

State of California - Department of Justice - Attorney General's Office - Proposition 65 Enforcement Reporting

Attention: Prop 65 Coordinator, 1515 Clay Street, Suite 2000, Oakland, CA 94612

FORM JUS 1501  
(03-01)

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**REPORT OF SETTLEMENT**

Please print or type required information

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<b>PARTIES TO THE ACTION</b>	PLAINTIFF(S) <b>Suzanne Fernandez</b>			
	DEFENDANT(S) INVOLVED IN SETTLEMENT <b>Millennium Products, Inc.</b>			
<b>CASE INFO</b>	COURT DOCKET NUMBER <b>BC 448 920</b>		COURT NAME <b>Los Angeles Cty. Sup. Ct., Central CCW</b>	
	SHORT CASE NAME <b>Fernandez v. Millennium</b>			
<b>REPORT INFO</b>	INJUNCTIVE RELIEF <b>None</b>			
	PAYMENT: CIVIL PENALTY <b>None</b>		PAYMENT: ATTORNEYS FEES <b>\$10,000</b>	PAYMENT: OTHER <b>None</b>
	WILL SETTLEMENT BE SUBMITTED TO COURT? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, AFTER ENTRY OF JUDGMENT BY COURT, REPORT OF ENTRY OF JUDGMENT MUST BE SUBMITTED TO ATTORNEY GENERAL		DATE SETTLEMENT SIGNED <b>01/26/2012</b>
	<b>COPY OF SETTLEMENT MUST BE ATTACHED</b>			
<b>FILER INFO</b>	NAME OF CONTACT <b>Michael C. Martinez, Esq.</b>			
	ORGANIZATION <b>Martinez Charles LLP - Co-Counsel for Plaintiff</b>		TELEPHONE NUMBER <b>((626)) 240-4664</b>	
	ADDRESS <b>1055 East Colorado Boulevard, Suite 500</b>		FAX NUMBER <b>((626)) 240-4665</b>	
	CITY <b>Pasadena</b>	STATE <b>CA</b>	ZIP <b>91106-2371</b>	E-MAIL ADDRESS <b>mmartinez@martinezcharles.com</b>

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**FILING INSTRUCTIONS:** This form can be completed online and printed. If electronic filing is not available, mail the completed form with a copy of the settlement to the attention of the Prop 65 Coordinator at the address shown above. If you need additional space to complete this form please use an attachment.

1 Robert S. Green (State Bar No. 136183)  
Nicole D. Reynolds (State Bar No. 246255)  
2 **GREEN WELLING, P.C.**  
595 Market Street, Suite 2750  
3 San Francisco, CA 94105  
Telephone: (415) 477-6700  
4 Facsimile: (415) 477-6710

5 Patricio T.D. Barrera (State Bar No. 149696)  
**BARREA & ASSOCIATES, APC**  
6 1500 Rosecrans Avenue, Suite 500  
Manhattan Beach, CA 90266  
7 Telephone: (310) 802-1500  
Facsimile: (310) 802-0500  
8

9 Michael C. Martinez (State Bar No. 188084)  
**MARTINEZ CHARLES LLP**  
10 1055 East Colorado Boulevard, Suite 500  
Pasadena, CA 91106  
Telephone: (626) 240-4664  
11 Facsimile: (626) 240-4665

12 Attorneys for Plaintiff and Proposed Class  
13

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **COUNTY OF LOS ANGELES**  
16

17 **GRETCHEN PATCH, et al.,**

18 Plaintiff,

19 vs.

20 **MILLENNIUM PRODUCTS, INC.,**

21 Defendant.

22  
23 **SUZANNE FERNANDEZ, et al.,**

24 Plaintiff,

25 vs.

26 **MILLENNIUM PRODUCTS, INC.,**

27 Defendant.  
28

Lead Case No.: BC448347  
Related to Case No.: BC448920

**SETTLEMENT AGREEMENT**

**SETTLEMENT AGREEMENT**

1 This Settlement Agreement ("Agreement") is entered into between Plaintiffs Suzanne  
2 Fernandez and Gretchen Patch (each, a "Plaintiff"; collectively, "Plaintiffs"), on the one hand,  
3 and Defendant Millennium Products, Inc. ("Millennium" or "Defendant"), on the other hand.  
4 Defined terms in this Agreement shall have the meanings ascribed to them herein. Capitalized  
5 terms may be defined in the text or below in Section 2.

6 **1. RECITALS**

7 1.1. On October 27, 2010, Plaintiff Gretchen Patch filed her original complaint  
8 alleging violations of the Unfair Competition Law ("UCL"), the Consumer Legal Remedies Act  
9 ("CLRA"), the False Advertising Law ("FAL"), and breach of express warranty based on  
10 Millennium's alleged misrepresentations regarding the health benefits of its kombucha  
11 beverages sold under the brand names "GT's Kombucha" and "Synergy" ("Beverages").

12 1.2. On October 8, 2010, subsequent to conducting independent laboratory testing on  
13 the alcohol content of the Beverages, Plaintiff Suzanne Fernandez sent a Notice along with a  
14 Certificate of Merit of Defendant's alleged violation of Proposition 65 to the California  
15 Attorney General and all California District Attorneys, as well as to Defendant itself. On  
16 November 4, 2010, Plaintiff Fernandez filed her original complaint alleging violations of the  
17 CLRA, UCL, and FAL based on Millennium's alleged misrepresentations and omissions  
18 regarding the alcohol content and the health benefits of its Beverages. Plaintiff Fernandez's  
19 CLRA, UCL, and FAL alcohol-related claims, only, were entirely resolved by the settlement in  
20 *Gauss v. Millennium Products, Inc.*, No. CGC-10-503347 (Sup. Ct. S.F. County filed Sept. 9,  
21 2010). Like Plaintiff Fernandez, the plaintiff in the *Gauss* action asserted CLRA, UCL, and  
22 FAL claims based on Millennium's alleged misrepresentations regarding the alcohol content of  
23 its Beverages, but did not include claims related to alleged health benefits of its Beverages as is  
24 claimed here.

25 1.3. On January 3, 2011, the Court entered an Order designating both cases in the  
26 Litigation as complex and staying the cases until the initial status conference, which was held on  
27 March 8, 2011.

1           1.4. After the 60-day notice period passed, Plaintiff Fernandez filed her First  
2 Amended Complaint (“FAC”) on January 10, 2011, attempting to add a claim under Proposition  
3 65 and amend her CLRA claim to seek monetary damages. On January 18, 2011, Defendant’s  
4 counsel wrote to Plaintiff Fernandez’s counsel, Nicole Reynolds, and advised her that Plaintiff  
5 Fernandez’s filing of her purported FAC was improper and in violation of the Court-ordered  
6 stay, and that Defendant would not be responding to the purported FAC.

7           1.5. Plaintiffs allege that Defendant misleadingly claims that the Beverages possess  
8 incredible health benefits, and that Defendant possesses no scientific support for such claims.  
9 Plaintiffs cite statements allegedly made by the Defendant that its kombucha “is delicately  
10 cultured – some liken it to fermentation – for 30 days. During this period, essential nutrients  
11 form like active enzymes, viable probiotics, amino acids, antioxidants and polyphenols. All of  
12 these combine to create an elixir that immediately works with the body to restore balance and  
13 vitality.” On some of its bottle labels, Defendant represented the Beverages as supporting  
14 “Digestion,” “Metabolism,” “Immune System,” “Weight Control,” “Liver Function,” “Body  
15 Alkalinity,” “Anti-Aging,” “Cell-integrity,” and “Healthy Skin.” Plaintiffs also allege that  
16 Defendant claimed that kombucha played a key role in curing Millennium founder GT Dave’s  
17 mother of breast cancer. Plaintiffs allege that none of these claims are supported by scientific  
18 evidence.

19           1.6. Plaintiff Fernandez’s Proposition 65 claim alleges that Millennium knowingly  
20 and intentionally exposed consumers to alcohol, a substance listed by the State of California as  
21 known to cause birth defects or reproductive harm, in the Beverages without first providing a  
22 clear and reasonable warning. To support the Proposition 65 claim, Plaintiff Fernandez pointed  
23 to her own independent tests that allegedly revealed that the Beverages contained significant  
24 amounts of alcohol, as much as four percent (4%) per bottle. Proposition 65 requires certain  
25 warnings for products containing alcohol in amounts equal to or greater than five percent (0.5%)  
26 by volume. Plaintiff Fernandez alleges that Defendant nevertheless misrepresented and failed to  
27 disclose the alcohol content of the Beverages.

1           1.7. Millennium denied and continues to deny all charges of wrongdoing or liability  
2 against it arising out of any of the conduct, statements, acts or omissions alleged, or that could  
3 have been alleged, in the Litigation. With respect to Plaintiff Patch's allegations, Millennium  
4 specifically denies Plaintiff Patch's allegation that Millennium misrepresented the health  
5 benefits of the Beverages. Millennium contends that most of the statements that Plaintiff Patch  
6 challenges in her complaint are clearly non-actionable under California law because they consist  
7 of vague, highly-subjective claims on which no reasonable consumer could or would rely. In  
8 addition, Millennium believes the challenged health benefit statements are supported by  
9 competent and reliable scientific evidence, including scientific studies that show kombucha is  
10 rich in potent antioxidants that support liver function and bolster the immune system, as well as  
11 glucuronic acid and other organic acids that aid kidney function and assist in the removal of  
12 toxins from the body. Further, Millennium has received many unsolicited testimonials from  
13 consumers who have experienced the Beverages' benefits. Millennium denies, *inter alia*,  
14 Plaintiff Patch's allegations that: (a) Millennium represented that kombucha played a "key role"  
15 in curing Millennium founder GT Dave's mother of breast cancer; (b) Plaintiffs or any other  
16 member of the Settlement Class has suffered damage or harm by reason of any alleged conduct,  
17 statement, act, or omission of Millennium; (c) the Litigation meets the requisites for certification  
18 as a class action under California law, except for purposes of settlement; and (d) that the  
19 evidence is sufficient to support a finding of liability.

20           1.8. As for Plaintiff Fernandez's allegations, Millennium specifically denies Plaintiff  
21 Fernandez's allegation that the Beverages contained 0.5% alcohol or greater by volume, or that  
22 Millennium knowingly or intentionally distributed any Beverages with an alcohol content of  
23 0.5% or greater by volume. Millennium maintains that independent laboratory tests of the  
24 Beverages confirm that the Beverages did not meet or exceed 0.5% alcohol by volume at the  
25 time Millennium distributed the Beverages, and that any instances of elevated levels of alcohol  
26 that developed subsequent to Millennium's distribution of the Beverages were exceedingly rare,  
27 sporadic, and the result of mishandling by third parties, such that it is impossible to identify  
28 specific products that may have met or exceeded 0.5% alcohol by volume. Millennium also

1 denies that Proposition 65 requires Millennium to place alcohol content warnings on the  
2 Beverage labels. Millennium further contends that any such purported requirement would be  
3 preempted by federal law.

4 1.9. Millennium ceased selling the Beverages on or before September 1, 2010. In  
5 October 2010, Millennium began selling the Enlightened Beverages, which are made with a  
6 different formula that Plaintiffs do not allege to contain alcohol in quantities of 0.5% or greater  
7 by volume. In January 2011, Millennium introduced a formulation of the Beverages inspired by  
8 the original formulation (called "CLASSIC"), which Millennium is manufacturing and  
9 distributing with an alcoholic beverage license and with alcohol content labels. Millennium  
10 states in its marketing materials that: "Due to new labeling laws, you must be at least 21 to  
11 purchase the CLASSIC."

12 1.10. Class Counsel conducted a thorough examination and investigation of the facts  
13 and law relating to the matters in the Litigation, including but not limited to engaging in  
14 independent laboratory testing and conducting thorough factual and legal investigation of the  
15 claims asserted in the Litigation.

16 1.11. The Parties engaged in a two-day, arm's length settlement conference conducted  
17 by the Honorable Peter D. Lichtman (Ret.) in Department 4 of the Court on September 1, 2011  
18 and October 3, 2011 (the "Settlement Conference"). Each of the terms set forth in this  
19 Agreement was reached through contested negotiation, including without limitation discussions  
20 that took place in connection with the Settlement Conference. No discussion was held of  
21 attorneys' fees or expenses until the Parties had reached agreement on all the other material  
22 terms of the settlement, including the Settlement Benefits and Class Notice described in  
23 Sections 3 and 5 of this Agreement. The undersigned Parties agree, subject to approval by the  
24 Court, that the Litigation and the Released Claims shall be fully and finally compromised,  
25 settled and released, and that the Litigation shall be dismissed on the merits with prejudice, on  
26 the terms and conditions set forth in this Agreement.

27 1.12. Class Counsel has analyzed and evaluated the merits of all Parties' contentions  
28

1 and this settlement as it impacts upon all Parties and the Settlement Class Members. Among the  
2 risks of continued litigation are the risks of not succeeding in a motion to certify a class and  
3 proving liability or damages on a classwide or individual basis. Plaintiffs and Class Counsel,  
4 after taking into account the foregoing along with the risks and costs of further litigation, are  
5 satisfied that the terms and conditions of this Agreement are fair, reasonable, and adequate, and  
6 that a settlement of the Litigation and the prompt provision of effective relief to the Class are in  
7 the best interest of the Settlement Class Members.

