

## STIPULATION OF CLASS ACTION SETTLEMENT

This Stipulation of Class Action Settlement, including its attached Exhibits, which are incorporated by this reference (the “Agreement”), is entered into by and between plaintiff Sherry Hunter, individually, and in her representative capacity on behalf of all others similarly situated (“the Settlement Class”), on the one hand, and defendants Nature’s Way Products, LLC and Schwabe North America, Inc. (collectively, “Nature’s Way”), on the other hand. Ms. Hunter and Nature’s Way are jointly referred to herein as the “Parties.” Capitalized terms used herein are defined in Section 1 herein or indicated in parentheses elsewhere in the agreement.

### RECITALS

- A. **WHEREAS** on January 28, 2016, Ms. Hunter and Malia Levin filed a putative class action complaint in the Superior Court of California for the County of San Diego entitled *Sherry Hunter and Malia Levin v. Nature’s Way Products, LLC, et al.*, Case No. 37-2016-00002933-CU-NP-CTL (the “Action”), in which they stated claims against Nature’s Way for violations of California’s Consumers Legal Remedies Act, Unfair Competition Law, California’s False Advertising Law, and for Breach of Express and Implied Warranty on behalf of themselves, all others similarly situated individuals, and the general public.
- B. **WHEREAS** on March 2, 2016 Nature’s Way removed the Action to the United States District Court for the Southern District of California, and it was assigned case number 3:16-cv-00532-WQH-AGS.
- C. **WHEREAS** after the Court’s ruling granting in part and denying in part Nature’s Way’s motion to dismiss, Nature’s Way answered the class action complaint and asserted various affirmative defenses on September 9, 2016.
- D. **WHEREAS** on March 21, 2017, the Parties stipulated to dismiss Malia Levin’s individual claims without prejudice, which the Court ordered on March 23, 2017.
- E. **WHEREAS** on January 30, 2018, Ms. Hunter filed a First Amended Complaint, and on February 12, 2018, she filed a Second Amended Complaint, to which Nature’s Way answered and asserted various affirmative defenses on February 26, 2018.
- F. **WHEREAS** the Parties conducted a factual investigation and analyzed the relevant legal issues with regard to the claims in, and potential defenses to, the Action. Ms. Hunter and her counsel contend that the claims asserted in the Action have merit, and that she and the putative class members are entitled to restitution and damages. Nature’s Way contends the claims asserted in the Action do not have merit, that Nature’s Way has defenses that could eliminate or reduce liability and monetary recovery in this case, and that neither Ms. Hunter nor the putative class have been damaged in any sum whatsoever.
- G. **WHEREAS** the Parties recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the claims through trial, possible appeals, and ancillary actions. The Parties also have taken into account the uncertain outcome and the

risk of any litigation, especially in multi-party actions such as this proceeding, as well as the difficulties and delays inherent in such litigation.

- H. **WHEREAS** the Parties engaged in arms-length negotiations and, on February 21, 2018, participated in a mandatory settlement conference before Magistrate Judge Andrew G. Schopler, and with the assistance of Judge Schopler, the principal terms of a settlement were reached, which, after additional arms-length negotiations, are embodied in this Agreement;
- I. **WHEREAS** the Parties understand, acknowledge, and agree that the execution of this Agreement constitutes settlement and compromise of disputed claims. This Agreement is inadmissible as evidence except to enforce the terms of the Agreement and is not an admission of wrongdoing or liability on the part of any Party to this Agreement. The Parties desire and intend to effect a full, complete, and final settlement and resolution of all existing disputes and claims as set forth herein.

**NOW THEREFORE**, subject to Court approval, as hereinafter provided, it is hereby agreed by the Parties that, in consideration of the promises and covenants set forth in this Agreement and upon the entry by the Court of a Final Approval Order and the occurrence of the Final Settlement Effective Date, the Action, including the claims asserted by Ms. Hunter, individually and on behalf of the Class Members as defined herein, shall be settled and compromised upon the terms and conditions contained herein.

## 1. DEFINITIONS

In addition to the terms defined above, the below-listed terms shall be defined for purposes of this Agreement. Some of the definitions in this section use terms that are defined later in the section.

