

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("**Agreement**") is entered into by and among plaintiffs Joanne Levine ("**Levine**"), Steven Burda ("**Burda**"), and Nancy Harmon ("**Harmon**") (collectively "**Plaintiffs**"); defendants Phillip C. McGraw ("**McGraw**") and CSA Nutraceuticals, GP, LLC ("**CSAN**") (collectively "**Defendants**"); and Alticor Inc. ("**Alticor**"), and is subject to preliminary and final approval by the Court. The Agreement is intended to fully, finally and forever resolve, discharge and settle the Released Claims (as defined below) upon and subject to the terms and conditions hereof.

RECITALS

A. WHEREAS:

(1) Plaintiffs filed their initial Class Action and Representative Action Complaint ("**Complaint**") in *Joanne Levine, et.al. v. Dr. Philip C. McGraw, et.al.*, Los Angeles Superior Court Case No.BC312830 (the "**Action**") on March 26, 2004 and served Defendants in April 2004. Plaintiffs alleged claims for misrepresentation in the sale of "Shape Up!" supplements under: (1) the Unfair Competition Law, Bus. & Prof. Code § 17200 et seq. ("**UCL**"); (2) the Consumers Legal Remedies Act, Civ. Code § 1750 et seq. ("**CLRA**"); and (3) the False Advertising Act, Bus. & Prof. Code § 17500 et seq. ("**FAL**"). Plaintiffs filed an Amendment to the Complaint on May 17, 2004 pursuant to Section 1782(d) of the CLRA. On June 21, 2004, Plaintiffs and Defendants filed a joint designation of the Action as a complex case pursuant to the California Rules of Court and on June 23, 2004, the Court designated the Action "complex." Defendants served Answers to the Complaint on September 13, 2004. On August 19, 2004, the date of the Initial Status Conference, the Court set a schedule for briefing legal issues relating

to the propriety of nationwide class certification. Plaintiffs and Defendants prepared briefs totaling over 100 pages regarding nationwide class certification and filed them between September 24 and December 7, 2004.

(2) Plaintiffs served Defendants with discovery demands in April and August 2004 and July 2005 and served additional discovery demands on CSAN in October 2005. The Court issued orders in connection with contested hearings regarding this discovery in September and October 2004 and November and December 2005. The Court entered a Stipulation and Protective Order Re Confidential Information in November 2004. Additional discovery motions relating to discovery demands on Defendants were pending at the time of the preliminary settlement by Plaintiffs, Defendants and Alticor. By May 2006, Defendants had produced more than twenty thousand documents and had served more than fifty substantive responses to interrogatories. Defendants served discovery demands on Plaintiffs in September 2004, which were the subject of discovery hearings in October 2004 and September 2005. Plaintiffs served their responses and produced documents in response to the discovery demands between December 2004 and June 2005. Plaintiffs were served with additional discovery demands in November 2005, which were withdrawn after objections by Plaintiffs.

(3) In July 2005, without resolving the dispute between Plaintiffs and Defendants as to whether the then-pending Complaint included class claims on behalf of consumers of any Shape Up! Products other than "Apple Body Type Supplement," "Pear Body Type Supplement," and the "Intensifier Supplement," the Court granted Plaintiffs leave to file an amended complaint. A First Amended Class Action and Representative

Complaint was filed on August 15, 2005 and an Amendment to First Amended Class and Representative Action Complaint was filed on August 17, 2005. In these pleadings, Plaintiffs individually and on behalf of all others similarly situated, asserted nationwide class action claims on behalf of all purchasers of Shape Up! Products sold and marketed by Defendants alleging claims for violation of the UCL, CLRA and FAL.

(4) On September 23, 2005, the Court heard arguments regarding the necessity for proof of causation and reliance by Plaintiffs with respect to Plaintiffs' UCL and CLRA claims, in the course of ruling on a contested discovery motion. On October 25, 2005, the Court denied Defendants' motion for judgment on the pleadings regarding Plaintiffs' nationwide class allegations.

(5) On February 25, 2005, an unsuccessful mediation was conducted before Hon. Charles W. McCoy, who had presided over the Action before his reassignment. On June 6, 2006, a mediation was conducted before the Hon. Daniel Weinstein (Ret.), which led to this Agreement.

B. WHEREAS:

(1) Defendants deny: (i) any and all allegations of wrongdoing, fault, liability or damages whatsoever; (ii) that they engaged in wrongdoing; (iii) that they committed any violation of law; and (iv) that they acted improperly in any way. To the contrary, Defendants believe and assert that they acted properly and in good faith at all relevant times. Defendants have denied and continue to deny each and all of the claims and contentions alleged by Plaintiffs in the Action. Defendants deny, *inter alia*, that Plaintiffs or the Settlement Class have suffered any damage and deny that either the Plaintiffs or the Settlement Class were harmed by the conduct alleged in the Action.

Defendants enter into this Agreement without in any way acknowledging any fault, liability, or wrongdoing of any kind. Defendants nonetheless have concluded that it is in their best interests that the Action be settled on the terms and conditions set forth herein in light of the expense that would be necessary to defend the Action, the benefits of disposing of protracted and complex litigation, and the desire of Defendants to conduct their business unhampered by the distractions of continued litigation.

(2) Plaintiffs' Counsel believes that the claims asserted in the Action have merit. However, Plaintiffs' Counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Action against Defendants through trial and/or appeals. Plaintiffs' Counsel also have taken into account the uncertain outcome and the risk of any litigation, especially in complex matters such as the Action, as well as the difficulties and delays inherent in such litigation. Plaintiffs' Counsel are also mindful of the inherent problems of proof under, and the possible defenses to, the violations asserted in the Action. Plaintiffs' Counsel believe that the Settlement set forth in this Agreement is a good result for Plaintiffs and the Settlement Class. Based on their evaluation, Plaintiffs' Counsel have determined that the Settlement set forth in this Agreement is in the best interests of Plaintiffs and the Settlement Class.