8 1.13. Millennium, while continuing to deny all allegations of wrongdoing and  
9 disclaiming any liability with respect to any and all claims, considers it desirable to resolve the  
10 Litigation on the terms stated herein, in order to avoid further expense, inconvenience, and  
11 interference with its ongoing business operations, and to dispose of burdensome litigation.  
12 Therefore, Millennium has determined that settlement of this Litigation on the terms set forth  
13 herein is in its best interest.

14 1.14. This Agreement reflects a compromise between the Parties, and shall in no  
15 event be construed as or be deemed an admission or concession by any Party of the truth of any  
16 allegation or the validity of any purported claim or defense asserted in any of the pleadings in  
17 the Litigation, or of any fault on the part of Defendant, and all such allegations are expressly  
18 denied. Nothing in this Agreement shall constitute an admission of liability or be used as  
19 evidence of liability, by or against any Party hereto.

20 NOW, THEREFORE, in consideration of the covenants and agreements set forth  
21 herein, and of the releases and dismissals of claims described below, the Parties agree to this  
22 settlement, subject to Court approval, under the following terms and conditions:

23 **2. DEFINITIONS**

24 2.1. "Agreement" means this Settlement Agreement, including all exhibits thereto.

25 2.2. "Beverage" or "Beverages" means all beverages sold or offered for sale under  
26 Millennium's "GT's Kombucha" and/or "Synergy" brands. The terms "Beverage" or  
27 "Beverages" shall not include beverages sold or offered for sale under Millennium's  
28 "Enlightened GT's Kombucha" and "Enlightened Synergy" brands.

1           2.3.   “Claim Administrator” means Rust Consulting Inc. or a qualified third party  
2 retained and selected by Millennium for the dissemination of Class Notice and processing and  
3 fulfillment of claims in connection with this settlement.

4           2.4.   “Claim Form” means a form in substantially the same form as Exhibit A hereto  
5 (for online claims) or Exhibit B hereto (for mailed claims).

6           2.5.   “Claim Period” means the period beginning on the Notice Date and continuing  
7 for seventy-five (75) days thereafter.

8           2.6.   “Class Counsel” means the law firms of Green Welling, PC; Barrera &  
9 Associates, APC; Martinez Charles, LLP, Levin Simes Kaiser Gornick, LLP; Bailey Perrin  
10 Bailey; and Hughes Ellzey, LLP.

11          2.7.   “Class Period” means the period between, and including, October 27, 2006 and  
12 October 3, 2011.

13          2.8.   “Class Notice” means the Court-approved forms of notice to Settlement  
14 Class Members, which will include notices in substantially the same form as Exhibits C  
15 (“Summary Published Notice”), D (“Long Form Notice”), and E (“Summary Email Notice”),  
16 which will notify Settlement Class Members of the conditional certification of the Settlement  
17 Class, Preliminary Approval of the settlement, and scheduling of the Final Approval Hearing,  
18 among other things.

19          2.9.   “Complaints” means the complaints filed in the Litigation, as described in  
20 Sections 1.1, 1.2, and 1.4 above.

21          2.10. “Court” means the Superior Court of the State of California, County of Los  
22 Angeles.

23          2.11. “Effective Date” means the latest of: (i) the date of final affirmance on an appeal,  
24 the expiration of the time for a petition for review, or if review is granted, the date of final  
25 affirmance following review pursuant to that grant; (ii) the date of final dismissal of any appeal,  
26 or the final dismissal of any proceeding on review; or (iii) if no appeal is filed, the expiration  
27 date of the time for filing or noticing an appeal from Final Approval, regardless of whether any  
28 Settlement Class Members filed a timely objection or request to intervene.

1           2.12. "Enlightened Beverage" means all beverages available for sale under  
2 Defendant's "Enlightened GT's Kombucha" and/or "Enlightened Synergy" brands.

3           2.13. "Escrow Account" means the settlement fund account as described in  
4 Section 7.4 of this Agreement.

5           2.14. "Final Approval" means issuance of judgment, in accordance with the material  
6 terms of this Agreement, granting final approval of the Agreement as binding upon the Parties,  
7 which shall constitute a judgment respecting the Parties, within the meaning and for purposes of  
8 California Code of Civil Procedure sections 577, 581(d) and 904.1(a), and Rule 8.104 of the  
9 California Rules of Court.

10          2.15. "Gauss Settlement" means the settlement reached in *Gauss v. Millennium*  
11 *Products, Inc.*, No. CGC-10-503347 (Sup. Ct. S.F. County filed Sept. 9, 2010) and finally  
12 approved on November 22, 2011, by the Honorable John E. Munter of the Superior Court of  
13 California, County of San Francisco.

14          2.16. "Interest" means the return earned on funds in the Escrow Account.

15          2.17. The "Litigation" means the above-entitled related actions: *Fernandez v.*  
16 *Millennium Products, Inc.*, Superior Court of California, County of Los Angeles, Case No.  
17 BC448920; and *Patch v. Millennium Products, Inc.*, Superior Court of California, County of  
18 Los Angeles, Case No. BC448347.

19          2.18. "Long-Form Notice" means the notice attached hereto as Exhibit D.

20          2.19. "Millennium" means Millennium Products, Inc.

21          2.20. "Defendant's Counsel" means the law firm of O'Melveny & Myers LLP.

22          2.21. "Defendant's Website" or "Millennium's Website" means the internet websites  
23 located at <http://www.synergydrinks.com> and [www.facebook/GTsSynergyKombucha](http://www.facebook/GTsSynergyKombucha).

24          2.22. "Notice Date" means the first day on which Defendant or its designee first  
25 publishes notice of the pendency of the Litigation and proposed settlement as provided in  
26 Section 5 of this Agreement.

27          2.23. "Parties" means Plaintiffs and Defendant, collectively.

28          2.24. "Party" means any one of Plaintiff or Defendant.

1           2.25. "Plaintiffs" means Suzanne Fernandez and Gretchen Patch.

2           2.26. "Preliminary Approval" means issuance of an order, substantially in the form of  
3 Exhibit G, granting preliminary approval of the settlement described in this Agreement.

4           2.27. "Proposition 65" means California's Safe Drinking & Toxic Enforcement Act of  
5 1986, codified at Cal. Health & Safety Code §§ 25249.5 *et seq.*

6           2.28. "Released Claims" means the claims released as set forth in Section 9 of this  
7 Agreement.

8           2.29. "Released Parties" means Millennium, all of Millennium's past and present  
9 officers, directors, principals, agents, designees, servants, attorneys, employees, parents,  
10 subsidiaries, associates, divisions, affiliates, heirs, and all successors or predecessors in interest,  
11 assigns or legal representatives, and all to whom Millennium distributes or sells Beverages  
12 including, but not limited to, distributors, wholesalers, customers, retailers, franchisees,  
13 cooperative members, and licensees.

14           2.30. "Representative Plaintiffs" means Suzanne Fernandez and Gretchen Patch.

15           2.31. "Settlement Benefit" means the benefits provided to Settlement Class Members  
16 as set forth in Section 3 of this Agreement.

17           2.32. "Settlement Class" or "Settlement Class Members" means all persons who, from  
18 October 27, 2006 through October 3, 2011, purchased one of Defendant's Beverages in the  
19 United States, except for the purposes of resale. Excluded from the Settlement Class are the  
20 Honorable Emilie H. Elias, the Honorable Peter D. Lichtman (Ret.), the Honorable John S.  
21 Wiley, Jr., and any member of their immediate families; any government entity; Millennium;  
22 any entity in which Defendant has a controlling interest; any of Defendant's subsidiaries,  
23 parents, affiliates, officers, directors, employees, legal representatives, heirs, successors, or  
24 assigns; any persons who timely opts out of the Settlement Class; and all persons who purchased  
25 the Beverages for purposes of resale.

26           2.33. "Settlement Conference" means the in-person settlement conference conducted  
27 by the Honorable Peter D. Lichtman (Ret.) in Department 4 of the Court on September 1, 2011  
28 and October 3, 2011.

1           2.34. "Settlement Website" means the internet website located at  
2 www.synergysettlement.com or an internet address as agreed upon by the Parties.

3           2.35. "Summary Email Notice" means the notice attached hereto as Exhibit E.

4           2.36. "Summary Published Notice" means the notice attached hereto as Exhibit C.

5           2.37. "Valid Claim" means a claim submitted in compliance with Section 3.2 of this  
6 Agreement.

7 **3. SETTLEMENT BENEFITS**

8           3.1. Every Settlement Class Member shall have the right to submit a claim for  
9 settlement benefits. A claim shall be valid only if submitted on the Claim Form pursuant to the  
10 procedures set forth herein.

11           3.2. Claim Forms must be submitted: (i) electronically through the Settlement  
12 Website; or (ii) in paper form via First Class United States Postal Service mail. On the Claim  
13 Form, the Settlement Class Member must certify the following under the penalty of perjury:

- 14           a. his or her name and address;
- 15           b. the date (during the Class Period) and place of purchase of the  
16 Beverage(s);
- 17           c. the Beverage(s) purchased;
- 18           d. the amount paid for the purchase; and
- 19           e. a sworn statement that the Settlement Class Member would not have  
20 purchased the Beverage(s) at that time had the Settlement Class Member  
21 known that there was no guarantee he or she would receive the benefits  
22 mentioned on the product label.

23           This information must be certified under the penalty of perjury with a wet ink signature  
24 for Claim Forms submitted in paper form, or with an electronic signature, in the  
25 form of typed initials, for Claim Forms submitted electronically.

26           3.3. Millennium will pay a maximum of \$600,000 in monetary relief to Settlement  
27 Class Members as set forth in Sections 3.5 and 7.1 below, which shall include the value of any  
28

1 coupons claimed and redeemed by Settlement Class Members and any incentive award to  
2 Representative Plaintiffs.

3 3.4. Each Settlement Class Member who submits a claim that complies with Section  
4 3.2 shall receive, for each \$1 declared to have been paid for the Beverage(s) during the Class  
5 Period, a coupon for \$1 towards a future purchase of any beverage at Whole Foods Market or  
6 Walgreens in the United States, up to a maximum of \$3 in coupons per person. Coupons shall  
7 be fully transferrable, expire two years from issuance, and have no cash value. A Settlement  
8 Class Member shall not be entitled to coupons for any Beverages purchased for which  
9 Millennium has already provided cash reimbursement or coupons pursuant to the *Gauss*  
10 Settlement. Claims shall be limited to no more than one claim per household, a household being  
11 defined as a single residential address. Up to \$3 in coupons can be combined towards any  
12 single purchase.

13 3.5. This is a claims-made settlement. Millennium will make available a maximum  
14 of 598,000 coupons (\$1 each) for distribution to Settlement Class Members who submit valid  
15 claims on a first-come, first-served basis. Settlement Class Members are not entitled to coupons  
16 unless they submit a valid claim form. Notwithstanding any other provision of this Agreement,  
17 Millennium will not be responsible for fulfilling any claims for coupons that exceed 598,000 in  
18 the aggregate.

19 3.6. Coupons shall be distributed by U.S. Postal Service mail.

20 3.7. For any coupons mailed to Class Members that have not been redeemed by the  
21 coupons' expiration date, Millennium will make a cash contribution equivalent to 50% of the  
22 total value of the unredeemed coupons, up to a maximum of \$15,000, to The Trevor Project.  
23 The remaining value of any coupons that have been issued but not redeemed shall revert to  
24 Millennium.

25 3.8. In addition to the above benefits, Class Counsel will make application to the  
26 Court for the following injunctive relief:

- 27 a. For so long as George Thomas Dave is the majority shareholder of  
28 Millennium, Millennium shall not print any product labels with any of the

1 below-listed statements on its product labels, unless Millennium has  
2 competent and reliable scientific evidence that kombucha or any of its  
3 ingredients supports the listed benefit(s), or Millennium otherwise meets  
4 the standards for substantiation of such statements provided by the  
5 Federal Trade Commission or Food and Drug Administration.

- 6 i. "Kombucha supports digestion"
- 7 ii. "Kombucha supports metabolism"
- 8 iii. "Kombucha supports immune system"
- 9 iv. "Kombucha supports weight control"
- 10 v. "Kombucha supports liver function"
- 11 vi. "Kombucha supports body alkalinity"
- 12 vii. "Kombucha supports anti-aging"
- 13 viii. "Kombucha supports cell integrity"
- 14 ix. "Kombucha supports healthy skin"

- 15 b. As it pertains to "Laraine Dave's Story" on Millennium's website located  
16 at <http://www.synergydrinks.com>, Millennium will include the following  
17 disclaimer: "These statements have not been evaluated by the Food and  
18 Drug Administration. This product is not intended to diagnose, treat, cure  
19 or prevent any disease."

#### 20 4. CLAIMS ADMINISTRATION

21 4.1. The Claim Administrator shall be responsible for processing Claim Forms and  
22 administering the Settlement Website, opt-out process, and Settlement Benefit claims process  
23 described herein.

24 4.2. Defendant shall be responsible for all fees or expenses incurred by the Claim  
25 Administrator.

26 4.3. Class Counsel and Defendant's Counsel shall have the right to monitor the  
27 administration of the Settlement Benefit and claims process, including without limitation any  
28 issues or problems in the administration of the Claim Forms or the settlement. Defendant's

1 Counsel reserves the right to investigate the authenticity and validity of any claim submitted and  
2 propose the rejection of any claim. Should the Claim Administrator or Defendant's Counsel  
3 propose to reject any claim, the reasons for rejection shall be provided to Class Counsel upon  
4 request. Should Plaintiffs dispute the rejection of any claim, counsel for Plaintiffs and  
5 Defendant will meet and confer in good faith to attempt to resolve the dispute. Any unresolved  
6 disputes between Plaintiffs and Defendant regarding claim administration or the payment of a  
7 claim shall be resolved by the Court.

