

Exhibit 1

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12
13 **IN THE UNITED STATES DISTRICT COURT**
FOR THE WESTERN DISTRICT OF MISSOURI
14 **WESTERN DIVISION**

15 In Re: BISPHENOL-A (BPA)
POLYCARBONATE PLASTIC
16 PRODUCTS LIABILITY
LITIGATION

) MDL Docket No. 1967
) Master Case No. 4:08-1967-MD-W-
) ODS

) Judge Ortrie D. Smith

17 This DOCUMENT relates to:
18

) STIPULATION OF CLASS ACTION
) SETTLEMENT

19 *Broadway, et al. v. Avent America,*
Inc., et al..
20 Case No. 08-00997 (W.D. Mo.)

1 **STIPULATION OF CLASS ACTION SETTLEMENT**

2 This Stipulation of Class Action Settlement, including its attached Exhibits
3 (the "Settlement Stipulation"), is entered into as of this 31st day of December 2010
4 by and among Plaintiffs, on behalf of themselves and on behalf of each of the
5 Settlement Class Members, and Philips Electronics North America Corporation,
6 for itself and as successor to Avent America, Inc. ("Philips" or "Defendant").
7 Capitalized terms used herein are defined in Section A below or indicated in
8 parentheses elsewhere in the Settlement Stipulation.

9 Subject to Court approval as required by applicable Federal Rules of Civil
10 Procedure, and as provided herein, the Parties hereby stipulate and agree that, in
11 consideration of the promises and covenants set forth in the Settlement Stipulation
12 and upon the entry by the Court of a Final Judgment and Order Approving
13 Settlement and the occurrence of the Effective Date, the Action and the Constituent
14 Actions shall be dismissed with prejudice, settled and compromised upon the terms
15 and conditions contained herein.

16 WHEREAS, a number of putative class actions were filed in various state
17 and federal courts against Philips and other bottle and formula manufacturers
18 arising out of the marketing and sale of products containing Bisphenol-A ("BPA"),
19 seeking damages and equitable relief under various state laws;

20 WHEREAS, the cases filed in various federal courts against Philips were
21 transferred to the Western District of Missouri pursuant to the provisions of 28
22 U.S.C. §1407 and, together with other cases pending in federal courts around the
23 country against various other defendants, were coordinated in this multidistrict
24 litigation styled as *In re Bisphenol-A (BPA) Polycarbonate Plastic Products*
25 *Liability Litigation*, Master Case No. 4:08-1967-MD-W-ODS, MDL No. 1967
26 (W.D. MO.)(*"the BPA MDL"*);

27 WHEREAS, on December 29, 2008, Class Representatives filed a Class
28 Action Complaint in the Action against Philips;

1 WHEREAS, on May 13, 2009, Philips along with other defendants filed a
2 motion to dismiss the Complaint and, on November 9, 2009, following briefing,
3 the Court ruled on motions to dismiss filed by Defendant and other defendants in
4 the BPA MDL, granting and denying them in part;

5 WHEREAS, on November 24, 2009, Philips along with other defendants
6 filed a motion for reconsideration or, in the alternative, for certification for
7 interlocutory appeal and, on January 19, 2010, the District Court denied the
8 motions;

9 WHEREAS, the Plaintiffs and Defendant have conducted extensive
10 discovery regarding the merits of the Action;

11 WHEREAS, on December 2, 2010, Plaintiffs filed a motion for class
12 certification seeking to certify the Action;

13 WHEREAS, Plaintiffs assert that they are members of the proposed classes
14 defined in Plaintiffs' motion for class certification, and include the Class
15 Representatives of the Settlement Class;

16 WHEREAS, Defendant has denied and continues to deny Plaintiffs'
17 allegations and claims in the Complaint, and has denied any wrongdoing or
18 liability to Plaintiffs;

19 WHEREAS, in November 2008, the Court appointed the firms of Whatley
20 Drake & Kallas, LLC and Walters Bender Strohbehn & Vaughan, PC as Co-Lead
21 Counsel for Plaintiffs;

22 WHEREAS, Co-Lead Counsel representing Plaintiffs in connection with the
23 BPA MDL have conducted an examination and investigation of the facts and law
24 relating to the matters set forth in the Complaint and have conducted pretrial
25 discovery into the claims and defenses alleged in the Action, including deposition
26 and document discovery, as well as consulting experts;

27 WHEREAS, in reaching the Agreement, the Parties have engaged in
28 extensive, arms-length negotiations, including a significant mediation of the final

1 terms of the Agreement under the auspices of the Hon. Nicholas Politan, a retired
2 United States District Judge (the "Mediator");

3 WHEREAS, Plaintiffs believe that the claims asserted in the Action have
4 substantial merit; however, taking into account the extensive burdens and expense
5 of litigation, including the risks and uncertainties associated with protracted trials
6 and appeals, as well as the fair, cost-effective and assured method of resolving the
7 claims of the Settlement Class, Plaintiffs' Counsel have concluded that the
8 Settlement Stipulation provides substantial benefits to the Settlement Class, and is
9 fair, reasonable, adequate, and in the best interests of Plaintiffs and the Settlement
10 Class;

11 WHEREAS, although Philips denies Plaintiffs' allegations in the Complaint,
12 wrongdoing of any kind, and believes that the Action is without merit, Philips also
13 has taken into account the uncertainty, risk, delay and costs inherent in litigation
14 and agreed to enter into the Agreement to avoid any further litigation expenses and
15 inconvenience, and to remove the distraction of burdensome and protracted
16 litigation;

17 WHEREAS, it is the intention and desire of the Plaintiffs and Philips to
18 compromise, resolve, dismiss and release all allegations and claims for damages or
19 equitable relief relating to the marketing, design and sale of the BPA Products as
20 set forth in the Complaint and that have been or could have been brought by the
21 Settlement Class Members against Philips in the Action and the Constituent
22 Actions; and

23 WHEREAS, the Parties have agreed that an appropriate resolution of this
24 controversy is accomplished through the benefits, releases and orders set forth in or
25 attached to the Settlement Stipulation, and intend that the Settlement resolves all
26 claims and disputes arising out of, or relating to, the marketing, design and sale of
27 the BPA Products on the terms set forth in the Settlement Stipulation.
28

1 NOW, THEREFORE, the Settlement Stipulation is entered into by and
2 among the Parties, by and through their respective counsel and representatives, and
3 the Parties agree that: (a) upon approval of the Court after the hearing(s) provided
4 for in the Agreement, the Action shall be settled and compromised as between
5 Plaintiffs and the Settlement Class, and Defendant; and (b) upon Court approval of
6 the Agreement, the Final Order Approving Settlement, substantially in the form
7 attached as Exhibits G hereto, shall be entered dismissing the Action with
8 prejudice and releasing all Released Claims, as defined herein, against Defendant
9 and all Released Parties, all on the following terms and conditions:

10 **A. DEFINITIONS**

11 As used in the Settlement Stipulation and the Exhibits hereto, in addition to
12 any definitions elsewhere in parentheses in the Settlement Stipulation, the
13 following terms shall have the meanings set forth herein:

14 1. Action means *Broadway, et al. v. Avent America, Inc., et al.*, Case No.
15 08-00997, which is one of the actions that is a part of the BPA MDL.

16 2. Award means the monetary relief obtained by Settlement Class
17 Members pursuant to Section D.2. of this Agreement.

18 3. Attorneys' Fees and Expenses means such funds as may be awarded
19 by the Court to Co-Lead Counsel to compensate them and all other Plaintiffs'
20 Counsel in this Action for their fees and expenses in connection therewith, as
21 described more particularly in Section I of this Settlement Stipulation.

22 4. BPA Products means those polycarbonate baby bottles and
23 training/sippy cups products manufactured, sold, distributed or otherwise put into
24 commerce in the United States by Philips from the period January 1, 2001 through
25 December 31, 2008, including those identified on the attached Exhibit A.

26 5. CAFA Notice means the notice required under 28 U.S.C. § 1715(b).