C. **NOW THEREFORE**, without any admission or concession on the part of Plaintiffs of any lack of merit of the Action whatsoever, and without any admission or concession by Defendants of any liability or wrongdoing, or lack of merit in any defenses, it is hereby STIPULATED AND AGREED, by and among the Parties to the Agreement subject to approval of the Court, in consideration of the mutual benefits of the Agreement, that all Released Claims (as defined below) as against the Released Parties

(as defined below) shall be compromised, settled, released and dismissed with prejudice, fully, finally and forever, upon and subject to the following terms and conditions:

DEFINITIONS

1. As used in this Agreement and the related documents attached hereto as exhibits, the following terms shall have the meanings set forth below:

(a) "**Action**" means the civil action entitled *Joanne Levine, et.al. v. Dr. Philip C. McGraw, et.al.*, Los Angeles Superior Court Case No. BC312830.

(b) "**Affiliates**" means, with respect to the Releases in **Section 12**, each entity, including divisions, partnerships and other unincorporated business ventures, that controls, is controlled by, or is under common control with, the identified Party to the Agreement. The term "**control**," as used herein including in the terms "controlled by" and "under common control with," means the power to direct or cause the direction of management and policies.

(c) "**Approved Claim**" means a Claim

(i) consisting of a fully completed Claim Form supported by such documents, if any, as are designated therein, or such other documents or proof as the Claims Administrator, in its discretion (subject to review by the Court) may deem acceptable; and

(ii) including a certification under penalty of perjury of the laws of the United States of America and the State of California that the information on the Claim Form is correct, that the Claimant has not previously received a refund for the purchases of Shape Up! Product, and that the Claimant waives any further right to make any claim regarding Shape Up! products; and

(iii) postmarked and mailed to the Claims Administrator on or before (i) the date specified in the Preliminary Approval Order; or, (ii) in the instance of a resubmitted Claim Form following notice from the Claims Administrator that a timely postmarked and mailed Claim Form contained curable deficiencies, on or before such later date as is permitted with respect to the resubmitted Claim Form under **Section 7(c)**.

(d) "**Approved Claimant**" means a Settling Class Member and Purchaser of Supplements determined by the Court (pursuant to the determination by the Claims Administrator and/or the procedure set forth in **Section 7(d)**) to have submitted an Approved Claim.

(e) "**Attorneys' Fee and Expense Application**" means the written motion(s) or application(s), including both the initial motion or application and any supplemental motion or application by which Class Counsel requests that the Court award them fees and/or expenses plus interest on such fees and expenses at the same rate earned by the Gross Fund.

(f) "**Attorneys' Fee Award**" shall have the meaning set forth in **Section 11(a)**.

(g) "**Bars and Shakes**" means any Shape Up! Product other than Supplements, such as "Complete Nutrition Shakes" (consisting of shake mixes and ready-to-drink shakes), and "Complete Nutrition Bars."

(h) "**Claimant**" means a Person submitting a Claim Form and any supporting documents or proof ("**Claim**").

(i) "**Claims Administrator**" means The Garden City Group, Inc. The Parties to this Agreement shall request that the Court approve the selection of The Garden

City Group, Inc. in the Preliminary Approval Order to perform the functions assigned to the Claims Administrator by this Agreement.

(j) "**Claim Form**" means a claim form that is substantially in the form of **Exhibit 3** to the Preliminary Approval Order.

(k) "**Class Representatives**" and "**Plaintiffs**" mean Levine, Burda and Harmon.

(l) "**Contributed Product**" means Nutrilite® Daily Multivitamin Multimineral, six-month supply, with a suggested retail price as of May 5, 2006 of \$41.60, or in the event that Nutrilite® Daily Multivitamin Multimineral, six-month supply, is no longer being sold at wholesale at the time of any deliveries referred to in **Section 6(b)**, the most similar Nutrilite product then available, as agreed among the Parties to the Agreement or ordered by the Court. For determining the quantity of Contributed Product for purposes of **Sections 2(a), 2(d), 2(e) and 6(b)**, Nutrilite® Daily Multivitamin Multimineral, six-month supply, shall be valued at \$39.60 per six-month supply, which is approximately five percent (5%) less than its May 5, 2006 suggested retail price of \$41.60. (The \$6.0 million of Nutrilite® Daily Multivitamin Multimineral, six-month supply, valued at \$39.60, amounts to 151,515 bottles of the Contributed Product.) In the event of substitution of the most similar Nutrilite product, the quantity of Contributed Product for purposes of **Sections 2(a), 2(d), 2(e) and 6(b)** shall be valued at approximately ninety-five percent (95%) of its suggested retail price at or about the Effective Date, as determined by agreement of the Parties or order of the Court.

(m) "**Counsel for Alticor**" means Brinks Hofer Gilson & Lione.

(n) "**Counsel for CSAN**" means Hirschmann & Barmann LLP.

(o) "**Counsel for McGraw**" means Munger, Tolles & Olson, LLP.

(p) "**Court**" means the Superior Court of the State of California for the County of Los Angeles,

(q) "**Defendants**" means McGraw and CSAN.

(r) "**Effective Date**" means the date on or after which all the following conditions have occurred: (1) the Court has entered the Preliminary Approval Order; (2) the Court has signed the Order and Judgment; and (3) the Order and Judgment has become Final; and (4) fewer than five thousand (5,000) of the members of the Settlement Class have submitted a Valid Request for Exclusion, except that if this condition is not met, Defendants and Alticor shall have at all times thereafter the option to give written notice to Class Counsel waiving this condition and stating that Defendants and Alticor intend to proceed with the Settlement as set forth in this Agreement.

(s) "**Final**" means with respect to any Court order or judgment, including the Order and Judgment, the latest of: (i) the expiration of the time for noticing of any appeal or motion for reconsideration; (ii) the date of final affirmance of any appeals therefrom, including reargument of such appeals; or (iii) the expiration of the time for petitions for review or reconsideration, and, if review or reconsideration is granted, the date of final affirmance following review or reconsideration of the final dismissal of any appeals or proceedings for review.

