of the Proceedings by sending a written election to opt-out, signed by the person, by pre-paid mail, courier or fax to the Class Counsel at an address to be identified in the Final Order and the notice contemplated by section 10.1(i) of this Settlement Agreement.
- (2) An election to opt-out will only be effective if it is actually sent to Class Counsel and post-marked on or before the Opt-Out Deadline.
- (3) In addition to a written election to opt-out, a person who wishes to opt-out must provide to Class Counsel, in writing and post-marked on or before the Opt-Out Deadline:
 - (a) his or her full name, current address and telephone number;
 - (b) the name(s) of each child and his or her date of birth for whom he or she purchased Children's Cough Medicine during the Class Period;
 - (c) any information in his or her possession concerning the price paid for Children's Cough Medicine during the Class Period and
 - (d) confirmation that the person was a resident of British Columbia at the time of purchase of Children's Cough Medicine.

5.2 Opt-Out Report

Within 30 days of the Opt-Out Deadline, Class Counsel shall provide the Settling Defendant with a report that sets out the names of any persons or entities who have opted out of the Proceedings, along with any other information received from any such persons or entities under section 5.1 hereof.

SECTION 6 – TERMINATION OF SETTLEMENT AGREEMENT

6.1 Right of Termination

- (1) In the event that:
 - (a) the Court declines to approve this Settlement Agreement or any material part hereof;
 - (b) the Court approves this Settlement Agreement in a materially modified form; or
 - (c) the order approving this Settlement Agreement does not become a Final Order;

this Settlement Agreement may be terminated at the election of the Settling Defendant by way of written notice to Class Counsel and, except as provided for in Section 6.4, following termination in accordance with this section, it shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.

(2) Any order, ruling or determination made by the Court with respect to Class Counsel's fees and disbursements or with respect to the Distribution Protocol or with respect to the Opt-Out Procedure 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.

(3) In the event this Settlement Agreement is not approved and is terminated in accordance with its terms, the Plaintiff and the Settling Defendant agree that the certification of the Proceeding as a class proceeding for settlement purposes, including the definitions of the Settlement Class and the Common Issue, shall be without prejudice to any position that any of the Parties may later take on any issue in the Proceeding.

6.2 If Settlement Agreement is Terminated

(1) If this Settlement Agreement is terminated, any order certifying the Proceeding as a class action on the basis of the Settlement Agreement or approving this Settlement Agreement shall be set aside and declared null and void and of no force or effect, and anyone shall be estopped from asserting otherwise.

6.3 Allocation of Monies in the Account Following Termination

If the Settlement Agreement is terminated after the Settlement Amount is paid to Class Counsel, Class Counsel shall return to the Settling Defendant all monies remaining in the Account (including interest) after deduction of Administrative Expenses reasonably incurred up to the date of termination within thirty (30) business days of notice of termination by the Settling Defendant in accordance with section 6.1(1) of this Settlement Agreement.

6.4 Survival of Provisions After Termination

(1) If this Settlement Agreement is terminated, the provisions of sections 3.2, 6, 8, 9.2, and 13, and the definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

(2) The Settling Defendant and Plaintiff expressly reserve all of their respective rights if this Settlement Agreement does not become effective or if this Settlement Agreement is terminated.

SECTION 7 – RELEASES AND DISMISSALS

7.1 Release of Releasees

Upon the Effective Date, and in consideration of payment of the Settlement Amount, and for other valuable consideration set forth in the Settlement Agreement, the Releasers forever and absolutely release the Releasees from the Released Claims.

7.2 No Further Claims

The Releasers shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in British Columbia or elsewhere, on their own behalf or on behalf of any class or any other person or entity, any action, suit, cause of action, claim or demand against any Releasee or any other person or entity who may claim contribution or indemnity

from any Releasee in respect of any Released Claim or any matter related thereto, except for the continuation of the Proceedings against the Non-Settling Defendants. If any action, suit, cause of action, claim or demand by any of the Releasors (including, without limitation, the Proceeding against the Non-Settling Defendants) results in any action, suit, cause of action, claim or demand against the Releasees, then such Releasors shall indemnify and save harmless such Releasees from all resulting liabilities, obligations and costs (including, without limitation, legal fees on a solicitor and own client basis) up to a maximum of \$150,000.