27 6. Claim means a request for relief pursuant to Section E.2 of this
28 Agreement submitted by a Settlement Class Member on a Claim Form filed with

1 the Claims Administrator in accordance with the terms of the Settlement
2 Stipulation.

3 7. Claim Form(s) means the form or forms to be used by Settlement
4 Class Members for filing Claims with the Claims Administrator. The proposed
5 Claim Form(s) are subject to Court approval and attached hereto as Exhibit E.

6 8. Claims Administration Expenses means the expenses incurred by the
7 Claims Administrator in administering the Notice Program and processing all
8 Claims by Settlement Class Members.

9 9. Claims Administrator means the Person identified by Philips and
10 approved by the Court to administer the Notice Program, to respond to inquiries
11 from Settlement Class Members, and to oversee the processing and payment of
12 Claims as set forth in the Settlement Stipulation.

13 10. Claims Deadline means the court-approved date by which all Claim
14 Forms must be postmarked or received by the Claims Administrator to be
15 considered timely. The Claims Deadline shall be clearly set forth in the Court
16 Orders granting preliminary and final approval of the Settlement, the Notices, on
17 the Claims Administrator's dedicated website, and on the front page of the Claim
18 Form.

19 11. Class Notice or Notice means the forms of notice to be disseminated
20 to Settlement Class Members informing them about the Settlement. Copies of each
21 of the proposed Notices are attached respectively in the form of Exhibits B and C.

22 12. Class Representatives means the named Plaintiffs in the Action listed
23 on Exhibit I.

24 13. Co-Lead Counsel means the law firms of Whatley Drake & Kallas,
25 LLC and Walters Bender Strohbehn & Vaughan, PC.

26 14. Complaint means the Class Action Complaint filed by those Plaintiffs
27 who are Class Representatives in the Action on December 29, 2008.
28

1 15. Constituent Actions means the associated and/or related cases pending
2 in the Court as part of the BPA MDL against Philips, all of which are listed on
3 Exhibit H.

4 16. Covered Product means a BPA Product.

5 17. Court means the United States District Court for the Western District
6 of Missouri, the Honorable Ortrie D. Smith presiding.

7 18. Defendant means the Persons named as defendants in the Complaint.

8 19. Effective Date means either: (a) the date thirty-five (35) days after the
9 entry of the Final Judgment and Order Approving Settlement, if no timely motions
10 for reconsideration and/or no appeals or other efforts to obtain review have been
11 filed; or (b) in the event that an appeal or other effort to obtain review has been
12 initiated, the date thirty-five (35) days after such appeal or other review has been
13 finally concluded and is no longer subject to review, whether by appeal, petitions
14 for rehearing, petitions for rehearing en banc, petitions for writ of certiorari, or
15 otherwise. However, in the event of an appeal or other effort to obtain review, the
16 Parties may jointly agree in writing to deem the Effective Date to have occurred in
17 accordance with Section A.19.(a) in the absence of a court order to the contrary;
18 however, there is no obligation to agree to advance the Effective Date.

19 20. Final Approval Hearing means the hearing to be conducted by the
20 Court in connection with its determination of the fairness, adequacy and
21 reasonableness of the Settlement in accordance with applicable jurisprudence, and
22 which shall occur no earlier than the 91st day after the last CAFA Notice is
23 provided hereunder.

24 21. Final Order Approving Settlement means the Final Order Approving
25 Settlement to be entered by the Court, substantially in the form of Exhibit G and
26 conforming to Section J herein, approving the Settlement without material
27 alteration, as fair, adequate and reasonable, confirming the certification of the
28 Settlement Class for purposes of the Settlement only, dismissing the Action with

1 prejudice, and issuing such other findings and determinations as the Court and/or
2 the Parties deem necessary and appropriate to implement the Settlement.

3 22. Incentive Award means the payment approved by the Court and made
4 by Philips to compensate the Class Representatives for efforts undertaken by them
5 on behalf of the Settlement Class Members.

6 23. Most Favored Nation Provision means the covenant in D.6 below.

7 24. Notice Date means the date upon which the Class Notice is first
8 disseminated to the Settlement Class.

9 25. Notice Expenses means the reasonable costs and expenses incurred in
10 connection with preparing, printing, disseminating, posting, emailing, internet
11 hosting and publishing the Class Notice, and all other aspects of administering the
12 Notice Program.

13 26. Notice Program means the Notice Plan and Class Member
14 Communication approved by the Court for disseminating the Class Notice by
15 publication to the Settlement Class Members. A copy of the proposed Notice
16 Program is attached as Exhibit D.

17 27. Opt Out and Objection Date means the date, to be set by the Court, by
18 which a Request For Exclusion must be filed with the Claims Administrator in
19 order for a Settlement Class Member to be excluded from the Settlement Class,
20 and the date by which Settlement Class Members must submit objections to the
21 Claims Administrator and the parties, if any, to the Settlement in accordance with
22 Section F herein.

23 28. Party or Parties means the parties to this Agreement, *i.e.*, the Plaintiffs
24 and/or Philips.

25 29. Person(s) means any adult individual and any minor child of whom
26 such adult individual is the parent or guardian, any corporation, trust, partnership,
27 limited liability company or other legal entity, and their respective successors or
28 assigns.

1 30. Philips means Philips Electronics North America Corporation, for
2 itself and as successor to Avent America, Inc. and all of their current or former
3 United States and foreign subsidiaries, predecessors, successors, parents, affiliates
4 and assigns.

5 31. Philips' Counsel means the law firms of Sullivan & Cromwell LLP
6 and Thompson Coburn LLP.

7 32. Plaintiffs means the Class Representatives listed on Exhibit I.

8 33. Plaintiffs' Counsel means all attorneys representing Plaintiffs.

9 34. Preliminary Approval means the order to be entered by the Court,
10 substantially in the form of Exhibit F and conforming to Section C.1. herein,
11 conditionally certifying the Settlement Classes, preliminarily approving the
12 Settlement, setting the date of the Final Approval Hearing, appointing Co-Lead
13 Counsel as Counsel for the Settlement Class, approving the Notice Program, Class
14 Notice, and Claim Form, barring the commencement of further litigation by
15 Settlement Class Members relating to a Released Claim and setting dates for the
16 Claims Deadline, Opt Out and Objection Date, and Notice Date.

17 35. Proof of Purchase means documentation from a third-party
18 commercial source reasonably establishing the fact of purchase of a BPA Product.

19 36. Price(s) means the price(s) for the Philips BPA Products as set forth in
20 Schedule A, which prices include an amount to compensate Class Members for
21 taxes paid at the time of the original purchase of a BPA Product.

22 37. Released Claim is defined in Paragraph H.1. herein.

23 38. Released Party is defined in Paragraph H.1. herein.

24 39. Releasing Party is defined in Paragraph H.1. herein.

25 40. Request For Exclusion means the written communication that must be
26 filed with the Claims Administrator and postmarked on or before the Opt Out and
27 Objection Date by a Settlement Class Member who wishes to be excluded from the
28 Settlement Class.

1 41. Settlement means the terms and conditions of the Settlement
2 Stipulation.

3 42. Settlement Classes and Settlement Class Member(s) include all
4 Persons who from January 1, 2001 to the present, purchased or acquired (including
5 by gift) a BPA Product in the United States. Excluded from the Settlement Class
6 are: (1) any person that has already obtained any refund from any retailer in
7 connection with the BPA Product(s) for which the Class Members seek relief in
8 this case, (2) any Person who files a valid, timely Request for Exclusion; (3) any
9 Person who purchased a BPA product but gave away such product as a gift; and (4)
10 any Judges to whom this Action is assigned and any member of their immediate
11 families.

12 43. Settlement Consideration means the consideration exchanged by and
13 between Philips and the Settlement Class, as set forth in this Settlement Stipulation.

14 44. United States includes the fifty states of the United States and all
15 territories and possessions of the United States.

16 45. Voucher means the document that Settlement Class Members may
17 elect to receive for relief under Section D.2 herein and that will entitle the Person
18 presenting such Voucher to a participating retailer to purchase products
19 manufactured by or for Philips as specified below.