(t) "**Final Approval Hearing**" shall have the meaning set forth in **Section 9(c)**.

(u) "**Fund**" means the Gross and Net Fund without regard to the distinction between them.

(v) "**Gross Fund**" shall have the meaning set forth in **Section 2(a)**.

(w) "**Joint Statement**" shall have the meaning set forth in **Section 13(a)**.

(x) "**Long Notice**" means the notice essentially in the form attached as **Exhibit 2** to Preliminary Approval Order.

(y) "**Net Fund**" shall have the meaning set forth in **Section 2(c)**.

(z) "**Order and Judgment**" means the order identical in all material respects to the form attached hereto as Exhibit B.

(aa) "**Party to the Agreement**" or "**Parties to the Agreement**" means Levine, Burda, Harmon, McGraw, CSAN and/or Alticor.

(bb) "**Person**" or "**Persons**" means any natural person, firm, corporation, unincorporated association, partnership or other form of legal entity or government body, including its agents and representatives.

(cc) "**Plaintiffs' Counsel**" and "**Class Counsel**" mean: (i) The Rossbacher Firm, (ii) Wilentz, Goldman & Spitzer, P.A., and (iii) Shepherd Finkelman, Miller & Shah, LLC.

(dd) "**Plaintiffs' Incentive Award**" shall have the meaning set forth in **Section 11(b)**.

(ee) "**Preliminary Approval Order**" means the order, identical in all material respects to the form of **Exhibit A** hereto. The Preliminary Approval Order shall include provisions: (1) preliminarily certifying the Settlement Class for Settlement purposes only; (2) preliminarily approving Plaintiffs as Class Representatives, (3) preliminarily approving the Agreement and finding the Settlement sufficiently fair, reasonable and adequate to allow notice of the Settlement to the Settlement Class; (4)

approving the form of the Summary Notice and Long Notice; (5) setting a schedule for final approval of the Settlement; and (6) providing that, pending entry of the Order and Judgment, all proceedings in the Action are stayed other than proceedings relating to the Settlement.

(ff) "**Purchaser of Bars and Shakes**" means a Settling Class Member with respect to his/her/its purchase of Bars and Shakes.

(gg) "**Purchaser of Supplements**" means a Settling Class Member who has purchased Supplements.

(hh) "**Released Claims**" means and includes all claims, known or unknown, rights, demands, actions, causes of action, suits, debts, liens, contracts, liabilities, agreements, costs, expenses, losses, attorneys' fees and costs of suit based on, arising from or in any way related to the claims, facts, acts or circumstances regarding or relating in any way to the Shape Up! Products and/or the development, formulation, manufacture, assembly, packaging, production, distribution, marketing, advertising, promotion and/or sale of the Shape Up! Products which have been alleged or which could have been alleged in the Action by the Plaintiffs, by the Settlement Class and/or by any member of the Settling Class, whether at law, in equity or under any statute or regulation.

(ii) "**Released Persons**" means: (a) (1) Phillip C. McGraw; the Dr. Phil Foundation; and Affiliates of McGraw; (2) CSAN, CSA IP Holdings, Inc.; CSA Nutraceuticals, LP; CSA Interactive, LP; Consolidated Synergy Associates, Ltd; CSA Interactive GP, LLC; Advent Associates, LLC; Courtroom Sciences, Inc.; CSAN Holdings, LP; CSA Nutraceuticals, LLC; Gary Dobbs; Brent Dobbs; Kenneth Kelly; and Affiliates of CSAN, (3) Alticor Inc.; Quixtar Inc.; Amway Corporation; Access Business

Group; and Affiliates of Alticor, and (4) all stores or other entities that sold any Shape Up! Product to any member of the Settlement Class and all distributors, wholesalers, retailers, advertiser and publicists involved in the sale of any Shape Up! Product (b) all past and present officers, directors, agents, attorneys, employees, stockholders, members and/or partners of LLCs and LPs of any of the Persons listed in subsection (a) above; and (c) all of predecessors, successors, assigns, heirs and legal representatives of any of the Persons listed in subsection(s) (a) and (b).

(jj) "**Request for Exclusion**" means a request for exclusion from the Settlement Class.

(kk) "**Settlement**" means the settlement contemplated by this Agreement.

(ll) "**Settlement Amount**" means the \$4.5 million cash and \$6.0 million in Contributed Product as set forth in **Section 2(a)**.

(mm) "**Settlement Class**" means the class certified for Settlement purposes only consisting of all Persons who purchased Shape Up! Products within the United States of America on or before July 1, 2006, exclusive of: McGraw; CSAN; Alticor; any entity in which McGraw, CSAN and Alticor has a controlling interest; CSAN's and Alticor's directors, officers, partners, members and employees; McGraw's, CSAN's and Alticor's legal representatives, successors and assigns.

(nn) "**Settling Class Member**" means every member of the Settlement Class who does not submit a Valid Request for Exclusion.

(oo) "**Shape Up! Product**" means any and all products sold using the name "Shape Up!" including without limitation the "Apple Body Type Supplement," "Pear Body Type Supplement," "Intensifier Supplement," " Complete Nutrition Shakes"

(consisting of shake mixes and ready-to-drink shakes), and "Complete Nutrition Bars."

(pp) "**Summary Notice**" means the notice essentially in the form attached hereto as **Exhibit 1 to the Preliminary Approval Order**.

(qq) "**Supplements**" means the Shape Up! "Apple Body Type Supplement," "Pear Body Type Supplement" and the "Intensifier Supplement."

(rr) "**Taxes**" means: (i) taxes on the income of the Gross Fund and (ii) expenses and costs incurred in connection with the taxation of the Gross Fund including, without limitation, expenses of tax attorneys and accountants.

(ss) "**Termination Notice**" shall have the meaning set forth in **Section 10(a)**.

(tt) "**Valid Request for Exclusion**" shall have the meaning set forth in **Section 5(a)**.