8 **5. NOTICE**

9 5.1. Prior to the Notice Date, the Claim Administrator shall establish the Settlement  
10 Website, which shall contain the settlement notices attached hereto as Exhibits C, D (included in  
11 HTML format with a clickable table of contents) and E; a Contact Information page that  
12 includes address and telephone numbers for the Claim Administrator, Class Counsel, and  
13 Defendant's Counsel; the Agreement; the signed order of Preliminary Approval; an electronic  
14 version of the Claim Form; and (when it becomes available) Plaintiff's Counsel's application for  
15 attorneys' fees, expenses, and incentive awards.

16 5.2. As soon as reasonably practicable, but not later than twenty (20) days following  
17 Preliminary Approval, Millennium shall provide the Claim Administrator the email and mailing  
18 address information of consumers who have submitted email or written communications to  
19 Millennium to the extent the information has not been previously provided by Millennium to the  
20 Claim Administrator. No later than thirty (30) days following Preliminary Approval, the Claim  
21 Administrator will send the Summary Email Notice, in the form attached hereto as Exhibit E,  
22 via electronic mail to all Settlement Class Members for whom electronic mail addresses were  
23 provided, and the Long Form Notice, in the form attached hereto as Exhibit D, via first class  
24 mail to all Settlement Class Members for which it has a mailing (but not an email) address.

25 5.3. The Claim Administrator will arrange for publication in *USA Today* (or other  
26 national print publication of equivalent circulation) of the Summary Published Notice, each  
27 in the form of one sixth-page ad, on a Tuesday, Wednesday or Thursday, once per week for two  
28 consecutive weeks, commencing not later than thirty (30) days following Preliminary Approval.

1 The notice to be published shall substantially resemble the Summary Published Notice attached  
2 hereto as Exhibit C.

3 5.4. Millennium will announce the settlement and provide a hyperlink to the  
4 Settlement Website on Millennium's Website. The hyperlink shall remain posted on  
5 Millennium's Website during and through the end of the Claim Period.

6 5.5. Millennium shall be responsible for making all arrangements necessary to  
7 effectuate the Class Notice described herein and for payment of associated costs.

8 5.6. At least ten (10) days prior to the Final Approval Hearing referenced in  
9 Section 8.3 of this Agreement, the Claim Administrator shall certify to the Court that it has  
10 complied with the notice requirements set forth herein.

## 11 **6. CONDITIONAL CERTIFICATION OF SETTLEMENT CLASS**

12 6.1. Solely for the purposes of this settlement and the proceedings contemplated  
13 herein, the Parties stipulate and agree that a Settlement Class shall be certified in accordance  
14 with the definition of "Settlement Class Members" contained in Section 2.32 of this Agreement,  
15 that the Representative Plaintiffs shall represent the Settlement Class Members for settlement  
16 purposes, and that Class Counsel shall be appointed as the attorneys for the Settlement Class  
17 Members.

18 6.2. Along with the application for Preliminary Approval of this settlement and this  
19 Agreement, Plaintiffs shall apply to the Court for entry of an order, substantially in the form of  
20 Exhibit F (the "Order Conditionally Certifying a Plaintiff Settlement Class"), conditionally  
21 certifying the Settlement Class in accordance with the definition set forth in Section 2.32 of this  
22 Agreement, determining that the Representative Plaintiffs adequately represent the Settlement  
23 Class Members and shall be their class representatives, and appointing Class Counsel as  
24 Settlement Class counsel, all for purposes of settlement only. Millennium will support  
25 Representative Plaintiffs' application.

26 6.3. The certification of said Settlement Class, the appointment of the Representative  
27 Plaintiffs to act as the Settlement Class representatives, and the appointment of Class Counsel to  
28 act as Settlement Class counsel shall be binding only with respect to this settlement and this

1 Agreement. In the event that this Agreement and the settlement proposed herein are not finally  
2 approved for any reason, or are terminated, cancelled, or fail to become effective for any reason  
3 whatsoever, this class certification, to which the parties have stipulated solely for the purposes  
4 of the settlement of the Litigation, this Agreement, and all the provisions of the Order  
5 Conditionally Certifying a Plaintiff Settlement Class, shall be vacated by their own terms, and  
6 the Litigation shall revert to its status with respect to class certification as existed prior to the  
7 date of this Agreement.

8 6.4. In the event that the Court fails to enter the Preliminary Approval order or fails to  
9 grant Final Approval (or enters any order that increases the cost or burden to Millennium  
10 beyond what is set forth in this Agreement), Class Counsel and Defendant's Counsel shall  
11 endeavor, consistent with this Agreement, to resolve any issues identified by the Court;  
12 provided, however, that Millennium shall have the right in its sole discretion at any time to  
13 notify the Class Counsel of its election to terminate this Agreement if such resolution involves  
14 any unreasonable increase in the cost (including, but not limited to, administration costs) or  
15 burden to Millennium.

16 **7. ATTORNEYS' FEES, COSTS, AND INCENTIVE AWARDS**

17 7.1. Millennium will pay incentive awards to the Plaintiffs, as approved by the Court,  
18 up to a maximum of \$1,000 each, as compensation for the time and effort undertaken in and  
19 risks of pursuing this Litigation, including the risk of liability for the Parties' costs of suit. The  
20 incentive awards approved by the Court, not to exceed \$1,000 for each Plaintiff, shall be the  
21 total obligation of Defendant to pay money to Plaintiffs, in connection with the Litigation and  
22 this settlement, other than amounts due to Plaintiffs for any valid claims they submit pursuant to  
23 Section 3 of this Agreement. If the Court determines or Class Counsel believes that a higher  
24 incentive award is warranted, any additional incentive award shall be paid out of the attorneys'  
25 fee allocation in Section 7.2 below.

26 7.2. Class Counsel may make an application to the Court for an award of attorneys'  
27 fees and costs not to exceed: (1) \$390,000 for the class action claims; and (2) \$10,000 for  
28 Plaintiff Fernandez's claims based on alleged violations of Proposition 65. Millennium agrees

1 not to oppose such application for attorneys' fees and expenses. Millennium shall not be  
2 responsible for paying any award of attorneys' fees and costs to Class Counsel in excess of  
3 \$390,000 for the class action claims or \$10,000 for Plaintiff Fernandez's claims based on  
4 alleged violations of Proposition 65.

5 7.3. Class Counsel and Plaintiffs agree that the denial, downward modification or  
6 failure to grant the request for attorneys' fees, costs or incentive awards shall not constitute  
7 grounds for modification or termination of the settlement.

8 7.4. Upon Preliminary Approval of the settlement, Millennium will pay \$402,000 into  
9 a neutral, interest-bearing settlement fund account with Merrill Lynch or another financial  
10 institution selected by Millennium (the "Escrow Account") to cover any incentive payment and  
11 attorneys' fee award. The Claim Administrator shall also serve as the Escrow Account  
12 administrator and escrow agent. The banking and administration fees, if any, shall be paid by  
13 Millennium.

14 7.5. All attorneys' fees and costs awarded to Class Counsel, up to a maximum of  
15 \$400,000 as outlined in Section 7.2 above, shall be paid to Class Counsel on the latest of seven  
16 (7) days after: (1) the date of final affirmance on an appeal, the expiration of the time for a  
17 petition for review, or if review is granted, the date of final affirmance following review  
18 pursuant to that grant; (2) the date of final dismissal of any appeal, or the final dismissal of any  
19 proceeding on review; or (3) if no appeal is filed, the expiration date of the time for filing or  
20 noticing an appeal from final approval. Any amount in the Escrow Account in excess of the  
21 attorneys' fee award and incentive payments approved by the Court shall revert to Millennium.

22 7.6. Within seven (7) days of the Effective Date, the Claim Administrator shall pay  
23 the Court-approved incentive award to Plaintiffs, up to \$1,000 each, plus Interest.

## 24 8. CLASS SETTLEMENT PROCEDURES

25 8.1. Service of Settlement Agreement on California Attorney General: Within five  
26 (5) days after the Parties, Class Counsel, and Defendant's Counsel have all signed this  
27 Agreement, Class Counsel shall serve this Settlement Agreement and a Report of Settlement, in  
28

1 accordance with the provisions and regulations of Proposition 65, on the California Attorney  
2 General.

3       8.2. Preliminary Approval of Settlement: As soon as practicable after the signing of  
4 this Agreement, Representative Plaintiffs shall move, with the support of Defendant, for: (a) a  
5 Preliminary Approval order, substantially in the same form of Exhibit G, preliminarily  
6 approving this Agreement and this settlement as fair, reasonable and adequate, approving Class  
7 Notice to the Settlement Class Members as described in Section 5 of this Agreement, and setting  
8 a hearing to consider Final Approval of the settlement and any objections thereto; and (b) a  
9 Judicial Approval order approving of the Parties' settlement of Plaintiff Fernandez's Proposition  
10 65 claim. The motion for Judicial Approval of the Proposition 65 claim shall be filed and  
11 served on the California Attorney General, in accordance with the provisions and regulations of  
12 Proposition 65, at least forty-five (45) days before the hearing on the motion. The motion for  
13 Preliminary Approval and the motion for Judicial Approval shall be filed simultaneously and  
14 request the same hearing date for both motions.

15       8.3. Final Approval Order and Judgment: At or before the hearing on Final  
16 Approval, Representative Plaintiffs, with the support of Defendant, shall move for entry of an  
17 order of Final Approval, in accordance with the materials terms of the Agreement, granting final  
18 approval of this settlement and holding this Agreement to be final, fair, reasonable, adequate,  
19 and binding on all Settlement Class Members who have not excluded themselves as provided  
20 below, and ordering that the settlement relief be provided as set forth in this Agreement,  
21 ordering the releases as set forth in Section 9, below, and entering judgment in this case.

22       8.4. Opt-Outs, Objections and Requests to Intervene: The Summary Email  
23 Notice, Summary Published Notice, and Long Form Notice shall advise prospective Settlement  
24 Class Members of their rights: (i) to forego the benefits of this settlement and pursue an  
25 individual claim; (ii) to object to this settlement individually or through counsel; and/or (iii) to  
26 request the opportunity to intervene in this case. If, within such time as is ordered by the Court  
27 and contained in the Summary Published Notice, Long Form Notice and Summary Email  
28 Notice, any Settlement Class Member wishes to object to the settlement and/or to be heard, the

1 Settlement Class Member must file a written notice of objection by the deadlines established by  
2 the Court and serve by mail the same upon Defendant's Counsel and Class Counsel. Each  
3 such objection shall state the name, address and telephone number of the Settlement Class  
4 Member, shall provide documents or testimony sufficient to establish membership in the  
5 Settlement Class, and shall provide a detailed statement of any objection asserted, including the  
6 grounds therefore and reasons, if any, for requesting the opportunity to appear and be heard at  
7 the Final Approval Hearing. If, within such time as is ordered by the Court and contained in the  
8 Summary Published Notice, Long Form Notice and Summary Email Notice, any Settlement  
9 Class Member wishes to intervene in the Litigation, such Settlement Class Member shall file  
10 and serve upon one of Class Counsel and Defendant's Counsel a Motion to Intervene and all  
11 accompanying arguments and documents in support thereof.

12 8.5. Within such time as is ordered by the Court and contained in the Summary  
13 Published Notice, Long Form Notice and Summary Email Notice, any Settlement Class  
14 Member who wishes to be excluded from this settlement may do so by completing the form at  
15 the Settlement Website or mailing a valid request to opt-out, as described in the Long Form  
16 Notice, to the Claim Administrator. A Settlement Class Member who elects to opt-out of this  
17 settlement shall not be permitted to object to this settlement or request the right to intervene.  
18 The proposed Preliminary Approval order and Long Form Notice will provide that any  
19 Settlement Class Member wishing to object, intervene or opt-out who fails to properly or timely  
20 file or serve any of the requested information and/or documents will be precluded from doing  
21 so. At least fifteen (15) days prior to the hearing on Final Approval, the Claim Administrator  
22 shall prepare a list of the names of the persons who, pursuant to the Class Notice described  
23 herein, have excluded themselves from the Settlement Class in a valid and timely manner, and  
24 Defendant's Counsel shall file that list with the Court, with service on Class Counsel.  
25 Notwithstanding anything else contained in this Agreement, if a significant number of  
26 Settlement Class Members opt out of the Settlement Class as determined by Millennium in its  
27 sole discretion, Millennium shall have the right, but not the obligation, at any time prior to such  
28 hearing and at its sole discretion, to notify Plaintiff's Counsel of its election to terminate this

1 Agreement and to have the settlement funds described in Section 7.4 of this Agreement returned  
2 to Millennium within seven (7) days of such notice to Plaintiff's Counsel.

3 8.6. Effect if Settlement Not Approved or Agreement is Terminated: This Agreement  
4 was entered into only for purposes of settlement. In the event that any part of the settlement is  
5 not finally approved, or is terminated, cancelled, or fails to become effective for any reason  
6 whatsoever, including without limitation termination of this Agreement by Millennium pursuant  
7 to Sections 6.4 or 8.5 above, or in the event that the Court imposes any penalty, monetary relief,  
8 or fee award in excess of the maximum amounts set forth herein, Millennium may opt to cancel  
9 the settlement, in which case, the settlement shall become null and void and the parties will  
10 revert to their respective positions immediately prior to reaching the settlement. If Millennium  
11 opts to cancel the settlement, no documents or communications related to the settlement  
12 (including the Parties' term sheet and this Agreement) shall have any effect or be admissible in  
13 evidence for any purpose in the Litigation or in any other proceeding.