20 **B. FOR SETTLEMENT PURPOSES ONLY**

21 1. This Agreement is for settlement purposes only, and neither the fact
22 of, nor any provision contained in, this Agreement or its Exhibits, nor any action
23 taken hereunder shall constitute, be construed as, or be admissible in evidence as
24 an admission of: (a) the validity of any claim or allegation by Plaintiffs, or of any
25 defense asserted by Defendant in the Action, or any other action or proceeding; (b)
26 the appropriateness of the Settlement Classes as a class for purposes of further
27 litigation and trial; and (c) any wrongdoing, fault, violation of law, or liability of
28

1 any kind on the part of any Party, Defendant, Released Party, Settlement Class
2 Member or their respective counsel.

3 2. The Settlement Stipulation is without prejudice to the rights of each
4 Releasing Party and each Released Party to seek or oppose class certification in the
5 Action for purposes of further litigation and trial should the Settlement Stipulation
6 not be finally approved or implemented for any reason.

7
8 **C. PRELIMINARY APPROVAL; CAFA NOTICE; COOPERATION**
THROUGH FINAL APPROVAL.

9 1. **Preliminary Approval**

10 Within one business day after execution of the Agreement, the Parties shall
11 file the Settlement Stipulation with the Court for its Preliminary Approval and
12 shall jointly move the Court for entry of an order, substantially in the form of
13 Exhibit F hereto, which by its terms shall:

14 a. Determine, preliminarily, that this Settlement Stipulation and
15 the Settlement set forth herein fall within the range of reasonableness and
16 merits possible final approval and dissemination of Notice to the Settlement
17 Class;

18 b. Determine, preliminarily, that the Class Representatives are
19 members of the Settlement Class and that, for purposes of the Settlement,
20 they satisfy the requirements of typicality, and that they adequately represent
21 the interests of the Settlement Class Members, and appoint them as the
22 representatives of the Settlement Class;

23 c. Determine, preliminarily, that the Settlement Class meets all
24 applicable requirements of Fed. R. Civ. P. 23 ("Rule 23"), and conditionally
25 certify the Settlement Class for purposes of the Agreement under Rule 23 for
26 settlement purposes only;

27 d. Appoint Co-Lead Counsel as Class Counsel pursuant to Rule
28 23(g);

1 e. Schedule the Final Approval Hearing to: (i) determine finally
2 whether the Settlement Class satisfies the applicable requirements of Rule 23
3 and should be finally certified for settlement purposes only; (ii) review
4 objections, if any, regarding the Agreement; (iii) consider the fairness,
5 reasonableness and adequacy of the Settlement; (iv) consider Co-Lead
6 Counsel's application for an award of attorneys' fees and reimbursement of
7 expenses; (v) determine the validity of Requests for Exclusion and exclude
8 from the Settlement Class those Persons who validly and timely opt out; and
9 (vi) consider whether the Court shall issue the Final Judgment and Order
10 Approving Settlement approving the Settlement and dismissing the Action
11 and all Constituent Actions with prejudice;

12 f. Set a briefing schedule for the Final Approval Hearing;

13 g. Approve the proposed Class Notice and Notice Program;

14 h. Approve the designation of Dahl, Inc. as the Claims
15 Administrator;

16 i. Direct Philips or its designee(s) to cause the Class Notice to be
17 disseminated in the manner set forth in the Notice Program on or before the
18 Notice Date;

19 j. Determine that the Class Notice and the Notice Program:
20 (i) meets the requirements of Rule 23(c)(3) and due process; (ii) is the best
21 practicable notice under the circumstances; (iii) is reasonably calculated,
22 under the circumstances, to apprise Settlement Class Members of the
23 pendency of the Action and their right to object to the proposed Settlement
24 or opt out of the Settlement Class; and (iv) is reasonable and constitutes due,
25 adequate and sufficient notice to all those entitled to receive notice.

26 k. Require each Settlement Class Member who wishes to opt out
27 of the Settlement Class to submit a timely written Request for Exclusion, on
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1 or before the Opt Out and Objection Date, to the Claims Administrator, to
2 Co-Lead Counsel, and to Philips' Counsel, as specified in Section F herein;

3 l. Rule that any Settlement Class Member who does not submit a
4 timely written Request for Exclusion will be bound by all proceedings,
5 orders and judgments in the Action;

6 m. Require any Settlement Class Member who wishes to object to
7 the fairness, reasonableness or adequacy of the Agreement or to the award of
8 attorneys' fees, costs and expenses, to submit to the Claims Administrator
9 and deliver to Co-Lead Counsel and Philips' Counsel, by the Opt Out and
10 Objection Date, a statement of his or her objection, as well as the specific
11 reason, if any, for each objection, including any legal support the Settlement
12 Class Member wishes to bring to the Court's attention and any evidence the
13 Settlement Class Member wishes to introduce in support of his or her
14 objection, and to state whether the Settlement Class Member and/or his or
15 her counsel wishes to make an appearance at the Final Approval Hearing, or
16 be forever barred from separately objecting;

17 n. Enter an order enjoining any new litigation related to BPA
18 Products by any Settlement Class Member related to a Released Claim;

19 o. Enter an order resetting all of the dates related to the pending
20 class certification motion against Philips so that Philips shall in no way be
21 prejudiced by its efforts to resolve the Action and the Constituent Actions;
22 and

23 p. Establish the following:

24 (i) The date and time of the Final Approval
25 Hearing.

26 (ii) The Notice Date: The Parties propose that
27 the Notice Date be eighty (80) days before the Final
28 Approval Hearing.

(iii) The Opt Out and Objection Date: The Parties propose that the Opt Out and Objection Date be twenty-one (21) days before the Final Approval Hearing.

(iv) The Claims Deadline: The Parties propose that the Claims Deadline be seventy-five (75) days after the Final Approval Hearing.

2. **Cooperation**

The Parties acknowledge that each intends to implement the Settlement. The Parties shall, in good faith, cooperate and assist with and undertake all reasonable actions and steps in order to accomplish all required events on the schedule set by the Court, and shall use their best efforts to implement all terms and conditions of the Settlement Stipulation. Nothing in this provision, however, requires either Party to waive its rights hereunder.

3. **CAFA Compliance**

The Parties shall provide the CAFA Notice, as required by 28 U.S.C. § 1715(a), on the Attorney General of the United States and the various states' attorneys general for states or other political entities as may be required to ensure that the Releases provided herein are fully enforceable in accordance with their terms. The Parties shall cooperate to provide the CAFA Notice as soon as possible after the filing of this Settlement Stipulation, but in no event no later than 10 days after the filing of this Settlement Stipulation.

4. **Certification of Settlement Class**

The Parties stipulate to the certification of the Settlement Class for purposes of the Settlement Stipulation for settlement purposes only.

D. SETTLEMENT CONSIDERATION

Upon the Effective Date, Philips shall provide, as consideration, the following, as consideration for this Settlement:

1. **Injunctive Relief**

1 (a) In connection with the resolution of this Action, Philips agrees
2 to the entry of an injunction providing that for four years from the date of
3 Preliminary Approval, Philips shall not knowingly sell baby bottles or “sippy”
4 cups with materials containing Bisphenol-A (“BPA”) for use in the United States
5 (the “No Sale Bar”); provided, however, that if any of the following Trigger Events
6 occur, as defined below, Philips may sell baby bottles or “sippy cups” made from
7 materials identified as containing BPA for use in the United States during the
8 remaining term of the No Sale Bar and thereafter, subject to the disclosure
9 obligation below.

10 (b) The Trigger Events are:

11 (i) any major manufacturer, including any of the
12 Defendants, announces that it intends to sell baby bottles or “sippy cups”
13 made of polycarbonate plastic in the United States, or

14 (ii) any major manufacturer, including any of the
15 Defendants, sells or offers for sale baby bottles or “sippy cups” made of
16 polycarbonate plastic in the United States.