CONSIDERATION TO SETTLING CLASS MEMBERS

2. (a) Defendants shall establish a fluid recovery fund consisting of the Settlement Amount (that is \$4.5 million cash and \$6.0 million in Contributed Product) for the benefit of Class Representatives and the Settling Class Members, as further set forth in **Section 6**. Alticor shall provide the full Settlement Amount on behalf of Defendants pursuant to prior agreement(s). McGraw will have no personal obligation to provide any part of the Settlement Amount. The Settlement Amount and any interest earned thereon shall constitute the "**Gross Fund**."

(b) Defendants and Alticor disclaim upon deposit of the cash and delivery of the Contributed Product as set forth in **Section 6** all dominion, control and legal and

equitable title to the Gross Fund and shall make no claim to or demand for the return of the cash and product in the Fund, directly or indirectly, through counsel or otherwise, except pursuant to **Section 10**. In the event of bankruptcy of either Alticor and/or either of the Defendants, the cash and product in the Gross Fund are not part of the debtor's estate, nor does the estate have any claim or interest therein, except pursuant to **Section 10**.

(c) The cash component of the Gross Fund, net of Taxes, shall be used, as provided for in this Agreement and after express orders of the Court, for: (i) payment of all administrative costs of the Settlement, including without limitation costs of notice to the Settlement Class, review of Claims and Requests for Exclusion, and distribution of the Net Fund; (ii) payment of the Attorneys' Fee Award; and (iii) payment of Plaintiffs' Incentive Award. The total of payments (i), (ii) and (iii) shall not exceed (but may be less than) the cash component of the Gross Fund, net of Taxes. The balance of the Gross Fund net of Taxes and payments (i), (ii) and (iii) set forth in this **Section 2(c)**, (including any cash remaining) shall be the "**Net Fund**."

(d) The Net Fund will be allocated such that: (i) Contributed Product valued at \$500,000 shall be used for the benefit of Purchasers of Bars and Shakes; and (ii) the balance of the Net Fund (both cash and Contributed Product) shall be used for the benefit of Purchasers of Supplements.

(e) The sole benefit for Purchasers of Bars and Shakes shall be a donation of Contributed Product (valued at \$500,000) which shall be distributed for use as *cy pres* relief in accordance with Section 384 of the Code of Civil Procedure to eligible IRC §501(c)(3) organization(s) to be selected by Defendant CSAN, subject to the approval of

Plaintiffs (which shall not be unreasonably withheld) and of the Court. Absent agreement of CSAN and Plaintiffs, the Court shall determine whether Plaintiffs' approval was unreasonably withheld and shall select the eligible organizations. Settling Class Members shall not be entitled to submit a Claim Form or receive a distribution from the Fund of either cash or Contributed Product as a result of any purchase of Bars and Shakes.

(f) The benefit for Purchasers of Supplements (in the allocated amount set forth in **Section 2(d)**) shall be as set forth in the following sub-parts (i) and (ii).

(i) For each box of Supplements purchased, up to a maximum of four boxes, each Approved Claimant will be entitled to a distribution from the Net Fund of either: (i) two (2) bottles of Nutrilite® Daily Multivitamin Multimineral, six-month supply, with a total suggested retail price as of May 5, 2006 of \$83.20 for the two bottles; or (ii) \$12.50 in cash. In the event of substitution of another Nutrilite product pursuant to **Section 1(I)**, for each box of Supplements purchased, up to a maximum of four boxes, each Approved Claimant will be entitled to a distribution from the Net Fund of either: (i) Contributed Product with a total suggested retail price at or about the time of distribution of approximately \$83.20, as further ordered by the Court; or (ii) \$12.50 in cash. An Approved Claimant may only request a distribution exclusively in cash or exclusively in Contributed Product, and may not request a distribution split between cash and Contributed Product. Notwithstanding anything to the contrary in this **Section 2(f)(i)**, the total distributions of cash or Contributed Product to Approved Claimants shall not exceed the respective total cash and Contributed Product in

the portion of the Net Fund allocated to Purchasers of Supplements: Said distributions may accordingly be equitably reduced *pro rata* or otherwise, as necessary, pursuant to recommendations from Plaintiffs' Counsel and an order of the Court and without further notice to the Settlement Class.

(ii) Any cash and/or Contributed Product remaining in the portion of the Net Fund allocable to Purchasers of Supplements after all distributions to Approved Claimants have been completed shall be distributed for use as *cy pres* relief in accordance with Section 384 of the Code of Civil Procedure. The *cy pres* relief set forth in this **Section 2(f)(ii)** shall be distributed, pursuant to a court-approved plan of distribution, to eligible IRC Section 501(c)(3) organizations. Plaintiffs and CSAN shall confer about the Section 501(c)(3) organizations to recommend to the Court to receive the *cy pres* relief set forth in this **Section 2(f)(ii)**. In the event Plaintiffs and CSAN do not agree, they shall submit the names of eligible organizations to the Court and the Court will determine which organizations will receive the *cy pres* relief set forth in this **Section 2(f)(ii)**, and in what amounts. The *cy pres* recipients selected by the Court pursuant to this **Section 2(f)(ii)** may be the same as those selected pursuant to **Section 2(e)**.

(g) Except for the obligation of Alticor to provide the Settlement Amount pursuant to **Section 2(a)**, Alticor and Defendants shall have no obligation to pay or any liability whatsoever with respect to Taxes, administrative or other costs of the Settlement, fees and expenses of Plaintiffs' Counsel or of any Settling Class member, incentive awards, and/or relief for or on behalf of Settling Class Members.

(h) The Gross Fund is intended to be compensation for damages, and no

portion of such distribution shall be deemed a payment of any fine, penalty, or punitive assessment.