**1.1. “Agreement”** means this Settlement Agreement and Release, including all Exhibits hereto.

**1.2. “Claims Administrator”** means or refers to the professional claims administrator, RG2 Claims Administration LLC, and any successors chosen to effectuate the Agreement.

**1.3. “Class” or “Class Members”** means all persons who, during the Class Period, purchased Nature’s Way Extra Virgin Coconut Oil or Nature’s Way Liquid Coconut Oil bearing at least one labeling claim challenged in this action for personal or household use. Excluded from the Class are: (a) persons or entities who purchased Coconut Oil for the purpose of resale or distribution; (b) persons who are directors and Officers of Nature’s Way or its parent, subsidiary, or affiliate companies; (c) governmental entities; (d) persons who timely and properly exclude themselves from the Class as provided in the Agreement; (e) persons who signed a release of Nature’s Way for compensation for the claims arising out of the facts or claims asserted in the Action; and (f) any judicial officer hearing this Action, including his or her immediate family members and employees.

**1.4. “Class Period”** means January 28, 2012 to the date of preliminary approval of this Agreement.

**1.5. “Class Representative”** means plaintiff Sherry Hunter in her representative capacity on behalf of the general public and the Class.

**1.6. “Class Counsel”** means:

Jack Fitzgerald  
**The Law Office of Jack Fitzgerald, PC**  
Hillcrest Professional Building  
3636 Fourth Avenue, Ste. 202  
San Diego, California 92103  
P | 619-692-3840  
F | 619-362-9555

Paul Joseph  
**The Law Office of Paul K. Joseph, PC**  
4125 W. Pt. Loma Blvd, No. 309  
San Diego, California 92110  
P | 619-767-0356  
F | 619-331-2943

**1.7. “Court”** means the United States District Court for the Southern District of California.

**1.8. “Common Fund”** means a qualified settlement fund (QSF) formed solely for purposes of effectuating this Agreement.

**1.9 “Nature’s Way’s Counsel” or “Defendant’s Counsel”** means:

Kevin W. Alexander, Esq.  
Thomas R. Watson, Esq.  
Michael Bryant, Esq.  
**GORDON & REES LLP**  
101 W. Broadway, Suite 2000  
San Diego, CA 92101  
P | (619) 696-6700  
F | (619) 696-7124

**1.10 “Coconut Oil”** means Nature’s Way Nature’s Way Extra Virgin Coconut Oil in either 16-ounce or 32-ounce jar, or Nature’s Way Liquid Coconut Oil in either 10-ounce and 20-

ounce bottles, distributed by Nature's Way during the Class Period, and bearing at least one labeling claim challenged in this action.

**1.11 "Fairness Hearing"** means the hearing at or after which the Court will make a final decision whether to approve this Agreement as fair, reasonable, and adequate.

**1.12 "Final Approval Order"** means the Court order finally certifying the Class for settlement purposes only and approving the settlement and this Agreement, as contemplated in this Agreement. "Final Approval" occurs on the date that the Court enters, without material change, the Final Approval Order.

**1.13 "Final Effective Settlement Date"** shall be the date a judgment in the Action becomes final and non-appealable, plus five (5) business days.

**1.14 "Full Class Notice"** means the legal notice of the terms of the proposed Settlement, as approved by Plaintiff's Counsel, Defendant's Counsel, and the Court, to be distributed according to a Notice Plan approved by the Court. The Full Class Notice shall be substantially in the form attached as **Exhibit A** hereto, and/or any different or additional notice that might be ordered by the Court.

**1.15 "Notice Date"** means thirty (30) calendar days after entry of the Preliminary Approval Order.

**1.16 "Notice Plan"** means the plan for notice as described in the Declaration of William Wickersham set forth in **Exhibit B** hereto.

**1.17 "Post-Challenged Label"** means a label for any Coconut Oil that no longer bears any labeling claim challenged in this action.

**1.18 "Preliminary Approval Order"** means the order: (1) provisionally certifying the Class for settlement purposes only and determining that the proposed settlement is within the range for final approval; (2) determining that Ms. Hunter adequately represents the Class and shall be its class representative; (3) appointing Class Counsel as counsel for the Class; (4) approving the Notice Plan; and (5) setting a date for the Fairness Hearing, as contemplated in this Agreement.