#### 14 9. RELEASES

15 9.1. Nature of Release: The obligations incurred by Millennium pursuant to this  
16 Agreement shall be a full and final disposition and settlement of all claims, actions, suits,  
17 obligations, debts, demands, rights, causes of action, liabilities, controversies, costs, expenses,  
18 and attorneys' fees, known or unknown, which actually were, or could have been, asserted in the  
19 Litigation, whether individual, class, representative, legal, equitable, administrative, direct or  
20 indirect, or any other type or in any other capacity, all of which shall be finally and irrevocably  
21 compromised, settled, released, and discharged with prejudice, subject to the provisions of  
22 Sections 9.2, 9.3, and 9.4 below.

23 9.2. Mutual Releases Regarding Plaintiffs and Released Parties: Upon Final  
24 Approval, Plaintiffs (for purposes of this Section, "Plaintiffs" includes Plaintiff Fernandez and  
25 Plaintiff Patch, as well as their assignors, predecessors, successors, assigns and members of their  
26 families) on the one hand, and Released Parties on the other hand, shall mutually release and  
27 forever discharge each other from and shall be forever barred from instituting, maintaining, or  
28 prosecuting:

1 a. any and all claims, liens, demands, actions, causes of action, obligations,  
2 damages or liabilities of any nature whatsoever, whether legal or equitable or otherwise, known  
3 or unknown, that actually were, or could have been, asserted in the Litigation, based upon any  
4 violation of any state or federal statutory or common law or regulation, and any claim arising  
5 directly or indirectly out of, or in any way relating to, the claims that actually were, or could  
6 have been, asserted in the Litigation, that Plaintiffs on the one hand, and Millennium on the  
7 other hand, have had in the past, or now have, related in any manner to the Released Parties'  
8 products, services or business affairs;

9 b. any and all other claims, liens, demands, actions, causes of action, obligations,  
10 damages or liabilities of any nature whatsoever, whether legal or equitable or otherwise, known  
11 or unknown, that Plaintiffs on the one hand, and Released Parties on the other hand, have had in  
12 the past or now have, related in any manner to any and all Released Parties' products, services  
13 or business affairs, or otherwise. Plaintiffs and Millennium expressly understand and  
14 acknowledge that it is possible that unknown losses or claims exist or that present losses may  
15 have been underestimated in amount or severity. Plaintiffs and Released Parties explicitly took  
16 that into account in entering into this Agreement, and a portion of the consideration and the  
17 mutual covenants contained herein, having been bargained for between Plaintiffs and  
18 Millennium with the knowledge of the possibility of such unknown claims, were given in  
19 exchange for a full accord, satisfaction, and discharge of all such claims. Consequently,  
20 Plaintiff and Defendant expressly waive all provisions, rights and benefits of California Civil  
21 Code section 1542 (and equivalent, comparable, or analogous provisions of the laws of the  
22 United States or any state or territory thereof, or of the common law). **Section 1542 provides:**

23 "A general release does not extend to claims which the creditor does not  
24 know or suspect to exist in his favor at the time of executing the release,  
25 which if known by him must have materially affected his settlement with the  
26 debtor."

27 //

28 //

1 c. Each and every term of this section shall be binding upon, and inure to the  
2 benefit of Plaintiffs and the Released Parties, and any of their successors and personal  
3 representatives, which persons and entities are intended to be beneficiaries of this section.

4 9.3. Plaintiff Fernandez's Proposition 65 Release: This Settlement Agreement is  
5 a full, final, and binding resolution between Plaintiff Fernandez, her past and current agents,  
6 representatives, attorneys, successors and/or assignees, and Defendant and Released Parties  
7 regarding any violation of Proposition 65 that has been or could have been asserted in the public  
8 interest against Defendants and Released Parties, regarding the failure to warn about alcohol  
9 exposure arising in connection with Beverages manufactured, distributed, or sold by Defendant.  
10 Plaintiff Fernandez, her past and current agents, representatives, attorneys, successors and/or  
11 assignees, for herself and acting on behalf of the public interest pursuant to Health & Safety  
12 Code § 25249.7(d), releases, waives, and forever discharges any and all claims against  
13 Defendant and Released Parties arising from any violation of Proposition 65.

14 a. Plaintiff Fernandez shall comply with the requirements of Division 4 of Title 11  
15 of the California Code of Regulations, section 3000 et seq., which requires at section 3003 that a  
16 private enforcer bringing a Proposition 65 action pursuant to Health and Safety Code section  
17 25249.7(d) shall serve the settlement on the Attorney General prior to obtaining Court approval,  
18 and meet other requirements as outlined in the applicable law and regulations.

19 9.4. Release Regarding Settlement Class Members and Released Parties: Upon Final  
20 Approval, the members of the Settlement Class (except any such person who has filed a proper  
21 and timely request for exclusion from the Settlement Class) shall release and forever discharge  
22 the Released Parties from and shall be forever barred from instituting, maintaining, or  
23 prosecuting:

24 a. any and all claims, liens, demands, actions, causes of action, obligations,  
25 damages or liabilities of any nature whatsoever, known or unknown, whether arising under any  
26 international, federal, state or local statute, ordinance, common law, regulation, principle of  
27 equity or otherwise, that actually were, or could have been, asserted in the Litigation based upon  
28 the facts alleged in the Litigation, concerning the health benefits, detriments, nutritional

1 content/labeling, alcohol content, effects, or risks associated with the consumption of the  
2 Beverages;

3 b. With respect to the released claims set forth in Subsection 9.4(a), each  
4 Settlement Class Member shall be deemed to have waived and relinquished, to the fullest extent  
5 permitted by law, the provisions, rights and benefits of California Civil Code section 1542 (and  
6 equivalent, comparable, or analogous provisions of the laws of the United States or any state or  
7 territory thereof, or of the common law). **Section 1542 provides:**

8 **“A general release does not extend to claims which the creditor does not**  
9 **know or suspect to exist in his favor at the time of executing the release,**  
10 **which if known by him must have materially affected his settlement with the**  
11 **debtor.”**

12 c. Each and every term of this section shall be binding upon the Settlement  
13 Class Members and any of their successors and personal representatives, and inure to the benefit  
14 of the Released Parties, and any of their successors and personal representatives, which persons  
15 and entities are intended to be beneficiaries of this section.

16 d. The Parties shall be deemed to have agreed that the release set forth  
17 herein will be and may be raised as a complete defense to and will preclude any action or  
18 proceeding based on the released claims.

19 9.5. Effectuation of Settlement: None of the above releases includes releases of  
20 claims to enforce the terms of the settlement.

21 9.6. No Admission of Liability: This Agreement reflects, among other things,  
22 the compromise and settlement of disputed claims among the Parties hereto, and neither this  
23 Agreement nor the releases given herein, nor any consideration therefore, nor any actions taken  
24 to carry out this Agreement are intended to be, nor may they be deemed or construed to be, an  
25 admission or concession of liability, or the validity of any claim, or defense, or of any point of  
26 fact or law (including but not limited to matters respecting class certification) on the part of any  
27 Party. Defendant expressly denies the allegations of the Complaints. Neither this Agreement,  
28 nor the fact of settlement, nor the settlement proceedings, nor settlement negotiations, nor any

1 related document, shall be used as an admission of any fault or omission by the Released  
2 Parties, or be offered or received in evidence as an admission, concession, presumption, or  
3 inference of any wrongdoing by the Released Parties in any proceeding, other than such  
4 proceedings as may be necessary to consummate, interpret, or enforce this Agreement.

5 **10. ADDITIONAL PROVISIONS**

6 10.1. Best Efforts: The Parties' counsel shall use their best efforts to cause the Court  
7 to give Preliminary Approval to this Agreement and settlement as promptly as practicable, to  
8 take all steps contemplated by this Agreement to effectuate the settlement on the stated terms  
9 and conditions, and to obtain Final Approval of this Agreement.

10 10.2. Change of Time Periods: The time periods and/or dates described in this  
11 Agreement with respect to the giving of notices and hearings are subject to approval and change  
12 by the Court or by the written agreement of Plaintiff's Counsel and Defendant's Counsel,  
13 without notice to Settlement Class Members.

14 10.3. Time for Compliance: If the date for performance of any act required by or  
15 under this Agreement falls on a Saturday, Sunday or court holiday, that act may be performed  
16 on the next business day with the same effect as if it had been performed on the day or within  
17 the period of time specified by or under this Agreement.

18 10.4. Governing Law: This Agreement is intended to and shall be governed by the  
19 laws of the State of California, without regard to conflicts of law principles.

20 10.5. Entire Agreement: The terms and conditions set forth in this Agreement  
21 constitute the complete and exclusive statement of the agreement between the Parties hereto  
22 relating to the subject matter of this Agreement, superseding all previous negotiations and  
23 understandings, and may not be contradicted by evidence of any prior or contemporaneous  
24 agreement. The Parties further intend that this Agreement constitutes the complete and  
25 exclusive statement of its terms as between the Parties hereto, and that no extrinsic evidence  
26 whatsoever may be introduced in any agency or judicial proceeding, if any, involving this  
27 Agreement. Any amendment or modification of the Agreement must be in writing signed by  
28 Plaintiffs, Class Counsel, and Defendant.

1           10.6. Advice of Counsel: The determination of the terms of, and the drafting of, this  
2 Agreement have been by mutual agreement after negotiation, with consideration by and  
3 participation of all Parties hereto and their counsel. The presumption found in California Civil  
4 Code section 1654 that uncertainties in a contract are interpreted against the party causing an  
5 uncertainty to exist is hereby waived by all Parties.

6           10.7. Binding Agreement: This Agreement shall be binding upon and inure to the  
7 benefit of the respective heirs, successors and assigns of the Parties hereto.

8           10.8. No Waiver: The waiver by any Party of any provision or breach of this  
9 Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.

10           10.9. Execution in Counterparts: This Agreement shall become effective upon its  
11 execution by all of the undersigned. The Parties may execute this Agreement in counterparts  
12 and/or by fax or electronic mail, and execution of counterparts shall have the same force and  
13 effect as if all Parties had signed the same instrument.

14           10.10. Extensions of Time: The Parties reserve the right, by agreement and subject to  
15 the Court's approval, to grant any reasonable extension of time that might be needed to carry out  
16 any of the provisions of this Agreement.

17           10.11. Enforcement of this Agreement: The Court shall retain jurisdiction to enforce,  
18 interpret, and implement this Agreement.

19           10.12. Gauss Settlement: Plaintiffs do not and will not object to the *Gauss* Settlement.

20           10.13. Confidentiality: The Parties agree that all drafts, discussions, negotiations,  
21 documentation or other information prepared in relation to this Agreement, and the Parties'  
22 settlement discussions, shall be treated as strictly confidential, including without limitation  
23 under California Evidence Code sections 1152 and 1154, and may not, absent a court order, be  
24 disclosed to any person other than the Parties' counsel, and only for purposes of the Litigation.

25           10.14. Notices: All notices to the Parties or counsel required by this Agreement, shall  
26 be made in writing and communicated by mail and fax or email to the following addresses:

27           If to Plaintiffs or Class Counsel, send to any one of the following addresses:  
28

1 Michael Martinez  
2 **MARTINEZ CHARLES LLP**  
3 1055 East Colorado Boulevard, Suite 500  
4 Pasadena, CA 91106  
5 Telephone: 626-240-4664  
6 Facsimile: 626-240-4665

7 Patricio T.D. Barrera  
8 **BARREA & ASSOCIATES, APC**  
9 1500 Rosecrans Avenue, Suite 500  
10 Manhattan Beach, CA 90266  
11 Telephone: 310-802-1500  
12 Facsimile: 310-802-0500

13 Robert S. Green  
14 **GREEN WELLING, P.C.**  
15 595 Market Street, Suite 2750  
16 San Francisco, CA 94105  
17 Telephone: 415-477-6700  
18 Facsimile: 415-477-6710

19 If to Defendant or Defendant's Counsel:

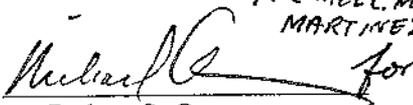
20 Scott M. Voelz  
21 **O'MELVENY & MYERS LLP**  
22 400 South Hope Street  
23 Los Angeles, CA 90071-2899  
24 Telephone: (213) 430-6000  
25 Facsimile: (213) 430-6407

26 IN WITNESS HEREOF the undersigned, being duly authorized, have caused this  
27 Agreement to be executed on the dates shown below and agree that it shall take effect on the  
28 date it is executed by all of the undersigned.