7.3 Dismissal of the Proceedings

The Proceedings shall be dismissed with prejudice and without costs as against the Releasees.

7.4 Dismissal of Other Actions

- (1) Each Settlement Class Member, who does not opt-out, shall be deemed to consent to the dismissal, without costs and with prejudice, of his, her or its Other Actions against the Releasees.
- (2) All Other Actions commenced by any Settlement Class Member, who does not opt-out, shall be dismissed against the Releasees, without costs and with prejudice.

7.5 Claims Against Other Entities Reserved

Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by Settlement Class Members against any person other than the Releasees.

SECTION 8 – EFFECT OF SETTLEMENT

8.1 No Admission of Liability

Whether or not this Settlement Agreement is terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the Settling Defendant, or of the truth of any of the claims or allegations contained in the Proceeding or any other pleading filed by the Plaintiff.

8.2 Agreement Not Evidence

The Parties agree that, whether or not it is terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law.

SECTION 9- CERTIFICATION FOR SETTLEMENT ONLY

9.1 Settlement Class and Common Issue

(1) The Parties agree that the Proceeding shall be certified as a class proceeding solely for purposes of settlement of the Proceeding and the approval of this Settlement Agreement by the Courts.

(2) The Plaintiff agrees that, in the motion for certification of the Proceeding as a class proceedings and for the approval of this Settlement Agreement, the only common issue that she will seek to define is the Common Issue and the only class that she will assert is the Settlement Class.

(3) The Parties agree that the certification of the Proceeding against the Settling Defendant for settlement purposes shall not derogate in any way from the rights of the Plaintiff and the Settlement Class Members as against the Non-Settling Defendants in respect of the Contested Certification.

9.2 Certification Without Prejudice

In the event this Settlement Agreement is not approved or is terminated in accordance with its terms, the Parties agree that the prior certification of the Proceeding as a class proceeding against the Settling Defendant for settlement purposes, including the definition of the Settlement Class and the statement of the Common Issue, shall be without prejudice to any position that any of the Parties may later take on any issue in the Proceeding or any other litigation.

SECTION 10 – NOTICE TO SETTLEMENT CLASSES

10.1 Notices Required

The proposed Settlement Class shall be given notice of: (i) the certification of the Proceeding as a class proceeding and the settlement approval hearing and (ii) settlement approval if granted by the Court.

10.2 Form and Distribution of Notices

The form of the notices referred to in section 10.1 and the manner of their publication and distribution shall be as agreed to by the Parties and approved by the Courts.

SECTION 11 – ADMINISTRATION AND IMPLEMENTATION

11.1 Mechanics of Administration

Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement shall be determined by the Court on motions brought by Class Counsel on written notice to the Settling Defendant.

11.2 Information and Assistance

(1) The Settling Defendant will make reasonable efforts to provide, on a confidential basis, information in its possession regarding the total quantity and price of Children's Cough Medicine sold in British Columbia during the Class Period, prior to the hearing seeking the Final Order. If this Settlement Agreement is terminated, all information provided by the Settling Defendant pursuant to section 11.2 shall be returned to it forthwith and no record of the information so provided shall be retained by Class Counsel in any form whatsoever.

SECTION 12 – CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES

(1) Class Counsel shall pay Administrative Expenses from the Settlement Amount up to a maximum of \$30,000, inclusive of costs of notices referred to in section 10.

(2) Except as provided in section 12(1), Class Counsel may seek the Court's approval to pay Class Counsel Fees and Administration Expenses contemporaneous with seeking approval of this Settlement Agreement.

(3) Except as provided in section 12(1), Class Counsel Fees and Administration Expenses may only be paid out of the Account after the Effective Date.

(4) The Settling Defendant shall not be liable for any fees, disbursements or taxes of any of Class Counsel's, the Plaintiff's or Settlement Class Members' respective lawyers, experts, advisors, agents, or representatives.