17 (c) If either of the Trigger Events occur, Philips may sell baby
18 bottles or “sippy cups” with disclosure appearing on the packaging that indicates
19 that the product is made from “polycarbonate” or “polycarbonate plastic” and
20 indicates, in some manner with equally legible print, that BPA is a part of
21 polycarbonate or polycarbonate plastic. This disclosure obligation shall last for
22 one year following a Trigger Event.

23 (d) The Most Favored Nation Provision expressly applies to any
24 injunctive relief.

25
26
27 2. **Monetary Relief for Settlement Class Members**
28

1 In addition to all other Settlement Consideration set forth in the Agreement,
2 Settlement Class Members who timely file Claims by the Claims Deadline and
3 provide all required proof or documentation and comply with all other conditions
4 and requirements specified herein, all as approved and validated by the Claims
5 Administrator, shall have the right to obtain relief, as detailed herein.

6 **CATEGORY A:** Any Settlement Class Member¹ who:

7 (a) submits a timely, valid and written Claim; *and*

8 (b) (1) submits all of the BPA Product(s) for which a Claim is
9 submitted; *or*

10 (2) in the event that the BPA Product(s) for which a claim is
11 submitted has been discarded or destroyed, submits acceptable
12 proof of purchase of such BPA Product(s) and attests that such
13 BPA Product(s) have been discarded or destroyed; *and*

14 (c) provides an attestation or other proof that they purchased BPA-Free
15 products to replace (that are not ordinary upgrades) the BPA Products;
16 *and*

17 (d) provides an attestation or other proof that the BPA Product(s) was no
18 longer used as a result of the Settlement Class Member's concern
19 about the presence of BPA; *and*

20 (e) provides an attestation that they never obtained any refund from any
21 retailer in connection with the BPA Product(s) for which they seek
22 relief here

23 shall have the option of receiving either (i) a full refund for 100% of the Schedule
24 A amount; *or* (ii) a voucher for 125% of the Schedule A amount. Such refund or

25 _____
26 ¹ All submissions from Persons in the States of Alabama, Mississippi, Ohio,
27 Oregon, Texas, and Wyoming shall be limited to recovery pursuant to Categories
28 C and F below.

1 voucher will be provided for each of the products in which the Settlement Class
2 Member has submitted proof of purchase of BPA Product(s) or the BPA Product(s)
3 and proof of purchase (including by way of attestation) of replacement BPA
4 Product(s).

5 **CATEGORY B:** Any Settlement Class Member who

- 6 (a) submits a timely, valid and written Claim; *and*
7 (b) (1) submits all of the BPA Product(s) for which a Claim is
8 submitted; *or*
9 (2) in the event that the BPA Product(s) for which a claim is
10 submitted has been discarded or destroyed, submits acceptable
11 proof of purchase of such BPA Product(s) and attests that such
12 BPA Product(s) have been discarded or destroyed; *and*
13 (c) provides an attestation that the BPA Product(s) was no longer used as
14 a result of the Settlement Class Member's concern about the presence
15 of BPA; *and*
16 (d) provides an attestation that they never obtained any refund from any
17 retailer in connection with the BPA Product(s) for which they seek
18 relief here

19 shall receive a voucher from Philips for 80% of the amount on Schedule A for each
20 of the products in which the Settlement Class Member has submitted proof of
21 purchase of BPA products.

22 **CATEGORY C:** Any Settlement Class Member who

- 23 (a) submits a timely, valid and written Claim; *and*
24 (b) (1) submits all of the BPA Product(s) for which a Claim is
25 submitted; *or*
26 (2) in the event that the BPA Product(s) for which a claim is
27 submitted has been discarded or destroyed, submits acceptable
28

1 proof of purchase of such BPA Product(s) and attests that such
2 BPA Product(s) have been discarded or destroyed; *and*
3 (c) provides an attestation that they never obtained a refund from
4 any retailer in connection with the BPA Product(s) for which
5 they seek relief here
6 shall receive a voucher from Philips for 60% of the amount on Schedule A, subject
7 to the limitations identified below.

8 ***CATEGORY D:*** Any Settlement Class Member who

- 9 (a) submits a timely, valid and written Claim; *and*
10 (b) submits an attestation which identifies (i) the BPA Product(s)
11 purchased or acquired; and (ii) the approximate date of such
12 purchase(s) or acquisition(s); and (iii) for Magic Cup claimants,
13 attests that the Magic Cup has the three-piece top configuration; *and*
14 (c) provides an attestation or other proof that they purchased BPA-Free
15 products to replace (that are not ordinary upgrades) the BPA Products;
16 *and*
17 (d) provides an attestation that the BPA Product(s) was no longer used as
18 a result of the Settlement Class Member's concern about the presence
19 of BPA; *and*
20 (e) provides an attestation that they never obtained any refund from any
21 retailer in connection with the BPA Product(s) for which they seek
22 relief here

23 shall receive a voucher from Philips for 50% of the amount on Schedule A, subject
24 to the limitations identified below.

25
26 ***CATEGORY E:*** Any Settlement Class Member who

- 27 (a) submits a timely, valid and written Claim; *and*
28

1 (b) submits an attestation which identifies (i) the BPA Product(s)
2 purchased or acquired; and (ii) the approximate date of such
3 purchase(s) or acquisition(s); and (iii) for Magic Cup claimants,
4 attests that the Magic Cup as of the three-piece top configuration; *and*
5 (c) provides an attestation that the BPA Product(s) was no longer used as
6 a result of the Class Member's concern about the presence of BPA;
7 *and*
8 (d) provides an attestation that they never obtained any refund from any
9 retailer in connection with the BPA Product(s) for which they seek
10 relief here
11 shall receive a voucher from Philips for 40% of the amount on Schedule A, subject
12 to the limitations identified below.

13 ***CATEGORY F:*** Any Settlement Class Member who

14 (a) submits a timely, valid and written Claim; *and*
15 (b) submits an attestation which identifies (i) the BPA Product(s)
16 purchased or acquired; and (ii) the approximate date of such
17 purchase(s) or acquisition(s); and (iii) for Magic Cup claimants,
18 attests that the Magic Cup as of the three-piece top configuration; *and*
19 (c) provides an attestation that they never obtained any refund from any
20 retailer in connection with the BPA Product(s) for which they seek
21 relief here
22 shall receive a voucher from Philips for 30% of the amount on Schedule A, subject
23 to the limitations identified below.

24
25
26 **3. Limits on Class Member Relief and Reallocations**
27
28

1 There shall be no capped limit on the number of refunds or vouchers
2 to be received for Class Members in Category A and no capped limit on the
3 number of vouchers to be received for Class Members in Category B above.
4 Categories C, D, E and F shall be able to receive up to 3 vouchers per household.

5 With respect to Categories D, E and F, there shall also be an all-in
6 limit of \$3,000,000 in vouchers. If the cap is reached, there shall be a proration of
7 the voucher amounts to ensure compliance with the limitation described herein.²

8 **4. Voucher Terms**

9 A. Vouchers shall be transferable; and

10 B. Voucher must be used within one year after issuance and after
11 that date shall become valueless; and

12 C. Vouchers may be used for the purchase of any (i) Avent
13 branded products, (ii) Philips Norelco shaving and grooming products, (iii) Philips
14 Sonicare oral care products, (iii) Philips accessories, and/or (iv) Philips audio or
15 video products.

16 **5. Most Favored Nation**

17 In the event that there are any other settlements in the BPA MDL that
18 are, on an overall basis, more favorable than that provided to Philips herein (taking
19 into account all provisions, including those provisions related to the voucher,
20 refund or awards to Class Counsel and Class Representatives), Philips shall be
21 entitled to a modification to the terms of this Settlement Stipulation to obtain the
22 full benefit of the more favorable settlement. In the event, however, that
23 consideration reflected above has been distributed to Class Members, there shall be
24 no clawback of such amounts; provided that to the extent there are unpaid or
25

26
27 ² "Capped Amount" is not per category, but overall limit for all "Capped
28 Categories" combined.

