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2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF CALIFORNIA
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5 Case No. 2:13-cv-02213-WBS

6 LAINIE COHEN, ALBA MORALES, LINDA
7 CLAYMAN and KENNETH DREW, on behalf of
8 themselves and all others similarly situated,

**[PROPOSED] ORDER AND FINAL
JUDGMENT**

9 Plaintiffs,

10 v.

11 CONOPCO, INC. D/B/A UNILEVER,

12 Defendant.
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15 On the 17th day of October, 2016, this Court held a hearing to determine (1) whether the
16 terms and conditions of the Class Action Stipulation of Settlement dated May 27, 2016 (the
17 “Stipulation” or “Settlement”) are fair, reasonable and adequate for the settlement of all claims
18 asserted by all members of the Class against Defendants in the class action captioned *Morales, et al.*
19 *v. Conopco, Inc.*, Civil Action No. 2:13-cv-02213 (the “Action”), including the release of Defendant
20 from the Plaintiffs’ Claims, and should be approved; (2) whether to certify a Class for settlement
21 purposes only, and whether to appoint Plaintiffs Alba Morales, Lainie Cohen, Linda Clayman and
22 Kenneth Drew as class representatives, Izard, Kindall & Raabe, LLP as Class Counsel and Bramson,
23 Plutzik, Mahler & Birkhaeuser LLP as liaison counsel for the Class; (3) whether final judgment
24 should be entered dismissing the Plaintiffs’ complaint against Defendant with prejudice; (4) whether
25 to approve the proposed Plan of Allocation as a fair and equitable method to allocate the Settlement
26 Fund among all Class members; (5) whether and in what amount to award Plaintiffs’ Counsel’s fees
27 and expenses; and (6) whether and in what amount to award Plaintiffs Class Representative Awards
28 in recognition of the time and effort they contributed while representing the members of the Class.

1 The Court having considered all matters submitted to it at the hearing and otherwise, and it
2 appearing that a notice of the settlement and the hearing was published to the Class in the form
3 approved by the Court and in accordance with a Notice Plan approved by the Court; and the Court
4 having considered and determined the fairness, reasonableness and adequacy of the Settlement, the
5 proposed Plan of Allocation, the fairness and reasonableness of the award of attorneys' fees and
6 expenses requested, and the fairness and reasonableness of the Class Representative Awards; and all
7 initial capitalized terms used herein having the meanings set forth in the Stipulation,
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9 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

10 1. The Court has jurisdiction over the subject matter of the Action and over all parties
11 to it, including all members of the Class.

12 2. The Court finds for the purposes of the Settlement only that the prerequisites for
13 certification of this Action as a class action under Rules 23(a) and (b)(1) of the Federal Rules of Civil
14 Procedure have been satisfied in this Action: (a) the number of Class members herein is so numerous
15 that joinder of all members thereof is impracticable; (b) there are questions of law and fact common
16 to the members of the Class herein; (c) the claims of the Plaintiffs designated herein are typical of
17 the claims of the Class sought to be represented; (d) Plaintiffs have fairly and adequately represented,
18 and will fairly and adequately represent, the interests of the Class herein. The Court also finds for
19 purposes of settlement only, as required by Rule 23(b)(3) of the Federal Rules of Civil Procedure,
20 that the common issues predominate over individual issues and that a class action is superior to other
21 methods of adjudicating the issues involved in the litigation.

22 3. Accordingly, pursuant to Rule 23 of the Federal Rules of Civil Procedure and for
23 purposes of the Settlement only, the Court hereby finally certifies this Action as a class action, with
24 the Class being defined as follows:

25 All individuals in the United States who purchased the following TRESemmé
26 Naturals products: (a) Nourishing Moisture Shampoo; (b) Nourishing
27 Moisture Conditioner; (c) Radiant Volume Shampoo; (d) Radiant Volume
28 Conditioner (e) Vibrantly Smooth Shampoo; and (f) Vibrantly Smooth
Conditioner (collectively, the "Products"). Specifically excluded from the
Class are (1) Defendant, (2) the officers, directors, or employees of Defendant
and their immediate family members, (3) any entity in which Defendant has a

1 controlling interest, (4) any affiliate, legal representative, heir, or assign of
2 Defendant, (5) all federal court judges who have presided over this Action and
3 their immediate family members, (6) all persons who submit a valid request
for exclusion from the Class, whose names are listed on Appendix A, attached
hereto, and (7) those who purchased the Products for the purpose of resale.