**1.19 "Request for Exclusion/Opt Out"** means any Class Member's request to be excluded from the terms of this Agreement, by way of the procedures set forth in Section 3.6 herein.

**1.20 "Settlement"** means the settlement into which the Parties have entered to resolve the Action. The terms of the Settlement are set forth in this Agreement and the attached exhibits, which are incorporated by reference herein.

**1.21 “Settlement Class”** means those persons who are members of the Class who have not properly and timely submitted a Request for Exclusion/Opt Out.

**1.22 “Settlement Website”** means the website established by the Claims Administrator to aid in the administration of the Settlement.

**1.23 “Product”** means any Coconut Oil, as defined above, purchased by any Class Member during the Class Period.

## 2. SETTLEMENT TERMS

### 2.1. Certification of the Class.

(a) For the purposes of Settlement and the proceedings contemplated herein only, and subject to Court approval, the Parties stipulate and agree that the Class shall be provisionally certified pursuant to Federal Rule of Civil Procedure 23 in accordance with the definition contained herein, that Ms. Hunter shall represent the Class for settlement purposes and shall be the Class Representative, and that Class Counsel shall be appointed as counsel for the Class.

(b) As soon as reasonably practicable, Ms. Hunter shall apply to the Court for entry of the Preliminary Approval Order, as provided in this Agreement.

**2.2 Injunction – Labeling Changes.** For a period of five (5) years commencing from the date the Court issues a Final Approval Order, Nature’s Way will not advertise (including in print, on its website, on Coconut Oil Product labels or packaging, and in its sales pitches or public statements) its Coconut Oil Products using the following terms and phrases, or substantially similar terms or phrases:

- “Healthy”
- “Ideal for Exercise and Weight Loss Programs”
- “Recommendation: Take 1 tablespoon (14 g) up to 4 times daily”
- “Non-hydrogenated, no trans fat” unless the statement is made with the disclosures required by the FDA

However, this paragraph shall not apply if there is a change in law, regulations, science or FDA guidance that would make it appropriate to use the above-described terms and phrases. The current labels of Nature’s Way Coconut Oil products do not include the above-described terms and phrases and are, therefore, in compliance with the terms described in this section.

**2.3 Common Fund for Class.** Within forty-five (45) days following the date of the Preliminary Approval Order, Nature’s Way or any other entity on its behalf, shall deposit ONE MILLION EIGHT HUNDRED FIFTY THOUSAND dollars (\$1,850,000.00) into a Common Fund, through the Claims Administrator, to be held in trust. The Common Fund shall be administered by the Claims Administrator. The Common Fund shall constitute the funds available to compensate Class Members, the Claims Administrator, Class Counsel, and Ms.

Hunter. The Common Fund, after deducting any attorneys' fees and costs, class representative incentive payment, and notice and administration costs as approved and awarded by the Court, shall be paid to those Class Members who submit a valid claim, as determined by the Claims Administrator, within forty-five (45) days after commencement of the distribution of the Full Class Notice. Class Members who have their claims validated by the Claims Administrator and who provide a proof of purchase, in the form of receipt or Product packaging, will be reimbursed as follows: \$3.00 for a 16-ounce jar of semi-solid Extra Virgin Coconut Oil, \$6.00 for a 32-ounce jar of semi-solid Extra Virgin Coconut Oil, \$3.50 for a 10-ounce jar of Liquid Coconut Cooking Oil, and \$6.00 for a 20-ounce jar of Liquid Coconut Cooking Oil. Class Members without proof of purchase who have their claims validated by the Claims Administrator will be reimbursed those same amounts, but will be capped at reimbursement for three total units for claims with no proof of purchase. Nature's Way shall not be obligated to add any additional monies to the Common Fund. If the total amount of funds claimed by Class Members is less than the total amount of the fund that is available to Class Members after costs and expenses, the excess funds will be distributed to Class Members who submitted Valid Claims on a pro-rata basis that is proportional to the value of each Valid Claim, with such distribution occurring concurrently with the distribution of the original refund amount, but that the total amount of claims paid to each Class Member shall be capped at 50% of the approximate average retail value of the products for which they are making claims. The approximate average retail value to be used for each product is as follows: Nature's Way semi-solid Extra Virgin Coconut Oil: \$20 for a 32-ounce jar, and \$10 for a 16-ounce jar; Nature's Way Liquid Coconut Cooking Oil: \$20 for a 20-ounce bottle, and \$11.50 for a 10-ounce bottle. If after that increase in funds to be distributed to Class Members, the total amount of funds claimed and to be distributed is less than the total amount of the fund that is available to Class Members after costs and expenses, the excess funds will be paid to: American Heart Association, Inc., a 501(c)(3) nonprofit corporation. If the total amount of funds claimed by Class Members is greater than the total amount of the fund that is available for Class Members after costs and expenses, each claim validated by the Claims Administrator will be reduced on a pro-rata basis that is proportional to the value of each claim validated by the Claims Administrator.