1 undistributed Claims, such claims shall be reduced to reflect the more favorable
2 treatment by the later settling defendant on a prospective basis. Co-Lead Counsel
3 shall provide notice of any other settlement in the BPA MDL to Philips and shall
4 make available all information related to the other settlement or settlements
5 (excluding attorney-client privileged communications) that is relevant to applying
6 this provision and shall do so under the terms of the Protective Order in the MDL
7 BPA. If there is a dispute under this provision, notwithstanding Section H.5.
8 herein, this matter shall be resolved by reference to binding arbitration before the
9 Mediator, to be conducted on an expedited basis, with the preferred venue being in
10 New York, New York, or at such other venue as the Mediator shall suggest.

11 **6. Costs of Notice, Administration, and Other Costs and Expenses**

12 Philips shall be responsible to pay all Claims Administration
13 Expenses and all Notice Expenses. The Claims Administrator shall make available
14 by mail and online to Settlement Class Members who wish to submit Claims a
15 pre-addressed, pre-paid shipping label(s) paid for by Philips for Settlement Class
16 Members to return the BPA Products.

17 **E. CLAIMS DEADLINES, CLAIM FORMS, AND ADMINISTRATION**

18 1. All Claims must be submitted with a Claim Form and received by the
19 Claims Administrator or postmarked by the Claims Deadline. The Claims
20 Deadline shall be clearly set forth in the Settlement Class Notice, the websites of
21 the Claims Administrator and of Co-Lead Counsel, and the Claim Form.
22 Settlement Class Members who do not timely submit a completed Claim Form
23 shall not be eligible for an Award. However, the Claims Administrator may, in its
24 sole discretion, permit a Settlement Class Member who makes a timely Claim to
25 remedy deficiencies in such Settlement Class Member's Claim Form or related
26 documentation.
27
28

1 2. Those Settlement Class Members submitting Claims under any of the
2 Categories herein must submit to the Claims Administrator a timely Claim Form.
3 Claim Forms must be signed by the Class Member by hand or electronically under
4 penalty of perjury. Claim Forms will be made available by mail and for
5 downloading from the Settlement website maintained by the Claims Administrator
6 and on the websites of Co-Lead Counsel. Class Members may submit completed
7 and signed (either by hand or electronically) Claim Forms to the Claims
8 Administrator by mail, private courier, facsimile, or as an attachment to an email.
9 Philips agrees that information provided by Settlement Class Members on Claim
10 Forms shall be kept confidential, shall be used only for purposes of administering
11 the Settlement, and shall not be used for marketing or any other commercial
12 purposes.

13 3. The Parties agree that the Claims Administrator shall be Dahl, Inc.
14 The Claims Administrator will be approved by the Court and will be subject to the
15 Court's supervision and direction as circumstances may require. The Claims
16 Administrator will administer the Notice Program and Claims process, and oversee
17 the distribution of Awards to Settlement Class Members in accordance with the
18 terms of the Settlement and orders of the Court. The Claims Administrator shall
19 determine if a Settlement Class Member is making a claim on a Covered Product.
20 The Claims Administrator shall also maintain the website to which Settlement
21 Class Members shall be directed for further information regarding the Settlement.
22 In its discretion after the Claims Deadline has passed, the Claims Administrator
23 may determine to take down the website, or portions of it.

24 4. The Claims Administrator shall administer the monetary relief for
25 Settlement Class Members provided by the Agreement by resolving Claims in a
26 cost effective and timely manner. The Claims Administrator may utilize the
27 resources of Philips to identify Class Members; to train the Claims Administrator's
28 personnel on bottle and sippy cup identification; to facilitate providing notice; to

1 assist with establishing the Settlement website; to store and/or dispose of BPA
2 Product(s) returned by Settlement Class Members; and to accomplish such other
3 purposes as may be approved by Philips and Co-Lead Counsel; provided, however,
4 that the determination of the validity of Claims shall be made by the Claims
5 Administrator. The Claims Administrator shall maintain records of all Claims
6 submitted. The Claims Administrator shall maintain all such records until the later
7 of 90 days after either the Effective Date or all Claims have been finally resolved,
8 and such records will be made available upon request to Co-Lead Counsel and
9 Philips Counsel. Claim Forms and supporting documentation will be kept
10 confidential by the Claims Administrator and will be provided only to the Court
11 upon request and to Co-Lead Counsel and Philips Counsel to the extent necessary
12 to resolve issues pursuant to **Section E.5**. The Claims Administrator also shall
13 provide such reports and such other information to the Court as it may require.

14 5. The Claims Administrator will review and validate all Claims
15 submitted by Settlement Class Members. The Claims Administrator shall have the
16 discretion to review Claims with the objectives of efficiency and effecting
17 substantial justice to the Parties and the Settlement Class Members. The Claims
18 Administrator shall have the right to contact Settlement Class Members to validate
19 Claims. The validity of a Claim will be assessed based on the totality of the Claim.
20 Issues regarding the validity of Claims that cannot be resolved by the Claims
21 Administrator shall be submitted to Counsel for Philips and Co-Lead Counsel for
22 resolution and, if no resolution is reached, to the Court.

23 6. The Claims Administrator shall cause a website to be created
24 containing Claims information and relevant documents, including but not limited
25 to, all applicable deadlines; the long-form Class Notice; downloadable Claim
26 Forms that may be submitted online or by mail; FAQs and answers; orders of the
27 Court pertaining to the Settlement; this Stipulation; a toll-free telephone number
28 and addresses to contact the Claims Administrator by e-mail and mail; means to

1 identify BPA Products. Philips shall pay the cost of creating and maintaining this
2 website. The website may be rendered inactive at Philips' sole discretion after the
3 Claims Deadline. The Parties shall agree on all information and documents to be
4 posted on this website.

5 **F. NOTICE TO THE SETTLEMENT CLASS, OBJECTION, AND OPT**
6 **OUT RIGHTS**

7 1. Upon Preliminary Approval of the Settlement, as the Court may
8 direct, the Claims Administrator shall cause the Class Notice to be disseminated to
9 potential Settlement Class Members as provided herein. Notice shall be
10 disseminated pursuant to the Notice Program on or before the Notice Date. Copies
11 of the proposed forms of Class Notice and the Notice Program are attached as
12 Exhibits B, C, and D.

13 2. The Class Notice shall:

14 a. contain a short, plain statement of the background of the Action
15 and the proposed Settlement;

16 b. describe the proposed Settlement relief as set forth in this
17 Agreement;

18 c. inform Settlement Class Members that, if they do not exclude
19 themselves from the Settlement Class, they may be eligible to receive relief;

20 d. describe the procedures for participating in the Settlement and
21 advise Settlement Class Members of their rights, including their right to file
22 a Claim to receive an Award under the Settlement, to opt out of same, or
23 object thereto;

24 e. explain the scope of the Release and Covenant Not To Sue, and
25 the impact of the proposed Settlement on any existing litigation, arbitration
26 or other proceeding;
27
28

1 f. state that any Award to Settlement Class Members under the
2 Settlement is contingent on the Court's final approval of the proposed
3 Settlement;

4 g. explain that neither Counsel for the Parties, nor the Claims
5 Administrator may advise on the tax consequences of participating or not
6 participating in the Settlement;

7 h. explain the procedures for opting out of the Settlement and
8 specifying that so-called "mass" or "class" opt outs shall not be allowed; and

9 i. provide that any objection to the Settlement and any papers
10 submitted in support of said objection will be considered only if the
11 Settlement Class Member making an objection has submitted timely notice
12 of his or her intention to do so, with the grounds for the objection, and has
13 submitted copies of such papers he or she proposes to submit at the Final
14 Approval Hearing to the Claims Administrator and served copies of such
15 papers on Co-Lead Counsel and Philips' Counsel on or before the Opt Out
16 and Objection Date, as approved by the Court and specified in the Class
17 Notice

18 j. identify the existence of an injunction, barring new suits by
19 Class Members relating to the Released Claims, until consideration of the
20 Settlement Stipulation is concluded by the Court.