ADMINISTRATION

3. (a) The Court shall have and shall retain authority and exclusive jurisdiction over the Parties to the Agreement, the members of the Settlement Class, the Claims Administrator and the Gross and Net Fund with regard to all aspects of the Action and the Settlement (including without limitation all proceedings and all controversies relating thereto, including disputed questions of law and fact with respect to the timeliness and validity of Claims) to the fullest extent permitted by law including without limitation Section 664.6 of the California Code of Civil Procedure and Rule 1859(h) of the California Rules of Court. The Claims Administrator, each Claimant and each Person making an objection to the Settlement shall be deemed to have submitted to the exclusive jurisdiction of the Court for all purposes relating to the Settlement. Any asset of the Gross Fund and Net Fund shall be deemed to be in the custody of the Court until the asset is, pursuant to this Agreement, paid or distributed, or returned to Alticor.

(b) The Claims Administrator shall in a manner consistent with the provisions and purpose of this Agreement: (i) take dominion, control and title to the Fund upon deposit of the cash and delivery to the Claims Administrator of the Contributed Product pursuant to **Section 6**, (ii) administer notice to the Settlement Class, (iii) administer Claims, (iv) administer the Requests for Exclusion, (v) report to the Court; (vi) make reports and give notice to the Parties to the Agreement as provided herein, and (vii) pay and/or distribute the assets of the Gross and Net Fund. Plaintiffs' Counsel shall have the right to inquire of the Claims Administrator respecting any aspect of the

Settlement.

(c) Except for the obligation of Alticor to provide the Settlement Amount pursuant to **Section 2(a)**, the Released Persons shall have no responsibility for, or obligation or liability with respect to the administration of the Settlement, including without limitation class notice, determinations of the validity and timeliness of Claims and Requests for Exclusion, distributions to class members, and payments or disbursements from the Gross and Net Funds.

(d) All Taxes shall be paid out of the Gross Fund, considered a cost of the administration of the Settlement, and timely paid by the Claims Administrator without prior order of the Court.

(e) The Claims Administrator may submit its invoices on a monthly basis for payment from the Gross Fund, which invoices shall be approved by Class Counsel prior to payment from the Gross Fund.

NOTICE OF CLASS ACTION SETTLEMENT

4. (a) Notice of the Settlement to the Settlement Class shall be provided as follows:

(i) The Claims Administrator shall post copies of the Preliminary Approval Order as entered by the Court (without exhibits), the Long Notice, the Claim Form, the Agreement, and the materials attached as Exhibits 5 and 6 to the Preliminary Approval Order, and the Order and Judgment as and when entered by the Court (and nothing other than the foregoing documents) on a settlement website, www.Shapeupsettlement.com (the "**Settlement Website**") and shall operate the Settlement Website strictly and exclusively in conformity with **Paragraph 9** of the

Preliminary Approval Order. The Claims Administrator shall take down the Settlement Website on the date set forth in **Paragraph 9 of the Preliminary Approval Order**. The Claims Administrator shall also mail copies of the Long Notice and the Claim Form at no charge to members of the Settlement Class who call a toll-free number to be established by the Claims Administrator ("**Toll-Free Number**"), until the date set forth in **Paragraph 10 of the Preliminary Approval Order**.

(ii) The Claims Administrator shall publish and run the Summary Notice strictly and exclusively as provided in Paragraphs 11 and 12 of the Preliminary Approval Order. The Summary Notice shall include the address of the Settlement Website and the Toll-Free Number.

(iii) The Claims Administrator shall issue the press release attached as Exhibit 4 to the Preliminary Approval Order strictly and exclusively in accordance with the provisions of **Paragraph 13** of the Preliminary Approval Order.

(iv) Plaintiffs and the Claims Administrator shall be solely responsible for all arrangements necessary to effectuate the notices set forth above.

(b) Compliance with the notice procedures set forth in **Section 4(a)** is the best notice practicable under the circumstances and shall constitute due and sufficient notice to members of the Settlement Class of the pendency of the Action, certification of the Settlement Class, the terms of the Agreement, and the Final Approval Hearing, and shall satisfy all requirements of the California Rules of Court, the California Code of Civil Procedure, the Constitution of the State of California, the United States Constitution, and any other applicable law.

(c) The Claims Administrator shall provide all Parties to the Agreement, and shall file with the Court, a declaration attesting to compliance with the notice requirements set forth above (except with respect to the deadline to take down the Settlement Website) no later than the date specified in **Paragraph 14** of the Preliminary Approval Order.

REQUESTS FOR EXCLUSION

5. (a) "**Valid Request for Exclusion**" means a Request for Exclusion: (1) signed by a member of the Settlement Class; (2) postmarked and mailed to the Claims Administrator no later than the date specified in the Preliminary Approval Order; (3) clearly requesting exclusion from the Settlement Class; (4) containing the name, address, and telephone number of the requestor; (5) stating the approximate amount of Shape Up! Products the requestor purchased; and (6) complying with the rule against group requests set forth in the next sentence. A Request for Exclusion may not be submitted on behalf of any group or class of Persons: Rather, each Request for Exclusion must pertain to only one member of the Settlement Class and must be transmitted individually to the Claims Administrator.

(b) Upon the Effective Date, all members of the Settlement Class who have not submitted a Valid Request for Exclusion in the manner set forth in **Paragraph 17** of the Preliminary Approval Order shall be Settling Class Members and shall be bound by the terms of the Agreement and the Order and Judgment, regardless of whether or not they file an Approved Claim Form, and any such members of the Settlement Class shall be conclusively deemed to have fully and finally released the Released Parties from any and all of the Released Claims. Any member of the Settlement Class who submits a

Valid Request for Exclusion shall not be either a Settling Class Member or an Approved Claimant and shall not receive a distribution of any kind from the Net Fund.

(c) No later than the date specified in the Preliminary Approval Order, the Claims Administrator shall prepare and file with the Court, and serve on counsel for all Parties to the Agreement a report on Requests for Exclusion, including: (i) a list of each member of the Settlement Class who has submitted a Request for Exclusion; (ii) a list of each Request for Exclusion which fails to comply with any of the explicit requirements for a Valid Request for Exclusion set forth herein; and (iii) a copy of each Request for Exclusion received by the Claims Administrator.