**APPROVED AS TO FORM:**

DATED: January 27, 2012

**GREEN WELLING, P.C.**

By:  <sup>MICHAEL C. MARTINEZ  
MARTINEZ CHARLES LLP</sup> for  
Robert S. Green

Nicole D. Reynolds  
595 Market Street, Suite 2750  
San Francisco, CA 94105  
Telephone: (415) 477-6700  
Facsimile: (415) 477-6710  
Patricio T.D. Barrera

1 DATED: January \_\_\_\_, 2012

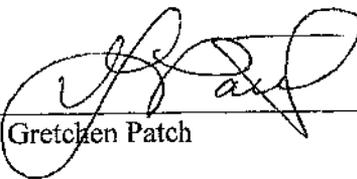
O'MELVENY & MYERS LLP

2  
3 By: \_\_\_\_\_  
4 Scott M. Voelz

5 Richard B. Goetz  
6 Scott M. Voelz  
7 Carlos M. Lazatin  
8 *Attorneys for Defendant Millennium Products, Inc.*

9 **APPROVED AND AGREED:**

10 DATED: January 27, 2012

  
\_\_\_\_\_  
Gretchen Patch

11  
12 DATED: January \_\_\_\_, 2012

\_\_\_\_\_  
Suzanne Fernandez

13  
14 Millennium Products, Inc.

15  
16 DATED: January \_\_\_\_, 2012

\_\_\_\_\_  
By: George Thomas Dave  
Its: Chief Executive Officer

1 DATED: January 26, 2012

O'MELVENY & MYERS LLP

2  
3 By: Scott M. Voelz  
4 Scott M. Voelz

5 Richard B. Goetz  
6 Scott M. Voelz  
7 Carlos M. Lazatin  
*Attorneys for Defendant Millennium Products, Inc.*

8  
9 **APPROVED AND AGREED:**

10 DATED: January \_\_\_\_, 2012

\_\_\_\_\_  
11 Gretchen Patch

12 DATED: January \_\_\_\_, 2012

\_\_\_\_\_  
13 Suzanne Fernandez

14 Millennium Products, Inc.

15  
16 DATED: January \_\_\_\_, 2012

\_\_\_\_\_  
17 By: George Thomas Dave  
18 Its: Chief Executive Officer

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DATED: January \_\_\_\_, 2012

O'MELVENY & MYERS LLP

By: \_\_\_\_\_  
Scott M. Voelz

Richard B. Goetz  
Scott M. Voelz  
Carlos M. Lazatin  
*Attorneys for Defendant Millennium Products, Inc.*

**APPROVED AND AGREED:**

DATED: January \_\_\_\_, 2012

\_\_\_\_\_  
Gretchen Patch

DATED: January \_\_\_\_, 2012

\_\_\_\_\_  
Suzanne Fernandez

Millennium Products, Inc.

DATED: January 26, 2012

  
\_\_\_\_\_  
By: George Thomas Dave  
Its: Chief Executive Officer

1 DATED: January \_\_\_\_, 2012

O'MELVENY & MYERS LLP

2  
3 By: \_\_\_\_\_

4 Scott M. Voelz

5 Richard B. Goetz

6 Scott M. Voelz

7 Carlos M. Lazatin

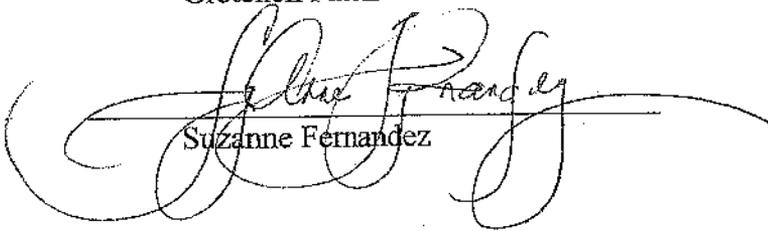
*Attorneys for Defendant Millennium Products, Inc.*

8  
9 **APPROVED AND AGREED:**

10 DATED: January \_\_\_\_, 2012

\_\_\_\_\_  
11 Gretchen Patch

12 DATED: January \_\_\_\_, 2012

  
\_\_\_\_\_  
13 Suzanne Fernandez

14 Millennium Products, Inc.

15  
16 DATED: January \_\_\_\_, 2012

\_\_\_\_\_  
17 By: George Thomas Dave

18 Its: Chief Executive Officer



*Patch v. Millennium Products, Inc. & Fernandez v. Millennium Products, Inc.*  
Class Action Settlement

**Online Claim Form**

[First Page]

Instructions:

To make a claim under the Settlement, please provide the following information. All fields are required. All information will be kept private and will not be disclosed to anyone other than the Court, the Claim Administrator, and the parties in this case, and will be used only for purposes of administering this Settlement.

First Name: \_\_\_\_\_ Last Name: \_\_\_\_\_  
Current Email Address: \_\_\_\_\_  
Re-enter Current Email Address: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
City \_\_\_\_\_ State [Drop down] Zip Code \_\_\_\_\_

I certify the following:

1. On approximately [date] at [location]
2. I purchased [drop down] bottles of GT' s Kombucha and [drop down] bottles of Synergy
3. I paid approximately [amount]

[click to add additional purchases—which brings up same 3 above fields again]

I would not have purchased the Beverage(s) listed above had I known at the time that there was no guarantee I would receive the health benefits mentioned on the product label.

I have not previously received credit or a refund from Millennium or any other party or entity for any of the Beverages listed in this claim, including coupons or cash reimbursement pursuant to the *Gauss v. Millennium Products, Inc.* Class Action Settlement.

The purchase information I have provided is accurate to the best of my recollection.

By electronically typing my initials below, I certify under penalty of perjury under the laws of the State of California\* that all of the foregoing is true and correct.

(\*The California Penal Code provides that if a person makes a statement under penalty of perjury, it is unlawful to willfully state as true any material matter which the person knows to be false. Violations are punishable by up to four years in prison. Cal. Penal Code §§ 118(a), 126.)

[E-SIGN BOX for up to 3 initials]

[CONTINUE button]

[Validation on this page:

- All fields complete
- Checkbox is checked
- Email address is in form XXX@YYY.ZZZ where ZZZ is recognizable extension
- Email addresses match
- Zip code and state match
- Date is within Class Period
- At least two initials are filled in]

**[Second Page -- Review]**

Please confirm the information you provided and submit your claim:

Name: [FIRST NAME] [LAST NAME]

Address: [ADDRESS]  
[CITY], [STATE] [ZIP]

Current Email Address: [EMAIL]

Claimed Purchases:

Date: [PURCHASE DATE]

Place: [PURCHASE PLACE]

Beverages: [NUMBER] Synergy [NUMBER] GT's

Amount: \$[PURCHASE AMOUNT]

[repeat for each purchase]

Claimed Total Purchase Amount: [TOTAL OF ALL PURCHASE AMOUNTS]

Once you press the submit button,  
your claim cannot be changed.

[BACK button]

[SUBMIT CLAIM button]

**[Third Page -- Confirmation]**

Thank you for submitting your claim in the *Patch v. Millennium Products, Inc. & Fernandez v. Millennium Products, Inc.* Class Action Settlement. The information you submitted is shown below.

Name: [FIRST NAME] [LAST NAME]

Address: [ADDRESS]

[CITY], [STATE] [ZIP]  
Current Email Address: [EMAIL]

Claimed Purchases:

Date: [PURCHASE DATE]  
Place: [PURCHASE PLACE]  
Beverages: [NUMBER] Synergy [NUMBER] GT's  
Amount: \$[PURCHASE AMOUNT]

[repeat for each purchase]

Claimed Total Purchase Amount: [TOTAL OF ALL PURCHASE AMOUNTS]

If the settlement becomes effective, you will receive coupons for [TOTAL OF ALL PURCHASE AMOUNTS, ROUNDED DOWN TO NEAREST DOLLAR, NOT TO EXCEED \$3]. These coupons can be used towards the purchase of any beverage at Whole Foods Market or Walgreens in the United States. Coupons are fully transferrable, expire two years from issuance, and have no cash value. Millennium Products, Inc. will not be responsible for fulfilling more than one claim per household. Up to \$3 in coupons can be combined towards any single purchase.

Claims will be paid only if they are verified, the Settlement is finally approved by the Court, and the Effective Date occurs. When the settlement becomes effective, you will receive a notice via first-class mail at the address you provided on this Claim Form. The notice will include any coupons to which you are entitled.

The Claim Administrator's mailing address is:

[insert address]

You may print a copy of this page for your records. An email confirmation will also be sent to the email address you provided as shown above.

You may track the progress of the Court approval of the Settlement by returning to [www.synergysettlement.com](http://www.synergysettlement.com).

[Bar Code generated by Claim Administrator]

### **Email Confirmation for Online Claims**

Email confirmation should be identical to the Third Page of the Online Claim Form except that:

- Delete: "You may print a copy of this page for your records. An email confirmation will also be sent to the email address you provided as shown above."



*Patch v. Millennium Products, Inc. & Fernandez v. Millennium Products, Inc.*  
Class Action Settlement

**Printed Claim Form**

Instructions:

To make a claim under the Settlement, you must submit an online claim at [www.synergysettlement.com](http://www.synergysettlement.com) or complete the reverse side of this form. If you need additional space to list your purchases, you may attach a separate document listing the date of purchase, the place of purchase (including the store name and location), the Beverage(s) purchased, and the amount paid to purchase the Beverage(s).

All information will be kept private and will not be disclosed to anyone other than the Court, the Claim Administrator, and the parties in this case, and will be used only for purposes of administering this Settlement.

You will receive a \$1 coupon for each \$1 you paid for Defendant's Beverage(s), up to a maximum of \$3 in coupons. The coupons may be used towards the purchase of any beverage at Whole Foods Market or Walgreens in the United States. Coupons are fully transferrable, expire two years from issuance, and have no cash value. Millennium Products, Inc. will not be responsible for fulfilling more than one claim per household. Up to \$3 in coupons can be combined towards any single purchase.

If you wish to make a claim by submitting a printed claim form, you must send your completed form by first-class mail to:

*Patch v. Millennium Products, Inc. & Fernandez v. Millennium Products, Inc.*  
Settlement Claim Administrator  
[address]

Printed claim forms must be received (not just postmarked) by [75 days after the issuance of Class Notice]. Upon receipt of your claim form, an email confirmation will also be sent to the email address you provide below.

Claims will be paid only if they are verified, the Settlement is finally approved by the Court, and the Effective Date occurs. When the settlement becomes effective, you will receive a notice via first class mail at the address you provide on this Claim Form. The notice will include any coupons to which you are entitled.

Please save a copy of your completed form for your records.

You may track the progress of the Court approval of the Settlement by visiting [www.synergysettlement.com](http://www.synergysettlement.com).

[Bar Code generated by Claim Administrator]

First Name: \_\_\_\_\_ Last Name: \_\_\_\_\_

Current Email Address: \_\_\_\_\_

Re-write Current Email Address: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_

I made the following purchases:

Date	Store Name and Location	Number of Bottles	Total Paid
		_____ GT's Kombucha _____ Synergy	\$ _____
		_____ GT's Kombucha _____ Synergy	\$ _____
		_____ GT's Kombucha _____ Synergy	\$ _____

I certify under penalty of perjury under the laws of the State of California\* that:

- (1) I would not have purchased the Beverage(s) listed above had I known at the time that there was no guarantee I would receive the health benefits mentioned on the product label;
- (2) I have not previously received credit or a refund from Millennium or any other party or entity for any of the Beverages listed in this claim, including coupons or cash reimbursement pursuant to the *Gauss v. Millennium Products, Inc.* Class Action Settlement; and
- (3) all of the foregoing is true and correct.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

(\*The California Penal Code provides that if a person makes a statement under penalty of perjury, it is unlawful to willfully state as true any material matter which the person knows to be false. Violations are punishable by up to four years in prison. Cal. Penal Code §§ 118(a), 126.)

**Email Confirmation**

Thank you for submitting your claim in the *Patch v. Millennium Products, Inc. & Fernandez v. Millennium Products, Inc.* Class Action Settlement. The information you submitted is shown below.

Name: [FIRST NAME] [LAST NAME]

Address: [ADDRESS]

[CITY], [STATE] [ZIP]

Current Email Address [EMAIL]

Claimed Purchases:

Date: [PURCHASE DATE]

Place: [PURCHASE PLACE]

Beverages [NUMBER] Synergy [NUMBER] GT's

Amount: \$[PURCHASE AMOUNT]

[repeat for each purchase].

Claimed Total Purchase Amount: [TOTAL OF ALL PURCHASE AMOUNTS]



**NOTICE TO PURCHASERS OF GT'S KOMBUCHA AND SYNERGY BEVERAGES  
BETWEEN OCTOBER 27, 2006 AND OCTOBER 3, 2011**

You may be a member of a class in a proposed class action settlement. Under the settlement, you have the right to make a claim for up to \$3 in coupons towards a future purchase of any beverage at Whole Foods Market or Walgreens in the United States, if you purchased a "GT's Kombucha" or "GT's Synergy" beverage ("Beverage") in the United States during the date range shown above (the "Class Period"). You may choose to exclude yourself from the settlement, file written objections to the settlement, intervene in the lawsuit, or appear (or have your own attorney appear) at the hearing in Los Angeles County Superior Court.

The lawsuits are *Patch v. Millennium Products, Inc.*, Los Angeles County Superior Court, Case No. BC448347, and *Fernandez v. Millennium Products, Inc.*, Los Angeles County Superior Court, Case No. BC448920. The defendant, Millennium Products, Inc. ("Millennium"), is a leading manufacturer of kombucha beverages, including the Beverages.