21 3. Any Settlement Class Member who intends to object must do so on or
22 before the Opt Out and Objection Date. In order to object, the Settlement Class
23 Member must include in the objection submitted to the Claims Administrator and
24 served on Co-Lead Counsel and Philips' Counsel: (a) the name, address, telephone
25 number of the Person objecting and, if represented by counsel, of his/her counsel;
26 and (b) Proof of Purchase or acquisition of a BPA Product. An objecting
27 Settlement Class Member must state, specifically and in writing, all objections and
28 the basis for any such objections, and provide a statement of whether he/she

1 intends to appear at the Final Approval Hearing, either with or without counsel.
2 Any Settlement Class Member who fails to submit and serve timely a written
3 objection and notice of his or her intent to appear at the Final Approval Hearing
4 pursuant to this Section **F.3.**, as detailed in the Notice, shall not be permitted to
5 object to the approval of the Settlement at the Final Approval Hearing and shall be
6 foreclosed from seeking any review of the Settlement or the terms of the
7 Agreement by appeal or other means. The Claims Administrator shall provide
8 copies of all objections to counsel for the Parties, who shall file them with the
9 Court.

10 4. Prior to the Final Approval Hearing, the Claims Administrator shall
11 provide to the Court documentation that Notice was provided in accordance with
12 the Notice Program.

13 5. A Settlement Class Member who wishes to opt out of the Settlement
14 Class must do so on or before the Opt Out and Objection Date. In order to opt out,
15 a Settlement Class Member must complete and send to the Claims Administrator a
16 Request For Exclusion that is post-marked no later than the Opt Out and Objection
17 Date. The Request for Exclusion must be personally signed by the Settlement
18 Class Member requesting exclusion and contain a statement that indicates a desire
19 to be excluded from the Settlement Class. So-called "mass" or "class" opt-outs
20 shall not be allowed.

21 6. Except for those Settlement Class Members who timely and properly
22 file a Request for Exclusion, all other Settlement Class Members will be deemed to
23 be Settlement Class Members for all purposes under the Settlement Stipulation,
24 and upon the Effective Date, will be bound by its terms, regardless of whether they
25 file a Claim or receive any monetary relief.

26 7. Any Settlement Class Member who properly opts out of the
27 Settlement Class shall not: (a) be bound by any orders or judgments entered in the
28 Action relating to the Settlement; (b) be entitled to relief under, or be affected by,

1 the Agreement; (c) gain any rights by virtue of the Agreement; or (d) be entitled to
2 object to any aspect of the Settlement.

3 8. The Claims Administrator shall provide Co-Lead Counsel and
4 Defendant's Counsel with a list of all timely Requests For Exclusion within five
5 (5) business days after the Opt Out and Objection Date.

6 **G. EXCLUSIVE REMEDY; RELEASES; JURISDICTION OF COURT**

7 The Settlement Stipulation shall be the sole and exclusive remedy for any
8 and all Released Claims of all Releasing Parties against all Released Parties. The
9 Releases are entirely independent from the dismissals with prejudice contained in,
10 and made a part of, this Settlement Stipulation. No Released Party shall be subject
11 to liability or expense of any kind to any Releasing Party with respect to any
12 Released Claim. Upon entry of the Final Judgment and Order Approving
13 Settlement, each and every Releasing Party shall be permanently barred and
14 enjoined from initiating, asserting and/or prosecuting any Released Claim against
15 any Released Party in any court or any forum.

16 **H. RELEASES AND COVENANT NOT TO SUE**

17 1. The following terms have the meanings set forth herein:

18 a. Released Claim means any individual, class, representative,
19 group or collective claim, liability, right, demand, suit, matter, obligation, damage,
20 loss, action or cause of action, of every kind and description that a Releasing Party
21 has or may have, including assigned claims, whether known or unknown, asserted
22 or unasserted, latent or patent, suspected or unsuspected, concealed or hidden, that
23 is, has been, could have been or in the future might reasonably be asserted under
24 any body of law by the Releasing Party either in the Court or any other court or
25 forum, regardless of legal theory or relief claimed, and regardless of the type of
26 relief or amount of damages claimed, against any of the Released Parties arising
27 from, or in any way relating to, the sale, marketing, design or advertising of a BPA
28

1 Product, provided that nothing in these Releases shall be deemed a release of a
2 claim for personal injuries arising out of the use of a BPA Product.

3 b. Released Party means Defendant and any retail seller and/or
4 distributor of the BPA Products, including all of their current and former
5 predecessors, successors, assigns, parents, subsidiaries, divisions, departments, and
6 affiliates, and any and all of their past, present and future officers, directors,
7 employees, stockholders, partners, agents, servants, successors, attorneys, insurers,
8 representatives, licensees, licensors, customers, subrogees and assigns.

9 c. Releasing Party means each Plaintiff and each Settlement Class
10 Member and any Person claiming by or through him/her/it as his/her/its spouse,
11 child, ward, next friend, heir, devisee, legatee, invitee, employee, customer,
12 associate, co-owner, attorney, agent, administrator, predecessor, successor,
13 assignee, representative of any kind, shareholder, partner, director, or affiliate.

14 2. Upon entry of the Final Judgment and Order Approving
15 Settlement, each Releasing Party shall be deemed to have released and forever
16 discharged each Released Party of and from liability for any and all Released
17 Claims.

18 3. To ensure that these Releases are enforced fully and in accordance
19 with their terms, with respect to any and all Released Claims, and upon entry of the
20 Final Judgment and Order Approving Settlement without further action, for good
21 and valuable consideration, Plaintiffs, on behalf of themselves and the Settlement
22 Class and as the representatives of the Settlement Class, shall expressly, and
23 Releasing Parties shall be deemed to have, and by operation of the Final Judgment
24 and Order Approving Settlement shall, to the fullest extent permitted by law, fully,
25 finally, and forever expressly waived and relinquished with respect to the Released
26 Claims, any and all provisions, rights, and benefits of Section 1542 of the
27 California Civil Code and any and all similar provisions, rights, and benefits
28 conferred by any law of any state or territory of the United States or principle of

1 common law that is similar, comparable, or equivalent to Section 1542 of the
2 California Civil Code, which provides:

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

4. Additional Mutual Releases

8 a. On and after the Effective Date, each of the Released Parties
9 shall be deemed to have fully, finally, and forever released, relinquished and
10 discharged each and all of the Plaintiffs and Settlement Class Members, and their
11 respective present and former parents, subsidiaries, divisions, and affiliates, the
12 present and former partners, employees, officers and directors of each of them, the
13 present and former attorneys, accountants, experts, consultants, insurers, and
14 agents of each of them, each of the foregoing solely in their capacity as such, and
15 the predecessors, successors, heirs, and assigns of each, from all claims of every
16 nature and description, known and unknown, relating to the initiation, assertion,
17 prosecution, non-prosecution, settlement, and/or resolution of the Action or the
18 Released Claims.

19 b. On and after the Effective Date, each of the Releasing Parties
20 shall be deemed to have fully, finally, and forever released, relinquished and
21 discharged the Defendant, their respective present and former parents, subsidiaries,
22 divisions, and affiliates, the present and former partners, employees, officers and
23 directors of each of them, the present and former attorneys, accountants, experts,
24 consultants, insurers and agents of each of them, each of the foregoing solely in
25 their capacity as such, and the predecessors, successors, heirs, and assigns of each
26 of them, from all claims of every nature and description, known and unknown,
27
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1 relating to the defense, settlement and/or resolution of the Action or the Released
2 Claims.

3 5. The Parties agree that the Court shall retain exclusive and continuing
4 jurisdiction over the Parties, Settlement Class Members, Class Counsel and the
5 Claims Administrator to interpret and enforce the terms, conditions, and
6 obligations under the Settlement Stipulation.