(d) Through the time of entry of the Order and Judgment, the Claims Administrator shall provide copies of each Request for Exclusion it has received to counsel for all Parties to the Agreement within seven calendar days of the date the Claims Administrator received the Request for Exclusion.

(e) Any Party to the Agreement shall have the right, but not the obligation to file and serve within the time set forth in **Paragraph 20 of the Preliminary Approval Order**, objections to any Request for Exclusion on grounds that the Request for Exclusion is not a Valid Request for Exclusion. Before signing or entering the Order and Judgment, the Court shall rule on any such objection timely filed and served pursuant to Paragraph 20 of the Preliminary Approval Order. The failure of any Party to the Agreement to exercise its right to file and serve such an objection pursuant to Paragraph 20 of the Preliminary Approval Order shall not diminish or extinguish the right of that Party to the Agreement to: (i) enforce either Section 23 of this Agreement or condition (iv) in Section 1(r) of this Agreement; or (ii) to contend later in the Action or in any other

lawsuit or proceeding that a Request for Exclusion is not a Valid Request for Exclusion.

PROVISION OF SETTLEMENT AMOUNT

6. (a) Within ten (10) days after the Court enters the Preliminary Approval Order, the \$4.5 million cash component of the Settlement Amount shall be deposited in an interest-bearing escrow account at a financial institution to be agreed upon by the Plaintiffs and CSAN or, absent such agreement, by the Court at the hearing on the Preliminary Approval Order. The account, including interest thereon, will be maintained by the Claims Administrator.

(b) After the Effective Date, Alticor shall deliver to the Fund Contributed Product valued at \$6.0 million. Alticor shall deliver the Contributed Product upon reasonable terms and conditions at its sole expense. The delivery schedule for the Contributed Product shall be negotiated between Alticor and the Claims Administrator subject to the following: (i) Alticor will not be required to make more than four deliveries; (ii) all deliveries will be to one of the Claims Administrator's regular distribution centers or to one or more *cy pres* recipients in the continental United States; (iii) the Claims Administrator must give Alticor at least 120 days advance notice of the due date of each shipment; and (iv) the Claims Administrator shall not give notice of any shipment until after the Effective Date. In the event the Claims Administrator and Alticor cannot agree to the delivery schedule, the schedule will be determined by the Court. The Claims Administrator shall take title, possession and control of the Contributed Product upon its delivery to the Claims Administrator's distribution center. The *cy pres* recipient shall take title, possession and control of any Contributed Product upon its delivery to the *cy pres* recipient.

CLAIMS PROCESS

7. (a) The Claims Administrator shall review each Claim it receives and determine in accordance with this Agreement the extent, if any, to which each Claim is an Approved Claim, subject to review by the Court.

(b) The Claims Administrator shall, in good faith, administer the process of receiving, handling, processing and honoring claims (including Claims and Approved Claims) pursuant to this Agreement. The Claims Administrator may determine that any fraudulent, insufficient or incomplete Claim is not an Approved Claim.

(c) No later than the date set forth in **Paragraph 28 of the Preliminary Approval Order**, the Claims Administrator may mail a written notice of additional information required for the Claim to be an Approved Claim ("**Cure Notice**") directly to the Settling Class Member who submitted the Claim Form. A Settling Class Member shall have twenty-one (21) days to cure defective or incomplete Claims, which shall run from the date of mailing the Cure Notice to the Settling Class Member. The 21-day cure period may extend after the initial deadline for submission of Claim Forms so long as the original Claim Form was timely submitted. A Settling Class Member shall have only one opportunity to cure.

(d) The Claims Administrator shall notify, in a timely fashion in writing by mail, all Claimants whose Claims the Claims Administrator proposes to reject, in whole or in part, setting forth the reasons therefor, and shall indicate in such notice that the Claimant whose claim is to be rejected has the right to review by the Court in accordance with the procedures herein. If any Claimant whose claim has been rejected,

in whole or in part, desires to contest such rejection, the Claimant must postmark and mail to the Claims Administrator not more than fifteen (15) days after the date of mailing of the Claims Administrator's notice of rejection, a notice and statement of reasons indicating the Claimant's grounds for contesting the rejection along with any supporting documentation, and requesting a review thereof by the Court. If a dispute concerning a claim cannot be otherwise resolved, Plaintiffs' Counsel shall thereafter present the request for review to the Court and the Court shall determine if the Claim is an Approved Claim.

(e) The Claims Administrator shall file with the Court for approval of the Court, with notice to Class Counsel, Counsel for McGraw, Counsel for CSAN and Counsel for Alticor, no later than the date set forth in the Order and Judgment, a report presenting: (i) the Claims Administrator's administrative determinations accepting and rejecting claims; (ii) proof of its notice to Claimants of rejected claims; (iii) summaries of Claimant's objections to the Claims Administrator's rejection notices; (iv) attempts to resolve such objections by counsel for the Parties to the Agreement; and (v) copies of any unresolved challenges to the rejection notices.

(f) Any Settling Class Member who fails to submit an Approved Claim shall be forever barred from receiving any payment or other relief pursuant to this Agreement but shall in all other respects be bound by all of the terms of the Agreement including, among other things, the terms of the Order and Judgment and the releases provided for herein, and will be fully, finally and forever barred from bringing any action against the Released Parties concerning the Released Claims.

DISTRIBUTION OF NET FUND

8. The Claims Administrator shall distribute the Net Fund to Approved Claimants and to *cypres* recipients as set forth in Sections 2(f)(i) and 3(b). The Claims Administrator shall distribute the Net Fund only after the Effective Date and after: (i) all Claims have been processed, and all Claimants whose Claims have been rejected in whole or in part have been notified and provided the opportunity to be heard concerning such rejection or disallowance, pursuant to Section 7(d); (ii) the Court has entered orders resolving all requests for review with respect to all rejected or disallowed Claims and resolving all matters relating to attorneys' fees and expenses and Plaintiffs' Incentive Award; and (iii) all orders of the Court regarding rejected or disallowed claims, attorneys' fees and costs, and Plaintiffs' Incentive Award have become Final.