The plaintiffs ("Plaintiffs") allege that Millennium misleadingly claimed that its Beverages possess incredible health benefits, when in fact Millennium lacks scientific support for such claims. For example, on its Beverage labels, Millennium claimed its Beverages supported "Digestion," "Metabolism," "Immune System," "Weight Control," "Liver Function," "Body Alkalinity," "Anti-Aging," "Cell-integrity," and "Healthy Skin." Plaintiffs allege that Millennium even claimed that kombucha played a key role in curing Millennium founder GT Dave's mother of breast cancer.

Millennium denies Plaintiffs' allegations that Millennium misrepresented the health benefits of its Beverages. Millennium contends the challenged health benefit statements are supported by competent and reliable scientific evidence, including scientific studies that show kombucha is rich in potent antioxidants that support liver function and bolster the immune system, as well as glucuronic acid and other organic acids that aid kidney function and assist in the removal of toxins from the body. Further, Millennium has received many unsolicited testimonials from consumers who have experienced the Beverages' benefits. Millennium also denies Plaintiffs' allegations that: (a) Millennium represented that kombucha played a "key role" in curing Millennium founder GT Dave's mother of breast cancer; (b) anyone has suffered damage or is entitled to relief whatsoever by reason of any alleged conduct, statement, act, or omission of Millennium; (c) Plaintiffs' claims meet the requisites for certification as a class action under California law, except for purposes of settlement; and (d) the evidence is sufficient to support a finding of liability. However, Millennium considers it desirable and in its best interests to resolve the lawsuit on the terms stated in the settlement agreement, in order to avoid further expense, inconvenience, interference with its ongoing business operations, and burdensome litigation.

The Court has not made a decision on the merits of the lawsuit.

Under the settlement, Millennium will make available a maximum of 598,000 coupons (\$1 each) for distribution to class members who submit valid claims on a first-come, first-served basis. Coupons shall be fully transferrable, expire two years from issuance, and have no cash value. Up to \$3 in coupons can be combined towards any single purchase. There is a limit of one claim per household. Settlement Class Members are not entitled to coupons for any Beverages purchased for which Millennium has already provided cash reimbursement or coupons pursuant to the *Gauss v. Millennium Products, Inc.* Class Action Settlement.

If the settlement is approved, Plaintiffs' counsel will apply for an award of attorneys' fees and costs not to exceed \$390,000 for their class action claims, and Plaintiffs will apply for incentive awards of \$1,000 each, to be paid separately from and in addition to the relief available to settlement class members.

If you do not exclude yourself from the settlement class, you will give up the right to sue about any claims, statements or omissions concerning the health benefits, detriments, nutritional content/labeling, alcohol content, effects, or risks associated with the consumption of the Beverages.

You need not take any action unless you wish to make a claim, exclude yourself, object, or intervene in the lawsuit. If you wish to make a claim, please visit [www.synergysettlement.com](http://www.synergysettlement.com) (the "Settlement Website") or request a claim form by mail from the Claim Administrator at [insert]. Online claim forms must be submitted by [75 days after the issuance of Class Notice], and printed claim forms must be received (not just postmarked) by the same date. All claim forms must comply with the instructions set forth in the Long Form Notice on the Settlement Website. All requests for exclusion, objections, and requests to intervene must be received (not just postmarked) by [65 days after the issuance of Class Notice]. For further information regarding your options to exclude yourself, object or intervene, please review the Long Form Notice on the Settlement Website.

**DO NOT CONTACT THE COURT OR MILLENNIUM CONCERNING THIS NOTICE OR THIS LAWSUIT.** You may obtain additional information about the settlement and your rights on the Settlement Website, from the Claim Administrator at the address set forth above, or from Plaintiffs' counsel at the following address: Michael Martinez, Martinez Charles LLP, 1055 East Colorado Boulevard, Suite 500, Pasadena, CA 91106; or call [insert interactive voice response number].



**NOTICE TO ALL PERSONS IN THE UNITED STATES WHO PURCHASED MILLENNIUM  
PRODUCTS, INC.'S GT'S KOMBUCHA OR SYNERGY BEVERAGES  
BETWEEN OCTOBER 27, 2006 THROUGH OCTOBER 3, 2011**

**This notice may affect your rights.  
Please read it carefully.**

You are a member of the Settlement Class if, between October 27, 2006 through October 3, 2011, you purchased, in the United States, a "GT's Kombucha" or "Synergy" beverage ("Beverages") manufactured by Millennium Products, Inc. ("Millennium" or "Defendant"), unless the purchase was for purposes of resale.

The settlement derives from two lawsuits in which plaintiffs Gretchen Patch and Suzanne Fernandez (collectively, "Plaintiffs") allege that Millennium misleadingly claimed that its Beverages possess incredible health benefits, when Millennium lacks scientific support for such claims.

The purpose of this notice is to inform you of the proposed settlement, and of a hearing to consider whether the settlement should be approved. The hearing will be held on [ ], at [ ], before the Honorable John Shepard Wiley in Department 311 of the Los Angeles County Superior Court. This notice will inform you how to participate in the settlement; how to object to it if you wish; how to exclude yourself; and how to get more information. (Capitalized terms not defined in this notice have the meanings assigned to them in the settlement agreement ("Agreement"), available at [www.synergysettlement.com](http://www.synergysettlement.com).)

**I. DESCRIPTION OF THE LAWSUITS**

On October 27, 2010, Plaintiff Gretchen Patch filed a complaint against Millennium alleging violations of the Unfair Competition Law ("UCL"), the Consumer Legal Remedies Act ("CLRA"), the False Advertising Law ("FAL"), and breach of express warranty based on Millennium's alleged misrepresentations regarding the health benefits of its Beverages. On November 4, 2010, Plaintiff Fernandez filed her original complaint alleging violations of the CLRA, UCL, and FAL based on Defendant's alleged misrepresentations and omissions regarding the health benefits of its Beverages.

Plaintiffs allege that Defendant misleadingly claims that its Beverages possess incredible health benefits when it possesses no scientific support for such claims. For example, Defendant stated that its Beverages are “delicately cultured – some liken it to fermentation – for 30 days. During this period, essential nutrients form like active enzymes, viable probiotics, amino acids, antioxidants and polyphenols. All of these combine to create an elixir that immediately works with the body to restore balance and vitality.” On its bottle labels, Defendant represented its Beverages as promoting and supporting “Digestion,” “Metabolism,” “Immune System,” “Weight Control,” “Liver Function,” “Body Alkalinity,” “Anti-Aging,” “Cell-integrity,” and “Healthy Skin.” Plaintiffs allege that Defendant even claimed that kombucha played a key role in curing Millennium founder GT Dave’s mother of breast cancer. Plaintiffs allege that none of these claims are supported by scientific evidence.

Millennium denies all charges of wrongdoing or liability against it arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Litigation. Millennium specifically denies Plaintiffs’ allegations that Millennium misrepresented the health benefits of its Beverages. Millennium contends that most of the statements that Plaintiffs challenge in their complaints are clearly non actionable under California law because they consist of vague, highly subjective claims on which no reasonable consumer could or would rely. In addition, Millennium believes the challenged health benefit statements are supported by competent and reliable scientific evidence, including scientific studies that show kombucha is rich in potent antioxidants that support liver function and bolster the immune system, as well as glucuronic acid and other organic acids that aid kidney function and assist in the removal of toxins from the body. Further, Millennium has received many unsolicited testimonials from consumers who have experienced the Beverages’ benefits. Millennium also denies Plaintiffs’ allegations that: (a) Millennium represented that kombucha played a “key role” in curing Millennium founder GT Dave’s mother of breast cancer; (b) Plaintiffs or any other member of the Settlement Class has suffered damage or harm by reason of any alleged conduct, statement, act, or omission of Millennium; (c) the Litigation meets the requisites for certification as a class

action under California law, except for purposes of settlement; and (d) that the evidence is sufficient to support a finding of liability.

The Court has not decided whether Plaintiff or Millennium is correct.

After reviewing the evidence produced in discovery and considering the risks of further litigation, Plaintiffs and their counsel have come to the conclusion that it is in the best interests of the Settlement Class to enter into this settlement. Plaintiffs and their counsel believe there are serious risks that, if the litigation continues, they would be unable to certify a class or obtain relief for the class members. In addition, Millennium, while continuing to deny all allegations of wrongdoing and disclaiming any liability with respect to any and all claims, considers it desirable and in its best interests to resolve Plaintiffs' class allegations on the terms stated in this settlement, in order to avoid further expense, inconvenience, interference with its ongoing business operations, and burdensome litigation. In entering into the settlement, Millennium is not admitting to any liability, and continues to dispute that any liability lies.

## **II. THE SETTLEMENT CLASS MEMBERS**

For purposes of settlement only, the Court has certified a class of all persons who, from October 27, 2006 through October 3, 2011 (the "Class Period"), purchased one of Millennium's Beverages in the United States, except for the purposes of resale. Excluded from the Settlement Class are the Honorable Emilie H. Elias, the Honorable Peter D. Lichtman, the Honorable John S. Wiley, Jr., and any member of their immediate families; any government entity; Millennium; any entity in which Millennium has a controlling interest; any of Millennium's subsidiaries, parents, affiliates, officers, directors, employees, legal representatives, heirs, successors, or assigns; any persons who timely opts out of the Settlement Class; and all persons who purchased the Beverages for purposes of resale.

If you fit within this definition, you will be considered a member of the Settlement Class ("Settlement Class Member"), unless you request to be excluded.

### III. DESCRIPTION OF SETTLEMENT

#### a. Class Benefits and Claims Process

Every Settlement Class Member shall have the right to submit a claim for settlement benefits. A claim shall be valid only if submitted on a Claim Form pursuant to the procedures set forth herein. Claim Forms must be submitted either (1) electronically through the Settlement Website at [www.synergysettlement.com](http://www.synergysettlement.com) or (2) in paper form via first class mail. Online claim forms must be submitted by [75 days after the issuance of Class Notice], and printed claim forms must be received by the Claim Administrator (not just postmarked) by the same date.

On the Claim Form, the Settlement Class Member must certify the following under penalty of perjury:

- i. his or her name and address;
- ii. the date (during the Class Period) and place of purchase of the Beverage(s);
- iii. the Beverage(s) purchased;
- iv. the amount paid to purchase the Beverage(s); and
- v. a sworn statement that the Settlement Class Member would not have purchased the Beverage(s) at that time had the Settlement Class Member known that there was no guarantee he or she would receive the health benefits mentioned on the product label.

This information must be certified under penalty of perjury with a wet ink signature for Claim Forms submitted in paper form, or with an electronic signature (by typing initials) for Claim Forms submitted electronically. Settlement Class Members who submit claims that comply with the above provisions shall receive, for each \$1 declared to have been paid for Millennium's Beverage(s) during the Class Period, a coupon for \$1, up to a maximum of \$3 in coupons. Coupons are good towards a future purchase of any beverage at Whole Foods Market or Walgreens in the United States. Coupons shall be fully transferrable, expire two years from issuance, and have no cash value. Millennium will make available a maximum of 598,000

coupons (\$1 each) for distribution to Class Members who submit valid claims on a first-come, first-served basis. Millennium will not be responsible for fulfilling any claims for coupons that exceed 598,000 in the aggregate. There is a limit of one claim per household. Settlement Class Members are not entitled to coupons for any Beverages purchased for which Millennium has already provided cash reimbursement or coupons pursuant to the *Gauss v. Millennium Products, Inc.* Class Action Settlement. Up to \$3 in coupons can be combined towards any single purchase. Coupons shall be distributed by U.S. mail within seven (7) days of the Effective Date.

For any coupons mailed to Class Members that have not been redeemed by the coupons' expiration date, Millennium will make a cash contribution equivalent to 50% of the total value of the unredeemed coupons, up to a maximum of \$15,000, to The Trevor Project. The remaining value of any coupons that have been issued but not redeemed shall revert to Millennium.

In addition to the above benefits, Class Counsel will make application to the Court for the following injunctive relief:

- i. For so long as George Thomas Dave is the majority shareholder of Millennium, Millennium shall not print any product labels with any of the following statements, unless Millennium has competent and reliable scientific evidence that kombucha or any of its ingredients supports the listed benefit(s), or Millennium otherwise meets the standards for substantiation of such statements provided by the Federal Trade Commission or Food and Drug Administration: "Kombucha supports digestion"; "Kombucha supports metabolism"; "Kombucha supports immune system"; "Kombucha supports weight control"; "Kombucha supports liver function"; "Kombucha supports body alkalinity"; "Kombucha supports anti-aging"; "Kombucha supports cell integrity"; "Kombucha supports healthy skin."

- ii. As it pertains to “Laraine Dave’s Story” on Millennium’s website located at <http://www.synergydrinks.com>, Millennium will include the following disclaimer: “These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure or prevent any disease.”

**b. Incentive Awards and Attorneys Fees & Costs**

Under the terms of the settlement, Plaintiffs’ lawyers will apply to the Court for an award of attorneys’ fees and expenses not to exceed \$390,000 for their class action claims, and Plaintiffs will apply for incentive awards of \$1,000 each for the time and effort undertaken in and risks of pursuing this Litigation. The Court will determine the amount of fees, costs, and incentives to award. No award of attorneys’ fees, costs, expenses or incentive awards made by the Court will decrease or have any other effect on the relief to be provided to Settlement Class Members.