7 **I. COUNSEL FEES AND COSTS**

8 1. Co-Lead Counsel agree to make, and Philips agrees not to oppose, an
9 application for the award of Attorneys' Fees and Expenses in this Action not to
10 exceed a total of \$2,500,000. If and when ordered, such fees and expenses will be
11 paid by Philips within ten (10) business days after entry of Final Judgment and
12 Order Approving Settlement, subject to the conditions in this Section. If the Final
13 Judgment and Order Approving Settlement is reversed, vacated, modified, and/or
14 remanded for further proceedings or otherwise disposed of in any manner other
15 than one resulting in affirmance of the Final Judgment and Order Approving
16 Settlement as to any matter other than a reduction of Attorneys' Fees and
17 Expenses, and if Philips or Co-Lead Counsel properly and timely terminates the
18 Agreement in accordance with **Section N** of this Agreement, then Co-Lead
19 Counsel shall within ten (10) business days return to Philips the amount of
20 Attorneys' Fees and Expenses paid by Philips. If the award of Attorneys' Fees and
21 Expenses is reduced after entry of the Final Judgment and Order Approving
22 Settlement, then Co-Lead Counsel shall within ten (10) business days return to
23 Philips the amount by which the Attorneys' Fees and Expenses have been reduced.
24 Any return of Attorneys' Fees and Expenses under this Section shall be increased
25 by interest accrued at the Federal Funds Rate from the date of payment of the
26 Attorneys' Fees and Expenses to Co-Lead Counsel. Co-Lead Counsel's obligation
27 to return any of the Attorneys' Fees and Expenses, as described herein, shall be
28 evidenced by a promissory note, which note shall be executed jointly and severally

1 by the law firms of Whatley Drake & Kallas, LLC and Walters Bender Strohhahn
2 & Vaughan, PC.

3 2. Co-Lead Counsel, in their sole discretion, shall allocate and distribute
4 this award of Attorneys' Fees and Expenses among Plaintiffs' Counsel.

5 3. Philips agrees to pay each Class Representative the amount of such
6 Incentive Award, if any, as may be approved by the Court up to \$1,000 per
7 Plaintiff. Philips agrees that it will not object to, or otherwise challenge, the Class
8 Representatives' applications for Incentive Awards, so long as the Class
9 Representatives do not seek awards in excess of \$1000.00 per Class
10 Representative. If awarded by the Court, such Incentive Awards will be paid to
11 Co-Lead Counsel on behalf of the Class Representatives within thirty (30) days
12 after the Effective Date. Any Incentive Awards awarded by the Court shall be paid
13 by Philips, in addition to the Settlement benefits to Settlement Class Members and
14 the Attorneys' Fees and Expenses otherwise provided for in this Agreement.

15 **J. THE FINAL JUDGMENT AND ORDER APPROVING SETTLEMENT**

16 1. This Agreement is subject to and conditioned upon the issuance by the
17 Court of the Final Judgment and Order Approving Settlement that finally certifies
18 the Settlement Class for the purposes of settlement only, and grants final approval
19 of the Settlement, and provides the relief specified herein, which relief shall be
20 subject to the terms and conditions of the Agreement and the Parties' performance
21 of their continuing rights and obligations hereunder. Such Final Judgment and
22 Order Approving Settlement shall:

23 a. Confirm the final certification, for settlement purposes only, of
24 the Settlement Class;

25 b. Confirm the compliance of the Settlement Class with all
26 requirements of Rule 23, including confirmation of the adequacy of the
27 representation of the Class Representatives as representatives of the
28 Settlement Class;

1 c. Confirm that the Notice Program complied in all respects with
2 the requirements of due process and Rule 23 by providing due, adequate, and
3 sufficient notice to the Settlement Class;

4 d. Determine that the Agreement is entered into in good faith, is
5 reasonable, fair and adequate, and is in the best interest of the Settlement
6 Class;

7 e. Dismiss the Complaint and all complaints in the Constituent
8 Actions with prejudice as to the Released Parties and without costs;

9 f. Release each Released Party from the Released Claims that any
10 Releasing Party has, had, or may have in the future, against each Released
11 Party and provide that the Covenant Not To Sue has been given by each
12 Settlement Class Member in favor of each Released Party and that all
13 Settlement Class Members are bound thereby;

14 g. Bar and enjoin all Releasing Parties from asserting against any
15 Released Party any Released Claim;

16 h. Release each Releasing Party and Settlement Class Member,
17 and their respective present and former parents, subsidiaries, divisions and
18 affiliates, the present and former partners, employees, officers and directors
19 of each of them, the present and former attorneys, accountants, experts,
20 consultants and insurers, and agents of each of them, each of the foregoing
21 solely in their capacity as such, and the predecessors, successors, heirs and
22 assigns of each of them, from all claims of every nature and description,
23 known and unknown, that any Released Party has had, or may in the future
24 have relating to the initiation, assertion, prosecution, non-prosecution,
25 settlement and/or resolution of the Action or the Released Claims, and bar
26 and enjoin all Released Parties from asserting the same;

27 i. Release Defendant and its present and former parents,
28 subsidiaries, divisions and affiliates, the present and former partners,

1 employees, officers, and directors of each of them, the present and former
2 attorneys, accountants, experts, consultants, insurers and agents of them, and
3 the predecessors, successors, heirs and assigns of each of them from all
4 claims of every nature and description, known and unknown, that any
5 Releasing Party has, had or may in the future have relating to the defense,
6 settlement and/or resolution of the Action or the Released Claims, and bar
7 and enjoin all Releasing Parties from asserting the same;

8 j. Provide that all Settlement Class Members are deemed to have
9 waived and released all claims relating to Philips' disposal or destruction of
10 BPA Product(s) pursuant to orders of the Court and the terms of the
11 Settlement; and

12 k. Retain the Court's continuing and exclusive jurisdiction over
13 the Parties to the Agreement, including all Settlement Class Members, to
14 construe and enforce the Agreement in accordance with its terms for the
15 mutual benefit of the Parties.

16 **K. REPRESENTATIONS AND WARRANTIES**

17 1. Philips represents and warrants: (a) that it has the requisite corporate
18 power and authority to execute, deliver and perform the Settlement Stipulation and
19 to consummate the transactions contemplated hereby; (b) that the execution,
20 delivery and performance of the Settlement Stipulation and the consummation by
21 it of the actions contemplated herein have been duly authorized by necessary
22 corporate action on the part of Philips; and (c) that the Settlement Stipulation has
23 been duly and validly executed and delivered by Philips and constitutes its legal,
24 valid and binding obligation. Philips' Counsel represents and warrants that they
25 are fully authorized to execute this Settlement Stipulation on behalf of Philips and
26 thereby to bind Philips.

27 2. Plaintiffs represent and warrant that they are entering into the
28 Settlement Stipulation on behalf of themselves, individually and as representatives

1 of the Settlement Class Members and the Releasing Parties, of their own free wills
2 and without the receipt of any consideration other than what is provided in the
3 Settlement Stipulation or disclosed to, and authorized by, the Court. Each Plaintiff
4 represents and warrants that he or she has reviewed the terms of the Settlement,
5 believes it to be fair and reasonable, and each covenants that he or she will not file
6 a Request for Exclusion from the Settlement Class or object to the Settlement. Co-
7 Lead Counsel represents and warrants that they are fully authorized to execute the
8 Settlement Stipulation on behalf of the Plaintiffs, individually and as
9 representatives of the Settlement Class Members and Releasing Parties.

10 3. The Parties warrant and represent that no promise, inducement or
11 consideration for the Settlement has been made, except those set forth herein. No
12 consideration, amount or sum paid, accredited, offered or expended by Philips in
13 its performance of this Settlement Stipulation and the Settlement constitutes a fine,
14 penalty, punitive damages or other form of assessment for any claim against it.

15 **L. NO ADMISSIONS; NO USE**

16 1. The Settlement Stipulation shall in no event be construed or deemed
17 to be evidence or an admission or a concession on the part of any Plaintiff,
18 Defendant, any Releasing Party, or any Released Party with respect to any issue in
19 the case, including any claim of any fault or liability, any defense, or any claim of
20 injury or damages.