COURT APPROVAL OF THE AGREEMENT

9. The Parties shall use their respective best efforts to obtain Court approval of the Agreement. The process for obtaining Court approval of the Agreement shall be as follows:

(a) **Preliminary Approval.** As soon as practicable after the execution of this Agreement, Plaintiffs' Counsel and Counsel for CSAN, Counsel for McGraw and Counsel for Alticor shall jointly apply for entry of the Preliminary Approval Order.

(b) **Objections to Agreement.** Any member of the Settlement Class wishing to object to the approval of the Agreement, the Settlement, the initial part of the Attorneys' Fee and Expense Application, the application for Plaintiffs' Incentive Award, or to the Order and Judgment shall file with the Court and concurrently serve, on

the Claims Administrator a writing containing a clear and specific statement of the objection in the manner, and no later than the date, set forth in **Paragraph 22** of the Preliminary Approval Order. As soon as practicably possible after receipt of an objection, the Claims Administrator shall provide a copy of the objection and supporting papers (and the accompanying envelope or other packaging) to Class Counsel, Counsel for CSAN, Counsel for McGraw and Counsel for Alticor. Any member of the Settlement Class who fails to timely file and serve the objection in the manner provided in the Preliminary Approval Order shall be deemed to have waived such objection and forever shall be foreclosed from making any objection with respect to the Agreement, the Settlement, the Attorneys' Fee and Expense Application, Plaintiffs' application for an incentive award, or the Order and Judgment except as permitted by the Court.

(c) **Final Approval Hearing.** Commencing on the date set forth in the Preliminary Approval Order, or such later date as the Court shall order after entry of the Preliminary Approval Order, the Court shall conduct a hearing ("**Final Approval Hearing**"), at which the Court shall: (1) determine whether to grant final approval to this Agreement and to enter judgment dismissing the Action on the merits and with prejudice against the Plaintiffs and the Settling Class Members; (2) finally certify the Settlement Class; (3) rule on the initial part of the Attorneys' Fee and Expense Application; (4) rule on the application for Plaintiffs' Incentive Award; (5) consider any timely and otherwise procedurally proper objections to the Agreement, the Settlement, the Attorneys' Fee and Expense Application, and the application for Plaintiffs' Incentive Award; and (6) consider any objection then pending that a Request for Exclusion is not a Valid Request for Exclusion. Any member of the Settling Class shall have the right to appear and be

heard at the Final Approval Hearing, either personally or through an attorney retained at the member's own expense. Any such Person must postmark and mail to the Court and the Claims Administrator no later than the date set forth in the Preliminary Approval Order a written notice of intention to appear together with supporting papers including a detailed statement of the specific objections or contentions made. As soon as possible after receiving a request to appear at the Final Approval Hearing, the Claims Administrator shall provide a copy of the request (and accompanying envelope or other packaging) to Class Counsel, Counsel for McGraw, Counsel for CSAN and Counsel for Alticor.

(d) **Entry of Order and Judgment.** If the Court grants final approval to this Agreement, then the Court shall enter an Order and Judgment, substantially in the form of Exhibit B hereto, which approves the Agreement, authorizes entry of judgment, dismisses the Action with prejudice, and dismisses the claims of the Settling Class Members and Plaintiffs with prejudice.

TERMINATION OF AGREEMENT

10. (a) Plaintiffs, Alticor, CSAN, and McGraw, through their respective counsel, shall each have the right to terminate the Agreement and the Settlement by providing written notice of their election to do so ("**Termination Notice**") to all other Parties to the Agreement hereto within thirty (30) days after any of the following events: (a) the Court's declining to enter the Preliminary Approval Order in any material respect; (b) the Court's declining to approve this Agreement, including any amendment thereto approved in writing by the Parties to the Agreement in accordance with **Section 26**, or any material part of this Agreement; (c) the Court's refusal to certify the Settlement Class in

accordance with the definition provided in this Agreement; (d) the Court's entering an order for a modification of the Agreement that has not been previously agreed to by the Parties as a condition of preliminary approval or final approval of the Agreement; (e) the Court's declining to enter the Order and Judgment in any material respect; or (f) the date upon which the Order and Judgment is modified or reversed in any material respect by the California Court of Appeal, California Supreme Court, or any other court of competent jurisdiction.

(b) In the event a Notice of Termination is duly provided: (i) the Parties to the Agreement shall be deemed to have reverted to their respective status in the Action as it existed prior to the Agreement, (ii) the Parties to the Agreement shall proceed in all respects as if this Agreement, including any exhibits thereto, and any related orders, including any exhibits thereto, had not been entered and shall stand in the same position, without prejudice as if the Agreement had neither been entered into or filed with the Court; (iii) neither this Agreement, the exhibits thereto, any related orders and the exhibits thereto, nor any of the related negotiations, preliminary agreements or memoranda of understanding shall be of any force or effect or used for any purpose whatsoever in the Action or any other case or proceeding except for a recovery action against a third party by Defendants or Alticor or for the purpose of enforcing this **Section 10**; (iv) any portion of the Settlement Amount previously contributed, together with any interest earned thereon, less any Taxes due with respect to such income, and less any reasonable costs of administration and notice actually incurred and paid or payable from the Gross Fund, shall be returned to Alticor; (v) the certification of the Settlement Class shall be vacated, *nunc pro tunc*, and any findings regarding the

certification shall not be used or admissible for any purpose in the Action or any other proceedings involving the subject matter of the Action.