**2.4 Release of Common Funds.** Within seven (7) days following the entry of a Final Approval Order, the Claims Administrator shall pay to Class Counsel the amount of attorneys' fees and costs awarded by the Court, provided, however, that counsel shall be obligated to return to the Common Fund any fees if the amount is reduced prior to the Final Effective Settlement Date. On the Final Effective Settlement Date, the remaining funds in the Common Fund will become available to pay any Court-approved incentive award, and to compensate Class Members. In the event that the Agreement does not obtain final approval from the Court, the Common Fund shall be remitted back to the funding party.

**2.5 Attorneys' Fees and Expenses, and Incentive Award.** No later than twenty-eight (28) days before the Fairness Hearing, or at such other time as required by the Court, the Class Representative and Class Counsel shall apply to the Court for an award, from the Common Fund, of attorney's fees and expenses incurred in prosecuting this Action, and an incentive award for the Class Representative. The Parties have not agreed to any particular amounts that the Class Representative or Class Counsel may seek. Nature's Way is not obligated to respond, but may respond to Class Counsel's fee motion and the Class Representative's motion for an incentive award in whatever manner it deems appropriate. Any Court-approved attorney's fees and



incentive award will be paid from the Common Fund in accordance with the provisions of paragraph 2.4. In the event the Court does not approve the attorneys' fees and costs requested by Class Counsel, or the Court awards fees and costs in an amount less than that requested by Class Counsel, such award shall not be a basis for rendering the entire Settlement null, void or unenforceable, provided however, that Class Counsel retains the right to appeal any decision by the Court regarding the Court's award of Attorneys' Fees and Costs.

**2.6 Settlement Implementation Costs.** All reasonable costs of retaining the Claims Administrator to effectuate the Settlement and provide Full Class Notice in the manner prescribed in this Agreement shall be paid from the Common Fund.

### 3. CLASS SETTLEMENT PROCEDURES

**3.1. Settlement Approval.** As soon as practicable after the signing of this Agreement, Ms. Hunter shall prepare and file an application seeking the following orders from the Court: (1) preliminary approval of this Agreement as fair, reasonable, and adequate; (2) preliminary determining that the Class meets all applicable requirements of Federal Rule of Civil Procedure 23, and conditionally certify the Class for purposes of the Agreement under Rule 23 for settlement purposes only; (3) approving and appointing the Claims Administrator; (4) approving the form, manner, and content of the Notice Plan described in Section 3.2 and Exhibit B; (5) setting the date and time of the Fairness Hearing and related proceedings; and (6) appointing Ms. Hunter as Class Representative, and Ms. Hunter's counsel as Class Counsel for settlement purposes only.

**3.2. Full Class Notice.** Subject to Court approval as provided in Section 3.1, the Parties agree that no later than thirty (30) days after entry of the Preliminary Approval Order, the Claims Administrator will provide the Class with notice of the proposed settlement via digital publication notice, consistent with the manner set forth in the Notice Plan (**Exhibit B**).