21 2. The Settlement Stipulation, whether or not consummated, and any
22 proceedings taken pursuant to it, are not and shall not in any event be:

23 a. Construed as, offered in evidence as, received in evidence as,
24 and/or deemed to be, evidence of a presumption, concession or an admission
25 by any Plaintiff, Defendant, Settlement Class Member, or Released Party of
26 the truth of any fact alleged or the validity of any claim or defense that has
27 been, could have been, or in the future might be asserted in any litigation or
28 the deficiency of any claim or defense that has been, could have been, or in

1 the future might be asserted in any litigation, or of any liability, fault,
2 wrongdoing or otherwise of such Party; or

3 b. Construed as, offered in evidence as, received in evidence as,
4 and/or deemed to be, evidence of a presumption, concession or an admission
5 of any liability, fault or wrongdoing, or in any way referred to for any other
6 reason, by any Plaintiff, Defendant, Releasing Party or Released Party in the
7 Action or in any other civil, criminal or administrative action or proceeding
8 other than such proceedings as may be necessary to effectuate the provisions
9 of the Agreement.

10 **M. MISCELLANEOUS PROVISIONS**

11 1. Entire Agreement

12 The Settlement Stipulation, including all Exhibits hereto, shall constitute the
13 entire Agreement among the Parties with regard to the Settlement and shall
14 supersede any previous agreements, representations, communications and
15 understandings among the Parties with respect to the subject matter of the
16 Settlement, with the exception of the limit for Opt-Outs and certain mechanics
17 related to the Most Favored Nation provision. The Agreement may not be
18 changed, modified, or amended except in a writing signed by all Parties and, if
19 required, approved by the Court. The Parties contemplate that certain of the
20 Exhibits to the Agreement relating to Class Notice may be modified by subsequent
21 agreement of Philips and Co-Lead Counsel prior to dissemination to the Settlement
22 Class.

23 2. Governing Law

24 The Agreement shall be construed under and governed by the laws of the
25 State of Missouri, applied without regard to laws applicable to choice of law.

26 3. Execution by Counterparts

27 The Agreement may be executed by the Parties in one or more counterparts,
28 each of which shall be deemed an original but all of which together shall constitute

1 one and the same instrument. Facsimile signatures or signatures sent by e-mail
2 shall be treated as original signatures and shall be binding.

3 4. Notices

4 Any notice, instruction, application for Court approval or application for
5 Court orders sought in connection with the Settlement and the Agreement or other
6 document to be given by any Party to any other Party shall be in writing and
7 delivered personally or sent by registered or certified mail, postage prepaid, if to
8 Philips to the attention of Philips' Counsel, and if to Settlement Class Members, to
9 the attention of Co-Lead Counsel on their behalf.

10 All notices to the Parties or counsel required by the Agreement shall be
11 made in writing and communicated by fax and mail to the following addresses:

12 a. If to Plaintiffs or Co-Lead Counsel:

13 WHATLEY, DRAKE & KALLAS, LLC

14 Edith M. Kallas
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28

1 b. If to Philips or Philips' Counsel:

2 Michael H. Steinberg
3 Brian R. England
4 SULLIVAN & CROMWELL LLP
5 1888 Century Park East, Suite 2100
6 Los Angeles, California 90067
7 Telephone: (310) 712-6600
8 Facsimile: (310) 407-2674
9 steinbergm@sullcrom.com
10 englandb@sullcrom.com

11 5. Protective Orders

12 All orders, agreements and designations regarding the confidentiality of
13 documents and information ("Protective Orders") remain in effect, and all Parties
14 and counsel remain bound to comply with the Protective Orders.

15 6. Miscellaneous Provisions

16 a. The Agreement shall be binding upon, and inure to the benefit
17 of, the heirs, successors, assigns, executors and legal representatives of the
18 Parties to the Agreement and Defendant and Released Parties.

19 b. Time is of the essence.

20 c. Subject to Court approval, the Parties may agree to reasonable
21 extensions of time to carry out any of the provisions of the Agreement.
22 Nothing in this Settlement Stipulation, or any other understanding, shall
23 require such agreement.

24 d. The determination of the terms of, and the drafting of, the
25 Agreement has been by mutual understanding after negotiation, with
26 consideration by, and participation of, the Parties hereto and their counsel.

27 e. The waiver by one Party of any provision or breach of the
28 Agreement shall not be deemed a waiver of any other provision or breach of
the Agreement.

 f. In the event of any variance between the terms of this
Settlement Stipulation and any of the Exhibits hereto, the terms of this
Settlement Stipulation shall control and supersede the Exhibit(s), except if

1 such Exhibit shall become an entered order, in which case the Parties shall
2 petition the Court for an amendment of such entered order to ensure that the
3 terms of this Settlement Stipulation shall control.

4 g. All Exhibits to this Settlement Stipulation are material and
5 integral parts hereof, and are incorporated by reference as if fully rewritten
6 herein.

7 h. No opinion concerning the tax consequences of the Settlement
8 to any Settlement Class Member is given or will be given by Philips, Philips'
9 Counsel, Co-Lead Counsel, or Plaintiffs' Counsel; nor is any Party or their
10 counsel providing any representation or guarantee respecting the tax
11 consequences of the Settlement as to any Settlement Class Member. The
12 Class Notice will direct Settlement Class Members to consult their own tax
13 advisors regarding the tax consequences of the Settlement and any tax
14 reporting obligations with respect thereto. Each Settlement Class Member is
15 responsible for his/her tax reporting and other obligations respecting the
16 Settlement, if any.

17 i. It is expressly understood that, to the extent a Released Party is
18 not a Party to the Settlement Stipulation, all such Released Parties are
19 intended third party beneficiaries of the Settlement Stipulation.

20 **N. TERMINATION OF THIS AGREEMENT**

21 1. In the event that:

22 a. By January 10, 2011, the Court does not enter an order granting
23 Preliminary Approval Order conforming in all material respects to Section
24 C.1 herein and Exhibit F hereof;

25 b. The Court does not conditionally and finally certify the
26 Settlement Class as defined herein or the Court's order certifying the
27 Settlement Class is reversed, vacated, or modified in any respect by another
28 court;

1 c. The Court does not enter a Final Order Approving Settlement
2 conforming in all material respects to Section J herein and Exhibit G, or if
3 entered, such Final Judgment and Order Approving Settlement is reversed,
4 vacated, or modified in any material respect by another court;
5 then either of the Parties may terminate this Agreement within ten (10) business
6 days of the event giving rise to the right to terminate by serving written notice
7 upon the other Party and Court. In the event of a termination under Sections
8 **N.1.b. or N.1.c.** herein, Philips shall cause the Claims Administrator to post
9 information regarding the termination on the website established for the Settlement
10 and to e-mail such information to those Settlement Class Members who provided
11 an e-mail address to the Claims Administrator. It is expressly agreed that neither
12 the failure of the Court to award Attorneys' Fees and Expenses to Co-Lead
13 Counsel or Incentive Awards to Plaintiffs, nor the amount of such Attorney's Fees
14 and Expenses or Incentive Awards that may be finally determined and awarded,
15 shall provide a basis for termination of this Agreement.

16 2. In the event that more than a certain confidential number of
17 Settlement Class Members as specified in that separate and confidential side-letter
18 of even date, shall file valid Opt-Outs, then Philips, in its discretion, shall have the
19 ability to terminate this Settlement Stipulation.

20 3. In the event of the termination of this Settlement Stipulation, all
21 Parties shall be restored to their respective positions as of immediately prior to the
22 date of execution of this Settlement Stipulation. Upon termination, **Sections B**
23 **and L** herein shall survive and be binding on the Parties, but this Settlement
24 Stipulation shall otherwise be null and void.

1 IN WITNESS WHEREOF, each of the Parties hereto has caused the
2 Settlement Stipulation to be executed on its behalf by its duly authorized counsel of
3 record, all as of the day set forth below.

4 AGREED:

5 Dated: January 3, 2011

SULLIVAN & CROMWELL LLP

6
7 By: Michael H. Steinberg /BRE
8 *Attorneys for Defendant Phillips*
9 *Electronics North*
10 *America Corporation*

11 Dated: January 3, 2011

WHATLEY DRAKE & KALLAS, LLC

12 By: Edith M. Kallas

13 WALTERS BENDER STROHBEHN
14 & VAUGHAN, PC.

15 By: Chad Bender
16 Co-Lead Counsel for Plaintiffs
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