**c. Releases**

Under the terms of the settlement, all Settlement Class Members who have not excluded themselves will be bound by the final judgment entered by the Court. All claims of Settlement Class Members which were or could have been asserted in the Litigation, based upon the facts alleged in the Litigation, will be released as provided in the Agreement, and Settlement Class Members will be forever barred from seeking other or further relief on such claims. This release extends to claims that concern the health benefits, detriments, nutritional content/labeling, alcohol content, effects, or risks associated with the consumption of the Beverages. Settlement Class Members shall also be deemed to have waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of California Civil Code section 1542 (and equivalent, comparable, or analogous provisions of the laws of the United States or any state or territory thereof, or of the common law). **Section 1542 provides:**

**“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 settlement with the debtor.”**

#### **IV. REASONS FOR SETTLEMENT**

Plaintiffs’ counsel believes that the provision of the class benefits adequately compensates Settlement Class Members for the harm they allegedly suffered, in light of the risks of litigation. There are numerous risks in continuing with this Litigation, including the possibility of being unable to: (1) certify a class of purchasers for purposes of litigation; (2) demonstrate wrongful conduct on the part of Millennium; and (3) secure monetary relief on behalf of the Settlement Class. In particular, there may be difficulties in showing that Millennium’s health benefit representations constitute more than “puffery,” or that the health benefit representations are false or misleading. Given the risks associated with this litigation, Plaintiffs’ counsel believes this recovery is fair, reasonable, and adequate.

#### **V. RIGHT TO OBJECT, SEEK TO INTERVENE, OR OPT-OUT**

Any Settlement Class Members who object to the settlement and who have not excluded themselves from the settlement may file written objections with the Court. You may file these objections on your own or do so through counsel retained at your own expense. **Any such objections must be filed with the clerk of the Court and served on Plaintiffs’ counsel and Millennium’s counsel, at the addresses set out below on or before [65 days after the issuance of Class Notice].** All objections must: (1) state the objector’s name, address and telephone number; (2) provide documents or testimony sufficient to establish membership in the Settlement Class; and (3) provide a detailed written statement of each objection asserted, including all grounds for the objection and any request to appear and be heard at the Final Approval Hearing. Objections must be filed with the Clerk of the Court, Los Angeles County Superior Court, Central Civil West, 600 South Commonwealth Ave., Los Angeles, CA 90005, with copies sent to Plaintiffs’ counsel (Michael Martinez, Esq., Martinez Charles, LLP, 1055

East Colorado Boulevard, Suite 500, Pasadena, CA 91106) and Millennium's counsel (Scott M. Voelz, Esq., O'Melveny & Myers LLP, 400 S. Hope Street, Los Angeles CA 90071).

Any Settlement Class Members who wish to intervene in the Litigation and who have not excluded themselves from the settlement may file a motion to intervene with the Court. You may file a motion to intervene on your own or do so through counsel retained at your own expense. **Any such motion to intervene must be filed with the clerk of the Court and served on Plaintiffs' counsel and Millenniums' counsel, at the addresses set out in the preceding paragraph, on or before [65 days after the issuance of Class Notice].** Any motion to intervene must state the requesting party's name, address, and telephone number, shall provide documents to establish membership in the Settlement Class, and shall provide all arguments and documents in support of the intervention request.

If you do not wish to be a member of the Settlement Class, you must exclude yourself by completing the form on the Settlement Website at [www.synergysettlement.com](http://www.synergysettlement.com) or mailing a written request to be excluded to [ ]. **Your request must be received (not just postmarked) no later than [65 days after the issuance of Class Notice].** The request should state your name and address. If you choose to exclude yourself from the Settlement Class, you will not be affected by the Litigation, and you will not be able to object, intervene, or otherwise participate in the settlement.

Any Settlement Class Member who fails to properly or timely file or serve any of the requested information and/or documents required to object to the settlement, request to intervene or request to be excluded, will be forever precluded from doing so.

## **VI. FINAL APPROVAL HEARING**

The proposed Agreement is subject to Court approval. On [ ], 2012, at [ ], in Department 311 of the Los Angeles County Superior Court, Central Civil West, 600 South Commonwealth Ave., Los Angeles, CA 90005, a hearing will be held on whether the proposed settlement should be approved as fair, reasonable and adequate. If you have not requested exclusion, and if you file a proper, timely written objection or request to intervene, **along with a written statement of**

**your intent to appear at the hearing**, you may appear at the hearing in person or through an attorney retained at your own expense.

## **VII. ADDITIONAL INFORMATION**

You may inspect many of the documents connected with this case on the Settlement Website at [www.synergysettlement.com](http://www.synergysettlement.com). Other papers filed in this lawsuit are available at the office of the Clerk of the Los Angeles County Superior Court, Central Civil West, 600 South Commonwealth Ave., Los Angeles, CA 90005, during its regular business hours.

**Do not call or contact the Court or Millennium concerning this notice, the settlement or the lawsuit.** If you have questions contact your own attorney, or, if you would like more information about this notice or the case, you may contact:

The Claim Administrator:  
Patch/Fernandez v. Millennium Products, Inc. Settlement  
Claim Administrator  
[address]  
[phone number]

or

Plaintiffs' Counsel:  
Michael Martinez, Esq.  
Martinez Charles LLP  
1055 East Colorado Boulevard, Suite 500  
Pasadena, CA 91106  
Telephone: (626) 240-4664  
Facsimile: (626) 240-4665



To: [Customer email address]

From: Millennium Products, Inc.

Subject: Notice of Class Action and Proposed Settlement

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You are receiving this notice because you purchased "GT's Kombucha" or "Synergy" beverages ("Beverages"), manufactured by Millennium Products, Inc. ("Millennium"). A proposed class action settlement may affect you. A hearing has been scheduled in the Los Angeles County Superior Court (the "Court") to approve the settlement. Under the settlement, you have the right to receive up to \$3 in coupons towards a future purchase of any beverage at Whole Foods Market or Walgreens in the United States, if you purchased a Beverage in the United States between October 27, 2006 and October 3, 2011. You also may choose to exclude yourself from the settlement. Alternatively, you may file written objections to the settlement and appear (or have your own attorney appear) at the court hearing, or seek to intervene in the lawsuit. If the settlement is approved and you do not exclude yourself, you give up the right to sue for the claims the settlement resolves, and you will be bound by the terms of the settlement. To learn more about or exercise any of your rights, please read below and visit [www.synergysettlement.com](http://www.synergysettlement.com).

In the lawsuits, the plaintiffs ("Plaintiffs") allege that Millennium misleadingly claimed that its kombucha tea Beverages possess incredible health benefits, when in fact Millennium lacks scientific support for such claims. For example, on its Beverage labels, Millennium claimed its Beverages supported "Digestion," "Metabolism," "Immune System," "Weight Control," "Liver Function," "Body Alkalinity," "Anti-Aging," "Cell-integrity," and "Healthy Skin." Plaintiffs allege that Millennium even claimed that kombucha played a key role in curing Millennium founder GT Dave's mother of breast cancer.

Millennium denies Plaintiffs' allegations that Millennium misrepresented the health benefits of its Beverages. Millennium contends the challenged health benefit statements are supported by competent and reliable scientific evidence, including scientific studies that show kombucha is rich in potent antioxidants that support liver function and bolster the immune system, as well as glucuronic acid and other organic acids that aid kidney function and assist in the removal of toxins from the body. Further, Millennium has received many unsolicited testimonials from consumers who have experienced the Beverages' benefits. Millennium also denies Plaintiffs' allegations that: (a) Millennium represented that kombucha played a "key role" in curing Millennium founder GT Dave's mother of breast cancer; (b) anyone has suffered damage or is entitled to relief whatsoever by reason of any alleged conduct, statement, act, or omission of Millennium; (c) Plaintiffs' claims meet the requisites for certification as a class action under California law, except for purposes of settlement; and (d) the evidence is sufficient to support a finding of liability. However, Millennium considers it desirable and in its best interests to resolve the lawsuit on the terms stated in the settlement agreement, in order to avoid further expense, inconvenience, interference with its ongoing business operations, and burdensome litigation.

The Court has not made a decision on the merits of the lawsuit.

You are a member of the settlement class if you purchased one of Millennium's Beverages in the United States between October 27, 2006 through October 3, 2011, except for the purposes of resale.

If you submit a valid claim form under penalty of perjury, you will be eligible to receive up to \$3 in coupons towards future purchases of any beverage at Whole Foods Market or Walgreens in the United States. Coupons shall be fully transferrable, expire two years from issuance, and have no cash value. Up to \$3 in coupons can be combined for any single purchase. Millennium will make available a maximum of 598,000 coupons (\$1 each) for distribution to Class Members who submit valid claims on a first-come, first-served basis. There is a limit of one claim per household. Settlement Class Members are not entitled to coupons for any Beverages purchased for which Millennium has already provided cash reimbursement or coupons pursuant to the *Gauss v. Millennium Products, Inc.* Class Action Settlement.

If the settlement is approved, Plaintiffs' counsel will apply for an award of attorneys' fees and costs not to exceed \$390,000 for their class action claims, and Plaintiffs will apply for incentive awards of \$1,000 each, to be paid separately from and in addition to the relief available to settlement class members.

All claims of settlement class members which were or could have been asserted in the litigation based upon the facts alleged in the litigation will be released. This release will be limited to claims concerning the health benefits, detriments, nutritional content/labeling, alcohol content, effects, or risks associated with the consumption of Millennium's Beverages. This means that if you do not exclude yourself from the settlement class, you will give up the right to sue for the claims that the settlement resolves, and you will be bound by the terms of the settlement.

You need not take any action unless you wish to make a claim, exclude yourself, object to the settlement, or intervene in the lawsuit. If you wish to make a claim, please visit [www.synergysettlement.com](http://www.synergysettlement.com) or request a claim form by mail from the Claims Administrator at [insert]. Claim forms must be submitted either (1) electronically at [www.synergysettlement.com](http://www.synergysettlement.com) or (2) in paper form via first-class mail to [address]. Online claim forms must be submitted by [75 days after the issuance of Class Notice], and printed claim forms must be received (not just postmarked) by the same date. All claim forms must comply with the instructions set forth in the Long Form Notice at [www.synergysettlement.com](http://www.synergysettlement.com).

If you wish to exclude yourself from the settlement class, you must submit a request for exclusion at [www.synergysettlement.com](http://www.synergysettlement.com) or by mail to the Claim Administrator at [insert]. If you exclude yourself, you will not receive the benefits of the settlement, and you cannot object to the settlement or seek to intervene in the lawsuit.

If you wish to object to the settlement or appear (or have your own attorney appear) at the hearing, you must file your objection with the Court and serve it on the parties' counsel as follows: Michael Martinez, Martinez Charles LLP, 1055 East Colorado Boulevard, Suite 500,

Pasadena, CA 91106 (counsel for Plaintiffs); and Scott M. Voelz, O'Melveny & Myers LLP, 400 South Hope Street, Los Angeles, CA 90071 (counsel for Millennium).

If you wish to intervene in the lawsuit, you must file a motion to intervene on your own or do so through counsel retained at your own expense. Any such motion to intervene must be filed with the clerk of the Court and served on Plaintiffs' counsel and Millennium's counsel, at the addresses set out in the preceding paragraph.

All objections, requests for exclusion, and requests to intervene must be received (not just postmarked) by [65 days after the issuance of Class Notice], and must comply with the instructions set forth in the Long Form Notice at [www.synergysettlement.com](http://www.synergysettlement.com).

**DO NOT CONTACT THE COURT OR MILLENNIUM CONCERNING THIS NOTICE OR THIS LAWSUIT.** If you would like more information about this notice or this case, please visit [www.synergysettlement.com](http://www.synergysettlement.com). If you do not have internet access, you may request additional information from the Claim Administrator or counsel for Plaintiff, at the addresses set forth above, or by calling [insert interactive voice response number].



1 Robert S. Green (State Bar No. 136183)  
Nicole D. Reynolds (State Bar No. 246255)  
2 **GREEN WELLING, P.C.**  
595 Market Street, Suite 2750  
3 San Francisco, CA 94105  
Telephone: (415) 477-6700  
4 Facsimile: (415) 477-6710

5 Patricio T.D. Barrera (State Bar No. 149696)  
**BARRERA & ASSOCIATES, APC**  
6 1500 Rosecrans Avenue, Suite 500  
Manhattan Beach, CA 90266  
7 Telephone: (310) 802-1500  
Facsimile: (310) 802-0500

8 Michael Martinez (State Bar No. 188084)  
9 **MARTINEZ CHARLES LLP**  
1055 East Colorado Boulevard, Suite 500  
10 Pasadena, CA 91106  
Telephone: (626) 240-4664  
11 Facsimile: (626) 240-4665

12 Attorneys for Plaintiff and Proposed Class

13  
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **COUNTY OF LOS ANGELES**

16  
17 GRETCHEN PATCH, et al.,

18 Plaintiff,

19 vs.

20 MILLENNIUM PRODUCTS, INC.,

21 Defendant.

22  
23 SUZANNE FERNANDEZ, et al.,

24 Plaintiff,

25 vs.