**3.3. Claims Administrator Will Administrator Claims Process.**

- i. The Claims Administrator will administrator the claims process and oversee the distribution of settlement proceeds to Class Members in accordance with the terms and conditions of the Settlement and orders of the Court.
- ii. The Claims Administrator will review and validate all claims submitted by Class members. The Claims Administrator shall have the discretion to review claims with the objectives of efficiency and effecting substantial justice to the Parties and the Class Members. The Claims Administrator shall have the right to contact Class Members to validate claims. Issues regarding the validity of claims that cannot be resolved by the Claims Administrator shall be submitted to Class Counsel and Nature's Way's Counsel for resolution and, if no resolution is reached, to the Court. Nature's Way shall have the right to seek the review of any claim handled by the Claims Administrator.

**3.4. Objections.** Any Class Member who wishes to object to the Settlement must file a signed, written objection with the Court, and serve copies on Class Counsel and Defense Counsel, no later than fourteen (14) days before the Fairness Hearing (or other date required by the Court). Written objections must set forth the following:

- i. The name of this Action (“*Sherry Hunter v. Nature’s Way, et al.*, Case No. 3:16-cv-00532-WQH-AGS”);
- ii. The full name, address, and telephone number of the person objecting;
- iii. The word “Objection” at the top of the document;
- iv. An explanation of the basis upon which the person claims to be a Class member;
- v. In clear and concise terms, the legal and factual arguments supporting the objection;
- vi. The identity (name, address, and telephone number) of any counsel representing the person who will appear at the Fairness Hearing;
- vii. A statement confirming whether the person intends to personally appear and/or testify at the Fairness hearing; and the person’s signature or the signature of the person’s duly authorized counsel or other duly authorized representative.

Class Members who fail to make objections in this manner will be deemed to have waived any objections and will be foreclosed from making any objections, whether by a subsequent objection, intervention, appeal, or any other process. Unless otherwise permitted by the Court, Class Members shall not be entitled to speak at the Fairness Hearing unless they have complied with this paragraph 3.4.

**3.5. Intention to Appear at Fairness Hearing.** Any Class Member who wishes to be heard at the Fairness Hearing must file a signed, written Notice of Intention to Appear with the Court and serve copies on Class Counsel and Defense Counsel no later than forty-five (45) days following the Notice Date (or other date required by the Court). The Notice of Intention to Appear must set forth the following:

- i. The name of this Action (“*Sherry Hunter v. Nature’s Way, et al.*, Case No. 3:16-cv-00532-WQH-AGS”);
- ii. The full name, address, telephone number, and last four digits of the social security number of the person intending to appear at the Fairness Hearing;
- iii. The words “Notice of Intention to Appear” at the top of the document; and
- iv. The identity (name, address, and telephone number) of any counsel who will speak on the person’s behalf.

**3.6. Requests for Exclusion/Opt Outs.** Any Class Member who wishes to be excluded from (or “opt out” of) the Settlement must submit a written, signed Request for Exclusion to the Claims Administrator no later than forty-five (45) days following the Notice Date (or other date required by the Court) (the “Opt-Out Deadline”). Request for Exclusion



forms will be available for download on the settlement website, in substantially the form attached as **Exhibit C** hereto. Requests for Exclusion must be personally signed by the Class Member who seeks to opt out. No Class Member may opt out by having a request to opt out submitted by an actual or purported agent or attorney acting on behalf of the Class Member. No opt out request may be made on behalf of a group of Class Members—i.e., so called “mass” or “class” opt outs are not allowed. Each Class Member who does not, on or before the Opt-Out Deadline, submit a Request for Exclusion substantially in compliance with this Section, shall be deemed to participate in the Settlement and all releases provided in this Agreement. For purposes of determining timeliness, Requests for Exclusion shall be deemed to have been submitted on the date postmarked by the postal service or other expedited delivery service.

**3.7. CAFA NOTICE.** Nature’s Way, either directly or through the Claims Administrator (though not with funds from the Common Fund), shall send all notices and information required by 28 U.S.C. Sec 1715 to the appropriate federal and state public officials in accordance with the time requirements set forth therein.

**3.8. Motion for Final Approval.** No later than twenty-eight (28) days before the Fairness Hearing, or at such other time required by the Court, Ms. Hunter shall move the Court for final approval of the Settlement.