4 4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure and for the purposes of
5 the Settlement only, the Court appoints Plaintiffs Alba Marko, Lainie Cohen, Linda Clayman and
6 Kenneth Drew as representatives for the Class (“Class Representatives”).

7 5. The Court further finds, pursuant to Rule 23(g), that Izard, Kindall & Raabe, LLP and
8 Bramson, Plutzik, Mahler & Birkhaeuser LLP have done sufficient work and are sufficiently
9 experienced in class action litigation to represent the interests of the Class, and thereby appoints
10 Izard, Kindall & Raabe, LLP as Class Counsel and Bramson, Plutzik, Mahler & Birkhaeuser LLP as
11 liaison counsel for the Class, respectively.

12 6. The Court determines that the Class Notice provided to the Class in accordance with
13 the Notice Plan approved in this Court’s Preliminary Approval Order was the best notice practicable
14 under the circumstances. Such Notice provided valid, due, and sufficient notice of these proceedings
15 and of the matters set forth therein, including the Settlement described in the Stipulation of
16 Settlement and the Plan of Allocation, to all persons entitled to such notice, and such Notice has fully
17 satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and the requirements
18 of due process.

19 7. The Court determines that the Stipulation was negotiated vigorously and at arm’s-
20 length by Plaintiffs’ Counsel, on behalf of the Class, and Defendant’s Counsel, on behalf of
21 Defendant, and further finds that, at all times, Plaintiffs have acted independently and that their
22 interests are identical to the interests of the Class. If settlement of Plaintiffs’ claims had not been
23 achieved, both Plaintiffs and Defendant faced the expense, risk, and uncertainty of extended
24 litigation.

25 8. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the Court hereby
26 approves and confirms the Settlement embodied in the Stipulation of Settlement as being a fair,
27 reasonable, and adequate settlement and compromise of the Action and in the best interests of the
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1 Class. The Court orders that the Stipulation of Settlement shall be consummated and implemented
2 in accordance with its terms and conditions.

3 9. The Court hereby finds that the Plan of Allocation provides a fair and equitable basis
4 upon which to allocate the proceeds of the Settlement Fund among the Class members. A full and
5 fair opportunity was accorded to all Class members to be heard with respect to the Plan of Allocation.
6 Accordingly, the Court hereby approves the Plan of Allocation.

7 10. The Action is hereby dismissed with prejudice, each party to bear its own costs, except
8 as provided herein.

9 11. Upon the Effective Date of the Settlement, Plaintiffs and the Class, absolutely and
10 unconditionally release and forever discharge each and all of the Released Parties from the Released
11 Claims, and the Released Parties fully released and forever discharged Plaintiffs, all other Class
12 Members and Plaintiffs' Counsel from any and all claims of abuse of process, malicious prosecution,
13 or any other claims arising out of the initiation, prosecution or resolution of the Action, including,
14 but not limited to, claims for attorneys' fees, costs of suit or sanctions of any kind, or any claims
15 arising out of the allocation or distribution of any of the consideration distributed pursuant to this
16 Stipulation of Settlement. Nothing herein, however, shall preclude any action or claim related to the
17 implementation and/or enforcement of the Stipulation.

18 12. In the event that the Settlement does not become effective in accordance with the
19 terms of the Stipulation, the Final Order shall be rendered null and void and shall be vacated *nunc*
20 *pro tunc*, and the Action shall proceed in the manner provided in the Stipulation and the Order of
21 Preliminary Approval.

22 13. The Stipulation and this Final Order, whether or not consummated, do not and shall
23 not be construed, argued or deemed in any way to be (a) an admission or concession by Defendant
24 with respect to any of the Released Claims or evidence of any violation of any statute or law or other
25 wrongdoing, fault, or liability by Defendant, or (b) an admission or concession by Plaintiffs or any
26 member of the Class that their claims lack merit or that the defenses that have been or may have been
27 asserted by Defendant have merit. Absent written agreement of the parties, in the event the final
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1 judgment approving the Settlement is reversed, vacated, or modified in any respect by the Court or
2 any other court, the certification of the Class shall be vacated, the Action shall proceed as though the
3 Class had never been certified, and no reference to the prior Class or any documents related thereto
4 shall be made for any purpose. Nothing herein shall be deemed to preclude Defendant from
5 contesting class certification for any other purpose.