SECTION 13 – MISCELLANEOUS

13.1 Motions for Directions

(1) Any Class Counsel or the Settling Defendant may apply to the Court for directions in respect of the implementation and administration of this Settlement Agreement.

(2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

13.2 Releasees Have No Liability for Administration

The Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement.

13.3 Headings, etc.

In this Settlement Agreement:

- (a) the division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
- (b) the terms “this Settlement Agreement”, “hereof”, “hereunder” and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement.

13.4 Computation of Time

In the computation of time in this Settlement Agreement, except where a contrary intention appears,

- (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and

including the day on which the second event happens, including all calendar days;
and

- (b) only in the case where the time for doing an act expires on a holiday or weekend, the act may be done on the next day that is not a holiday or weekend.

13.5 Ongoing Jurisdiction

- (1) The Court shall retain exclusive jurisdiction over the Proceeding, the Parties thereto and the Class Counsel Fees in the Proceeding.

13.6 Governing Law

This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of British Columbia.

13.7 Entire Agreement

This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

13.8 Amendments

Prior to the Final Order, this Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto. After the Final Order, this Settlement Agreement may not be modified or amended except in writing, on consent of all Parties hereto and by further order of the Court.

13.9 Binding Effect

This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiff, the Settling Defendant, the Releasees and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by

the Plaintiff shall be binding upon all Releasors and each and every covenant and agreement made herein by the Settling Defendant shall be binding upon all of the Releasees.

13.10 Counterparts

This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

13.11 Negotiated Agreement

This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

13.12 Language

The parties acknowledge that they have required and consented that this Settlement 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.

13.13 Recitals

The recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

13.14 Schedules

The Schedules annexed hereto form part of this Settlement Agreement.

13.15 Acknowledgements

Each of the Parties hereby affirms and acknowledges that:

- (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
- (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
- (c) he, she or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
- (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party with respect to the first Party's decision to execute this Settlement Agreement.

13.16 Authorized Signatures

Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement.

13.17 Notice

Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication or document shall be provided by email, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For the Plaintiff Lana Wakelam and Class Counsel:

Reidar Mogerman/David G. A. Jones
Camp Fiorante Matthews Mogerman
4th Floor, Randall Building
856 Homer Street,
Vancouver, BC V6B 2W5

Telephone: 604-689-7555
Facsimile: 604-689-7554
Email: rmogermancamp@cfmlawyers.ca
djones@cfmlawyers.ca

For Settling Defendant Procter & Gamble Inc.

Up to and including the date of the Final
Order:

Diana Dorey
Dolden Wallace Folick LLP
Tenth Floor – 888 Dunsmuir Street
Vancouver, BC V6C 3K4
Telephone: 604-891-0356
Facsimile: 604-689-3777
Email: ddorey@dolden.com

After the date of the Final Order

Victoria May
Legal Counsel
Procter & Gamble Inc.
2nd Floor, 4711 Yonge Street
P.O. Box 355
Station A
Toronto, Ontario
M5W 1C5
Fax (416) 730-4520
Email: may.va@pg.com

13.18 Date of Execution

The Parties have executed this Settlement Agreement as of the date on the cover page.

Lana Wakelam

By:



Name: Lana Wakelam

Title: Plaintiff

~~Camp Fiorante-Matthews Mogerma~~n

By:



Name:

Title: Class Counsel

Procter & Gamble Inc.

By:

Name: Victoria May

Title: Legal Counsel

Name: Lana Wakelam

Title: Plaintiff

Camp Fiorante Matthews Mogerman

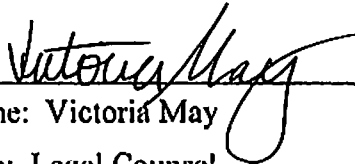
By:

Name:

Title: Class Counsel

Procter & Gamble Inc.

By:


Name: Victoria May

Title: Legal Counsel

SCHEDULE A - DEFENDANTS

SCHEDULE "A"

Johnson & Johnson

Johnson & Johnson Inc.

McNeil Consumer Healthcare Canada

Novartis Consumer Health Canada Inc./Novartis Santé Familiale Canada Inc.