#### **4. FINAL APPROVAL ORDER AND RELEASES.**

**4.1. Approval of This Agreement.** As soon as practicable after execution of this Agreement, counsel for all Parties will take all necessary and appropriate steps to secure the Court’s approval of this Agreement as set forth herein.

**4.2. Final Approval Order.** This agreement is subject to and conditioned upon the issuance by the Court of the Final Approval Order that finally certifies the Class for the purposes of settlement only, and grants final approval of the Settlement, and provides the relief specified herein, which relief shall be subject to the terms and conditions of the Agreement and the Parties’ perforce of their continuing rights and obligations hereunder.

**4.3. Release of Nature’s Way and Schwabe North America by All Class Members.** Upon the Final Effective Settlement Date, Ms. Hunter and each member of the Settlement Class, and each of his or her successors, assigns, legatees, heirs, and personal representatives, hereby release and forever discharge Nature’s Way and Schwabe North America, and each of their respective parents, sister and subsidiary corporations, affiliated entities, predecessors, successors and assigns, and any of their present and former directors, officers, employees, shareholders, agents, partners, licensors, privies, representatives, attorneys, accountants, insurers, manufacturers, retailers, distributors or any of them (collectively, “Released Parties”), from any action, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys’ fees, in law or equity, fixed or contingent, known or unknown, arising out of the conduct alleged or otherwise referred to in the Action, specifically any claim arising from the purchase of any Coconut Oil product (hereinafter “Released Claims”). It is expressly understood that, to the extent a Released Party is not a party to the Agreement, all such Released Parties are intended third party beneficiaries of the Agreement.

**4.4. Waiver of California Civil Code section 1542.** In addition, with respect to the Released Claims, Ms. Hunter, on behalf of herself and on behalf of the Class as Class Representative, expressly and affirmatively waives California Civil Code section 1542 to the fullest extent permitted by law, which states:

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

Ms. Hunter, on behalf of herself and on behalf of the Class as Class Representative, hereby waives any and all federal and state statutes similar in substance, meaning, or application to California Civil Code section 1542.

**4.5. Release of Plaintiff Persons.** Upon the Final Effective Settlement Date, Nature's Way will be deemed to have, and by operation of the judgment will have fully, finally, and forever released, relinquished, and discharged plaintiffs Sherry Hunter, Malia Levin, and their counsel, The Law Office of Paul K. Joseph, PC, and The Law Office of Jack Fitzgerald, PC, and each of their attorneys (collectively the "Released Plaintiff Persons"), from all claims, demands rights, suits, liabilities, and causes of action of every nature and description whatsoever, known or unknown, matured or unmatured, at law or in equity, existing under federal or state law, that Nature's Way has or may have against the Released Plaintiff Persons arising out of or related in any way to the transactions, occurrences, events, behaviors, conduct, practices, and policies alleged in the Action, and in connection with the conduct of the Action, that have been brought, could have been brought, or are currently pending in any forum in the United States.

**4.6. Covenant Not To Sue.** Upon the Final Effective Settlement Date, Ms. Hunter and each Class Member shall be deemed to have given and will be bound by the Covenant Not To Sue in favor of each Released Party. "Covenant Not To Sue" means for and in consideration of the Settlement, each Class Member shall be deemed to have covenanted that he or she will not in the future: (1) assert any claim for economic injury or for an injunction related to the Coconut Oil products and arising out of the facts and claims asserted in the Action; or (2) assert or maintain any Released Claim, directly or indirectly, against any Released Party in any court or other forum on behalf of the Class Member.

## **5. TERMINATION**

5.1 This Agreement is being entered into only for the purpose of settlement. In the event that (a) the Court does not approve the Settlement or a Final Approval Order and Judgment is not entered for any reason, or (b) the Final Effective Settlement Date does not occur for any reason, or (c) if the number of Class Members who exercise their rights to opt out under the terms of this Agreement exceeds a number separately agreed to by the Parties, then either party

may declare void ab initio the Agreement and Preliminary Approval Order, and all of their provisions shall be vacated by its own terms, and the Action shall revert to the status that existed prior to the execution date of this Agreement, including no certification of a class; and no term of this Agreement or any draft thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall have any effect, nor shall any such matter be admissible in evidence for any purpose in the Action, or in any other proceeding.