6 14. The Stipulation and the Final Order shall not be offered or received in evidence by
7 any class member or party to this action in any civil or administrative action or proceeding other than
8 proceedings necessary to approve or enforce the terms of the Stipulation and this Order and Final
9 Judgment.

10 15. In recognition of their contributions to this action and their efforts in furtherance of
11 the litigation as evidence by their submitted declarations, Lead Plaintiffs are awarded the following
12 amounts as Class Representative Awards: Alba Marko: _____; Lainie Cohen: _____; Kenneth
13 Drew: _____; and Linda Clayman: _____. In accordance with the Stipulation, these
14 awards will be paid by Defendant separate and apart from Defendant's payment of \$3.25 million for
15 the Settlement Fund.

16 16. The attorneys' fees sought by Plaintiffs' Counsel are fair and reasonable in light of
17 the successful results achieved by Plaintiffs' Counsel, the monetary benefits obtained in this Action,
18 the substantial risks associated with the Action, Plaintiffs' Counsel's skill and experience in class
19 action litigation of this type, and the fee awards in comparable cases. Accordingly, attorneys' fees
20 are awarded in the amount of \$_____, equal to __% of the Settlement Fund, to be paid in
21 accordance with the Stipulation.

22 17. The litigation expenses incurred by Plaintiffs' Counsel in the course of prosecuting
23 this action are fair and reasonable. Accordingly expenses are awarded in the amount of
24 \$_____, to be paid from the Settlement Fund in accordance with the Stipulation.

25 18. As required by Rule 23(h)(3) of the Federal Rules of Civil Procedure, the Court has
26 considered and finds as follows in making this award of attorneys' fees and expenses:
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- a. The Settlement created a Settlement Fund of \$3.25 million in cash, plus interest, for distribution to the Class, and numerous Class members will benefit from the Settlement pursuant to the Plan of Allocation;
- b. As a result of the litigation, the TRESemmé “Naturals” product line was discontinued;
- c. In accordance with the Notice Plan, the Class was advised that Plaintiffs’ Counsel would be applying to the Court for up to thirty (30) percent of the Settlement Fund in attorneys’ fees plus litigation costs expenses;
- d. Pursuant to the Preliminary Approval Order, Plaintiffs’ Counsel’s filing in support of final approval of the Stipulation, the proposed Plan of Allocation, and the applications for attorneys’ fees, expenses, and Class Representative Awards was posted to the Settlement Website at least two (2) weeks prior to the deadline for Class members to review and serve objections thereto;
- e. _____ objections were filed against the terms of the Stipulation of Settlement, the proposed Plan of Allocation, or Plaintiffs’ Counsel’s applications for attorneys’ fees, expenses and Class Representative Awards;
- f. The Action involved complex factual and legal issues, was actively prosecuted for more than three years and, in the absence of a settlement, would involve further lengthy proceedings with uncertain resolution of the complex factual and legal issues;
- g. Had Plaintiffs’ Counsel not achieved the Settlement there would remain a significant risk that Plaintiffs and the class they sought to represent would recover less or nothing from Defendant;
- h. Plaintiffs’ Counsel’s fee and expense application indicates that they devoted over 1400 hours, with a lodestar value of approximately \$744,779, to achieve the Settlement; and

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i. The amount of attorneys' fees and expenses awarded by the Court is fair and reasonable and consistent with such awards in similar cases.

19. Without affecting the finality of this Judgment, the Court retains jurisdiction for purposes of implementing the Stipulation and reserves the power to enter additional orders to effectuate the fair and orderly administration and consummation of the Stipulation, as may from time to time be appropriate, and resolution of any and all disputes arising thereunder.

SO ORDERED this ____ day of _____, 2016.

The Honorable William B. Shubb
United States District Court Judge

**ORDER AND FINAL JUDGMENT
APPENDIX A**

List of Individuals Who Have Opted Out of the Settlement

Name	Address
Shelby White	733 Westglen Dr., Yukon, OK 73099

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