Wyeth Consumer Healthcare/Wyeth Soins de Santé Inc.

Pfizer Canada Inc.

Trillium Health Care Products Inc.

Vita Health Products Inc.

Procter & Gamble Inc.

SCHEDULE B - APPROVAL ORDER

2. the P&G Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class;
3. the P&G Settlement Agreement is approved pursuant to s. 35 of the *Class Proceedings Act*, RSBC 1996, c. 50 and shall be implemented in accordance with its terms;
4. the P&G Settlement Agreement is incorporated by reference to and forms part of this Order and is binding upon the representative plaintiff and all Settlement Class Members;
5. upon the Effective Date, each Settlement Class Member shall consent and shall be deemed to have consented to the dismissal as against the Releasees of any Other Actions he, she or it has commenced, without costs and with prejudice;
6. upon the Effective Date, any Other Action commenced in British Columbia by any Settlement Class Member shall be and is hereby dismissed against the Releasees, without costs and with prejudice;
7. this Order, including the P&G Settlement Agreement, is binding upon each Settlement Class Member including those persons who are minors or mentally incapable;
8. upon the Effective Date, in accordance with s. 7.1 of the P&G Settlement Agreement, each Releasor forever and absolutely releases the Releasees from the Released Claims;
9. upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in British Columbia or elsewhere, on their own behalf or on behalf of any class or any other person or entity, any action, suit, cause of action, claim or demand against any Releasee or any other person or entity who may claim contribution or indemnity from any Releasee in respect of any Released Claim or any matter related thereto, except for the continuation of the Proceedings against the Non-Settling Defendants. If any action, suit, cause of action, claim or demand by any of the Releasors (including, without limitation, the Proceeding against the Non-Settling Defendants) results in any action, suit, cause of action, claim or demand against the Releasees, then such Releasors shall indemnify and save harmless such Releasees from all resulting liabilities, obligations and costs (including, without limitation, legal fees on a solicitor and own client basis) up to a maximum of \$150,000.
10. this Order does not affect any claims or causes of action that any Settlement Class Member has or may have against the Non-Settling Defendants;
11. upon the Effective Date, the Settling Defendant shall have no responsibility or liability relating to the investment, distribution or administration of monies in the Account;

12. Camp Fiorante Matthews Mogerma shall hold the Settlement Amount, plus any accrued interest, in trust for the benefit of the Settlement Class pending distribution to the Settlement Class Members in accordance with a subsequent order of this Court;

13. this Order shall be declared null and void on subsequent motion made on notice in the event that the P&G Settlement Agreement is terminated in accordance with its terms;

14. upon the Effective Date, the Proceeding is dismissed against the Settling Defendant without costs and with prejudice; and

15. endorsement of this Order by counsel for the Non-Settling Defendants is dispensed with

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of lawyer for the plaintiff

[insert name]

Signature of lawyer for Procter & Gamble Inc.

[insert name]

By the Court

Registrar

No. S078806
Vancouver Registry

In the Supreme Court of British Columbia

Between

LANA WAKELAM

Plaintiff

and

**JOHNSON & JOHNSON, JOHNSON & JOHNSON INC.,
MCNEIL CONSUMER HEALTHCARE CANADA,
NOVARTIS CONSUMER HEALTH CANADA INC./
NOVARTIS SANTE FAMILIALE CANADA INC., WYETH
CONSUMER HEALTHCARE/WYETH SOINS DE SANTE
INC, PFIZER CANADA INC., TRILLIUM HEALTH CARE
PRODUCTS INC., VITA HEALTH PRODUCTS INC., and
PROCTER & GAMBLE INC**

Defendants

BROUGHT UNDER THE CLASS PROCEEDINGS ACT, R.S.B.C. 1996, C. 50

ORDER MADE AFTER APPLICATION

CAMP FIORANTE MATTHEWS MOGERMAN
Barristers & Solicitors
#400 – 856 Homer Street
Vancouver, BC V6B 2W5

Tel: (604) 689-7555
Fax: (604) 689-7554
Email: service@cfmlawyers.ca

Agent: Mike Bike