5.2 In the event that there is a change in state or federal food labeling laws or regulations that expressly permits the use of any of the terms listed in Section 2.2, the injunction provided in Section 2.2 shall terminate automatically upon that occurrence and Nature's Way may label and market its Coconut Oil Products in accordance with such state or federal laws or regulations. Notwithstanding the foregoing, every other term of this Agreement shall remain in full force and effect.

## 6. ADDITIONAL PROVISIONS.

### 6.1 No Admission of Liability / For Settlement Purposes Only.

- A. This Agreement reflects the compromise and settlement of disputed claims among the Parties and is for settlement purposes only. Neither the fact of, or any provision contained in this Agreement or its Exhibits, nor any action taken hereunder, shall constitute, be construed as, or be admissible in evidence as an admission of: (a) the validity of any claim or allegation by Ms. Hunter, or of any defense asserted by Nature's Way, in the Action or any other action or proceeding; or (b) any wrongdoing, fault, violation of law, or liability of any kind on part of any Party, Defendant, Release Party, Class Member or their respective counsel.
- B. The Agreement is without prejudice to the rights of each Releasing Party and each Released Party to: (a) seek or oppose class certification in the Action should the Agreement not be finally approved or implemented for any reason; (b) seek or oppose class certification in any other action (except to the extent barred by the Releases and/or the Covenant Not to Sue), or (c) use the certification of the Settlement Class to oppose certification of any other proposed or existing class arising out of the facts or claims asserted in the Action.

**6.2 Fair, Adequate, and Reasonable Settlement.** The Parties believe this Settlement is fair, adequate, and reasonable, and the Parties arrived at this Settlement in arms-length negotiations, taking into account all relevant factors, present and potential.

**6.3 Change of Time Periods.** The time periods and/or dates described in this Agreement with respect to the giving of notices and notices of hearings are subject to approval and change by the Court or by the written agreement of counsel for the Parties, without notice to the Class.

**6.4 Real Parties in Interest.** In executing this Agreement, the Parties warrant and represent that they, including Ms. Hunter in her representative capacity on behalf of the Class,

are the only persons having any interest in any of the claims that are described or referred to herein, or in any of the pleadings, records, and papers in the Action, and, except as provided herein, neither said claims nor any part thereof have been assigned, granted, or transferred in any way to any other person, firm, or entity.

**6.5 Voluntary Agreement.** This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of the Parties, or of any other person, firm, or entity.

**6.6 Binding on Successors.** This Agreement shall bind and inure to the benefit of the respective successors, assigns, legatees, heirs, and personal representatives of each of the Parties.

**6.7 Parties Represented by Counsel.** The Parties hereby acknowledge that they have been represented in negotiations for and in the preparation of this Agreement by independent counsel of their own choosing, that they have read this Agreement and have had it fully explained to them by such counsel, and that they are fully aware of the contents of this Agreement and of its legal effect.

**6.8 Authorization.** Each Party warrants and represents that there are no liens or claims of lien or assignments in law or equity or otherwise of or against any of the claims or causes of action released herein and, further, that each Party is fully entitled and duly authorized to give this complete and final release and discharge.

**6.9 Entire Agreement.** This Agreement and Exhibits attached hereto contain the entire agreement between the Parties and constitutes the complete, final, and exclusive embodiment of their agreement with respect to the subject matter hereof. This Agreement is executed without reliance upon any promise, representation, or warranty by any Party or any representative of a Party, other than those expressly set forth herein.

**6.10 Construction and Interpretation.** Neither Party nor any of the Parties' respective attorneys shall be deemed the drafter of this Agreement for purposes of interpreting any provision hereof in any judicial or other proceeding that may arise between or among them. This Agreement has been, and must be construed to have been, drafted by all Parties to it, so that any rule that construes ambiguities against the drafter will have no force or effect.

**6.11 Headings.** The various headings used in this Agreement are solely for the convenience of the Parties and shall not be used to interpret this Agreement.