26 MILLENNIUM PRODUCTS, INC.,

27 Defendant.

Lead Case No.: BC448347  
Related to Case No.: BC448920

**[PROPOSED] ORDER**  
**CONDITIONALLY CERTIFYING**  
**A SETTLEMENT CLASS**

1           WHEREAS, plaintiffs Suzanne Fernandez and Gretchen Patch (collectively,  
2 “Plaintiffs”) and defendant Millennium Products, Inc. (“Millennium” or “Defendant”) have  
3 entered into a Settlement Agreement (“Agreement”) with respect to this Matter;

4           WHEREAS, this Court has reviewed the Agreement; and

5           GOOD CAUSE APPEARING AND SOLELY FOR THE PURPOSES OF  
6 SETTLEMENT IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE  
7 AGREEMENT, THE COURT FINDS AND ORDERS AS FOLLOWS:

8           1.       The Court hereby certifies the following Plaintiff Settlement Class: **All persons**  
9 **who, from October 27, 2006 through October 3, 2011, purchased one of Millennium**  
10 **Products, Inc.’s “GT’s Kombucha” or “Synergy” beverages (the “Beverages”) in the**  
11 **United States, except for the purposes of resale.** The Settlement Class also excludes the  
12 Honorable Emilie H. Elias, the Honorable Peter D. Lichtman (Ret.), the Honorable John S.  
13 Wiley, Jr., and any member of their immediate families; any government entity; Defendant; any  
14 entity in which Defendant has a controlling interest; any of Defendant’s subsidiaries, parents,  
15 affiliates, officers, directors, employees, legal representatives, heirs, successors, or assigns; any  
16 persons who timely opts out of the Settlement Class; and all persons who purchased the  
17 Beverages for purposes of resale.

18           2.       Capitalized terms not defined herein shall have the meanings assigned to them in  
19 the Agreement.

20           3.       For settlement purposes only, the Court finds:

- 21           a.       The above-described Settlement Class is sufficiently numerous such that  
22 joinder of all members would be impracticable. For purposes of  
23 settlement, Defendant does not contest that there were over fifty million  
24 bottles of Defendant’s Beverages sold during the class period.
- 25           b.       There are questions of law or fact common to the above-described  
26 Settlement Class that predominate, at least for purposes of settlement. In  
27 particular, Plaintiffs allege Defendant made misrepresentations to  
28 Settlement Class Members regarding the health benefits of the Beverages.

1 c. The claims advanced by the Representative Plaintiffs are typical of the  
2 claims of the above-described Settlement Class. In particular, Plaintiffs  
3 allege they would not have purchased the Beverages had they known  
4 there was no guarantee they would receive the health benefits mentioned  
5 on the product label.

6 4. The Representative Plaintiffs have fairly and adequately protected the interests of  
7 the above-described Settlement Class throughout the proceedings in this action, and they are  
8 conditionally appointed as class representatives of the above-described Settlement Class for  
9 purposes of implementing the settlement described in the Agreement. There appear to be no  
10 conflicts of interest between Plaintiffs and the Class for purposes of effectuating this settlement.

11 5. The following law firms are conditionally appointed as counsel for the above-  
12 described Settlement Class: Green Welling, PC; Barrera & Associates, APC; Martinez Charles,  
13 LLP; Levin Simes Kaiser Gornick, LLP; Bailey Perrin Bailey; and Hughes Ellzey, LLP;  
14 (collectively, "Class Counsel"). Class Counsel has been appointed class counsel in other similar  
15 consumer class actions.

16 6. Certification of the above-described Settlement Class by the Court in this matter  
17 is superior to other available methods for the fair and efficient adjudication of this Litigation.

18 7. Notice of the pendency of this case and the proposed settlement shall be provided  
19 to the above-described Settlement Class as specified in this Court's Order Granting Preliminary  
20 Approval of Class Action Settlement, filed herewith. Any Settlement Class Member may elect  
21 not to be a part of the Settlement Class and not to be bound by the Agreement or to object to the  
22 Agreement, as set forth in the Summary Published Notice, the Summary Email Notice, and the  
23 Long Form Notice.

24 8. In the event the Agreement terminates pursuant to its terms or for any reason, the  
25 Representative Plaintiffs shall cease to function as a Representative Plaintiffs of the Settlement  
26 Class, and the case shall revert to its status as existed immediately prior to the execution of the  
27 Agreement. Nothing in this Order is, or may be construed as, an admission or concession by or  
28 against any of the parties on any point of fact or law, including the appropriateness of class

1 certification in the absence of settlement or Defendant's liability to Plaintiff, the Settlement  
2 Class, or any members thereof.

3  
4 **IT IS SO ORDERED.**

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6  
7 DATED: \_\_\_\_\_, 2012

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8 Hon. John Shepard Wiley  
9 Judge of the Superior Court  
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12 Attorneys for Plaintiff and Proposed Class

13  
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **COUNTY OF LOS ANGELES**

16  
17 **GRETCHEN PATCH, et al.,**

18 Plaintiff,

19 vs.

20 **MILLENNIUM PRODUCTS, INC.,**

21 Defendant.

22  
23 **SUZANNE FERNANDEZ, et al.,**

24 Plaintiff,

25 vs.

26 **MILLENNIUM PRODUCTS, INC.,**

27 Defendant.

Lead Case No.: BC448347  
Related to Case No.: BC448920

**[PROPOSED] ORDER  
GRANTING PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

1 Plaintiffs Suzanne Fernandez and Gretchen Patch (collectively, "Plaintiffs"), having  
2 filed a motion for an order preliminarily approving the Settlement Agreement ("Agreement")  
3 entered into between Plaintiffs and defendant Millennium Products, Inc. ("Millennium");  
4 Millennium having filed papers in support of that motion; the said motion having come on for  
5 hearing before the above-entitled Court; the Court having reviewed and considered all  
6 documents, evidence and arguments of counsel presented in support of said motion; the Court  
7 being fully advised of the premises and good cause appearing therefor, the Court enters its order  
8 and, subject to final determination by the Court as to the fairness, reasonableness and adequacy  
9 of the settlement, finds and orders as follows:

10 1. The Court has conducted a preliminary assessment of the fairness,  
11 reasonableness, and adequacy of the Agreement and the settlement set forth therein, and hereby  
12 finds that the settlement falls within the range of reasonableness meriting possible final  
13 approval. The Agreement and settlement are therefore preliminarily approved as fair,  
14 reasonable, and adequate.

15 2. The Court finds that the manner and content of the notice specified in the  
16 Agreement and the Summary Published Notice, Long Form Notice and Summary Email Notice  
17 (Exhibits C, D, and E thereto) (together, the "Class Notice") will provide the best practicable  
18 notice to members of the Settlement Class, as defined in Section 2.32 of the Agreement.  
19 Accordingly, the parties shall provide notice by publication in *USA Today* of the Summary  
20 Published Notice, each in the form of one sixth-page ad, on Tuesday, Wednesday or Thursday,  
21 once per week for two successive weeks, commencing not later than thirty (30) days following  
22 Preliminary Approval. The notice to be published shall substantially resemble the Summary  
23 Published Notice attached hereto as Exhibit C. The parties shall also provide notice of the  
24 proposed settlement by: (1) providing a Long Form Notice in substantially the form of Exhibit  
25 D to the Agreement via posting on the website at [www.synergysettlement.com](http://www.synergysettlement.com) to which the  
26 notices refer; (2) posting a link to [www.synergysettlement.com](http://www.synergysettlement.com) on the home page of  
27 Millennium's website at [www.synergydrinks.com](http://www.synergydrinks.com) and on its Facebook page at  
28 [www.facebook/GTsSynergyKombucha](http://www.facebook/GTsSynergyKombucha); (3) sending a Summary Email Notice in substantially

1 the form of Exhibit E via electronic mail to all identifiable Settlement Class Members for whom  
2 Millennium has an email address; and (4) sending a Long Form Notice in substantially the same  
3 form as Exhibit D by first class mail to all identifiable Settlement Class Members for whom  
4 Millennium has a mailing address. The notice shall be provided according to the procedures  
5 and in the manner specified in Part 5 of the Agreement, and the costs and expenses of such  
6 notice shall be paid by Millennium. The Court authorizes the parties to make non-substantive  
7 revisions to the Class Notice as they may jointly deem necessary or appropriate, without the  
8 necessity of further Court action or approval.

9 3. A final approval hearing shall be held by this Court to consider and finally  
10 determine:

- 11 a. Whether the Agreement should be finally approved as fair, reasonable,  
12 and adequate;
- 13 b. The merits of any objections to the Agreement and the settlement set  
14 forth therein, or any of its terms; and
- 15 c. Whether attorneys' fees, costs and expenses should be awarded to  
16 Plaintiffs' Counsel, and whether incentive awards should be provided to  
17 Plaintiffs as provided in Section 7 of the Agreement.

18 The final approval hearing described in this paragraph may be postponed, adjourned, or  
19 continued by order of the Court without further notice to the Settlement Class.

20 4. Any member of the Settlement Class who does not request exclusion, and who  
21 objects to approval of the proposed settlement in compliance with the requirements of the  
22 Agreement, may appear at the final approval hearing in person or through counsel to show cause  
23 why the proposed settlement should not be approved as fair, reasonable, and adequate. Any  
24 member of the Settlement Class who does not request exclusion, and who seeks to intervene in  
25 the Action in compliance with the requirements of the Agreement, may file and serve a motion  
26 to intervene in accordance with applicable law.

27 5. However, no person (other than representatives of the named parties) may be  
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1 heard at the final approval hearing, or file papers or briefs, unless on or before the date set forth  
2 in the Class Notice, such person files with the Clerk of the Court and serves on Plaintiffs'  
3 Counsel and Millennium's Counsel a timely written objection and notice of intent to appear, in  
4 accordance with the procedures specified in the Class Notice. Any member of the Settlement  
5 Class who does not timely make his or her objection to the settlement or request for intervention  
6 in the manner provided herein and in the Agreement and in compliance with applicable law,  
7 shall be deemed to have waived such objection or right to intervene for purposes of appeal,  
8 collateral attack or otherwise.

9         6. The publication and dissemination of the Class Notice, as directed by this Order,  
10 constitutes the best notice practicable under the circumstances and sufficient notice to all  
11 members of the Settlement Class. The contents of the Class Notice and the manner of its  
12 dissemination satisfy the requirements of California Rule of Court 3.769, other California law,  
13 and state and federal due process.

14         7. Any member of the Settlement Class who desires to be excluded from the  
15 Settlement Class must, by the date set forth in the Class Notice, submit an online request for  
16 exclusion or mail a written request to the addresses set forth in the Class Notice. All persons  
17 who properly submit requests for exclusion shall not be members of the Settlement Class and  
18 shall have no rights with respect to the settlement.

19         8. If the Agreement is finally approved, the Court shall enter a Final Approval  
20 Order and Judgment approving the Agreement, within the meaning of and for purposes of  
21 Section 8 of the Agreement. Said Final Approval Order and Judgment shall be fully binding  
22 with respect to all members of the Settlement Class who did not request exclusion by the date  
23 set forth in the Class Notice, in accordance with the terms of the Class Notice and the  
24 Agreement.

25         9. All discovery and other pretrial proceedings in this Action are stayed and  
26 suspended until further order of this Court, except as otherwise agreed to by the parties or as  
27 may be necessary to implement the Agreement or this Order.

28         10. In the event that the proposed settlement as provided in the Agreement is not

1 approved by the Court, or entry of a Final Approval Order and Judgment as provided in the  
2 Agreement does not occur for any reason, then the Agreement, all drafts, negotiations,  
3 discussions, and documentation relating thereto, and all orders entered by the Court in  
4 connection therewith shall become null and void, and no such drafts, negotiations, discussions,  
5 or documentation may be used for any purpose whatsoever in this or any other action(s) against  
6 Millennium, including as an admission or as evidence concerning the appropriateness of class  
7 certification or any purported liability or wrongdoing on the part of Millennium. In such event,  
8 the Agreement and all negotiations and proceedings relating thereto shall be withdrawn without  
9 prejudice to the rights of any and all parties thereto, who shall be restored to their respective  
10 positions as of the date of the execution of the Agreement.

11 11. The dates of performance of this Order are as follows:

- 12 a. The Class Notice shall be published and disseminated by newspaper  
13 publication, website posting and electronic mail in accordance with the  
14 provisions of Part 5 of the Agreement. The parties shall use their best  
15 efforts to commence such publication and dissemination within 30 days  
16 of this order.
- 17 b. Requests for exclusion must be received no later than 65 days after the  
18 issuance of Class Notice.
- 19 c. Objections to the settlement, requests for intervention, and notices of  
20 intention to appear at the final approval hearing shall be deemed timely  
21 only if filed with the Court and served on counsel for the parties no later  
22 than 65 days after the issuance of Class Notice.
- 23 d. Claims made under the settlement must be received no later than 75 days  
24 after the issuance of Class Notice.
- 25 e. Plaintiffs' Counsel shall file and serve papers requesting attorneys' fees,  
26 costs, and expenses no later than 75 days after the issuance of Class  
27 Notice.  
28

- 1 f. Plaintiffs' Counsel shall prepare and file with the Court a joint list of  
2 class members who have filed timely requests for exclusion no later than  
3 110 days after the issuance of Class Notice.
- 4 g. The Parties shall file papers, if any, in support of final approval of the  
5 settlement and responding to any objections or motions to intervene no  
6 later than 110 after the issuance of Class Notice.
- 7 h. The Claims Administrator shall certify to the Court that it has complied  
8 with the notice requirements set forth in the Agreement and this Order no  
9 later than 10 days prior to the final approval hearing.
- 10 i. The final approval hearing shall be held on \_\_\_\_\_ at  
11 \_\_\_\_\_  
12 \_\_\_\_\_

13 **IT IS SO ORDERED.**

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15  
16 DATED: \_\_\_\_\_, 2012

\_\_\_\_\_  
17 Hon. John Shepard Wiley  
18 Judge of the Superior Court  
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