**6.12 Exhibits.** The exhibits to this Agreement are integral parts of the Agreement and Settlement and are hereby incorporated and made a part of this Agreement. The Parties contemplate that certain of the Exhibits relating to Class Notice may be modified by the Court or by subsequent agreement of Class Counsel and Nature's Way's counsel (with approval by the Court) prior to dissemination to Class members.

**6.13 Modifications and Amendments.** No amendment, change, or modification of this Agreement or any part thereof shall be valid unless in writing signed by the Parties and approved by the Court, except as otherwise expressly provided herein.

**6.14 Governing Law.** This Agreement is entered into in accordance with the laws of the State of California and shall be governed by and interpreted in accordance with those laws.

**6.15 Further Assurances.** Each of the Parties hereto shall execute and deliver any and all additional papers, documents, and other assurances and shall do any and all acts or things reasonably necessary in connection with the performance of his or her or its obligations hereunder to carry out the express intent of the Parties hereto.

**6.16 Agreement Constitutes a Complete Defense.** To the extent permitted by law this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of or contrary to this Agreement.

**6.17 Execution Date.** This Agreement shall be deemed executed upon the last date of execution of all of the undersigned.

**6.18 Continuing Jurisdiction.** The Parties agree that the Court has, and shall continue to have, jurisdiction to make any orders as may be appropriate to approve awards of attorneys' fees and costs pursuant hereto, and to supervise the administration of and the distribution of money funded pursuant to this Agreement.

**6.19 Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument. The several signature pages will be collected and annexed to one or more documents to form a complete counterpart. Photocopies or "pdfs" of executed copies of signatures shall have the same force and effect as originals.

**6.20 Resolution of Disputes.** The Parties shall cooperate in good faith in the administration of this Settlement. Any unresolved dispute regarding the administration of this Agreement shall be decided by the Court.

**6.21 Severability.** Should any paragraph, sentence, clause or provision of this Agreement be held invalid or unenforceable, such provision shall be ineffective to the extent of such invalidity or unenforceability, without invalidating the remainder of such provision or the remaining portions of the Agreement.

**6.22 Confidentiality of Documents and Information.** All orders, agreements and designations regarding the confidentiality of documents and information remain in effect, and all Parties and counsel remain bound to comply with them. Within thirty (30) days of the Final Settlement Effective Date, the Parties will certify in writing that they have used their best efforts to destroy or return all documents and information produced in the Action that were designated as "Confidential" or "Highly Confidential - Attorneys' Eyes Only." It is stipulated and agreed



that no money relief can remedy a breach of this provision such that immediate injunctive relief is proper and because of a breach of this provision by disclosure of or failure to destroy or return materials designated as "Confidential" or "Attorneys' Eyes Only," the prevailing party is entitled to reasonable Attorneys' fees and costs associated with bringing and prosecuting such enforcement action or motion.

**PLEASE READ THIS DOCUMENT CAREFULLY. THIS AGREEMENT  
CONTAINS A GENERAL RELEASE OF ALL KNOWN AND UNKNOWN  
CLAIMS.**

**IN WITNESS WHEREOF, the Parties hereto, acting by and through their  
respective counsel of record, have so agreed.**

Dated: 7-21-19

  
\_\_\_\_\_  
Plaintiff Sherry Hunter, for herself and for  
the Class

Dated: \_\_\_\_\_

\_\_\_\_\_  
Defendants Nature's Way, LLC and  
Schwabe North America, Inc.  
By (*print*): Michael Devereaux, CEO



that no money relief can remedy a breach of this provision such that immediate injunctive relief is proper and because of a breach of this provision by disclosure of or failure to destroy or return materials designated as "Confidential" or "Attorneys' Eyes Only," the prevailing party is entitled to reasonable Attorneys' fees and costs associated with bringing and prosecuting such enforcement action or motion.


**PLEASE READ THIS DOCUMENT CAREFULLY. THIS AGREEMENT CONTAINS A GENERAL RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.**

**IN WITNESS WHEREOF, the Parties hereto, acting by and through their respective counsel of record, have so agreed.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Plaintiff Sherry Hunter, for herself and for the Class

Dated: July 18, 2019

  
\_\_\_\_\_  
Defendants Nature's Way, LLC and Schwabe North America, Inc.  
By (*print*): Michael Devereaux, CEO