ATTORNEYS' FEES AND PLAINTIFFS' INCENTIVE AWARD

11. (a) Such attorneys' fees, expenses, and interest as are awarded by the Court in response to the initial and any supplemental parts of the Attorneys' Fee and Expense Application ("**Attorneys' Fee Award**") shall be paid exclusively out of the cash component of the Gross Fund. The Claims Administrator shall pay the Attorneys' Fee Award, to The Rossbacher Firm for the benefit of all Plaintiffs' Counsel subject to Plaintiffs' Counsel's joint and several obligation to make refunds or repayments to the Fund plus accrued interest at the same rate as is earned by the Gross Fund if and when, as a result of any appeal and/or further proceedings on remand, or successful collateral attack, the fee or cost award is reduced, set aside or reversed, the Effective Date does not occur, the Order and Judgment is reversed or modified, or a Termination Notice is duly provided. Each Plaintiffs' Counsel's law firm, on behalf of itself and each partner and/or shareholder of it, agrees that the law firm and its partners and/or shareholders are subject to the jurisdiction of the Court for the purpose of enforcing the provisions of this **Section** 11(a) and shall have no further recourse of any kind against Defendants, Alticor or Released Persons for attorneys' fees, expenses, interest, or any other sums related to the Action. Defendants and Alticor shall take no position concerning Plaintiffs' Counsel's Fee and Expense Application, provided that the Application (including both the initial and any supplemental parts) seeks a total award of fees and expenses of no more than \$2.5 million, exclusive of interest. The Released Persons shall have no responsibility for and no liability whatsoever with respect to the

allocation among Plaintiffs' Counsel and/or any other Persons who may assert some claim to the attorneys' fees. Plaintiffs' Counsel will timely file the initial part of the Attorneys' Fee and Expense Application, with notice to Counsel for CSAN, Counsel for McGraw and Counsel for Alticor, no later than the date set forth in the Preliminary Approval Order. The Claims Administrator shall pay that part of the Attorneys' Fee Award awarded in response to the initial part of the Attorneys' Fee and Expense Application within thirty (30) days after the entry of the Order and Judgment.

(b) Plaintiffs may apply to the Court for an incentive award not to exceed \$5,000 per Plaintiff for the efforts and risk to Plaintiffs with respect to the Action. This incentive award, in the amount ordered by the Court up to \$5,000 ("**Plaintiffs' Incentive Award**"), shall be paid exclusively out of the cash component of the Gross Fund within thirty (30) days after the Order and Judgment. The Claims Administrator shall pay the Plaintiffs' Incentive Award to Plaintiffs subject to their obligation to make refunds or repayments to the Gross Fund plus accrued interest at the same rate as is earned by the Gross Fund if and when, as a result of any appeal and/or further proceedings on remand, or successful collateral attack, the Plaintiffs' Incentive Award is reduced, set aside or reversed, the Effective Date does not occur, the Order and Judgment is reversed or modified, or the Agreement is cancelled or terminated. Plaintiffs shall have no further recourse of any kind against Defendants or Alticor for incentive awards. Defendants and Alticor will not oppose the payment of Plaintiffs' Incentive Award. Plaintiffs shall file only one application for an incentive award, There shall not be an application for a supplemental incentive award of any kind.

(c) Defendants and Alticor will not seek to recover their costs, attorneys'

fees, or expenses from the Plaintiffs, Plaintiffs' Counsel, Settling Class Members and/or the Fund once the Court enters the Order and Judgment.

RELEASES

12. (a) Upon the Effective Date, Plaintiffs, individually and on behalf of each Settling Class Member, acknowledge full satisfaction of, and fully, finally and forever settle, release and discharge to the fullest extent permitted by law, all of the Released Persons from all of the Released Claims. Payment pursuant to this Agreement shall be deemed final and conclusive against the Plaintiffs, and each of them, and the Settling Class Members, and each of them. All Settling Class Members whose claims are not approved by the Court shall be barred from participating in distributions from the Net Fund, but otherwise shall be bound by all of the terms of this Agreement and the Settlement, including, among other things, the terms of the Order and Judgment and the foregoing release, and will be fully, finally and forever barred from bringing any action against the Released Parties concerning the Released Claims.

(b) Upon the Effective Date, each Released Person, as defined above, shall be conclusively deemed to have fully and mutually released and discharged, to the fullest extent permitted by law, all other Released Persons from all of the Released Claims held by Plaintiffs and members of the Settlement Class.

(c) Upon the Effective Date, Released Persons shall be deemed to have fully released and discharged Plaintiffs, each Settling Class Member and Plaintiffs' Counsel from all claims held by them, whether known or unknown, that were or could have been alleged or asserted in the Action arising from or relating to the allegations set

forth in the Action, including for any damages, disgorgement, restitution, injunctive relief, attorneys' fees and costs of suit in connection with such claims.

(d) Solely with respect to the Released Claims, it is the intention of all the Parties to the Agreement, each Settling Class Member and Released Persons that, upon the Effective Date, Plaintiffs for themselves and each Settling Class Member, and all the Parties and Released Persons, hereby waive and relinquish the provisions, rights and benefits of any provision of the law of California or any comparable provision of the law of any other jurisdiction which would preclude the application of the releases herein to claims of which the releasor does not know or suspect to exist in his favor at the time of executing the release, including without limitation California Civil Code § 1542, which 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 OR HER SETTLEMENT WITH THE DEBTOR.

JOINT STATEMENT REGARDING SETTLEMENT AND NON-DISPARAGEMENT

13. (a) The Parties to the Agreement have cooperated in good faith in drafting a mutually satisfactory statement regarding the Settlement in the form attached to this Agreement as **Exhibit C** (the "**Joint Statement**"). Any public statement by the Parties to the Agreement or their respective counsel or agents or Affiliates, including without limitation to any media, shall be limited to and consistent with the Joint Statement.

(b) Plaintiffs and their counsel, on the one hand, and Defendants and

Alticor and their respective counsel, on the other hand, shall not make any disparaging statements about each other based on, arising from or in any way related to the claims, facts, acts or circumstances regarding or relating in any way to the subject matter of the Released Claims or to the conduct of the Action.

(c) The Parties to the Agreement stipulate (i) that pursuant to California Code of Civil Procedure Sections 638 and California Rules of Court, Rule 244.1(a) Judge Daniel Weinstein (Ret.) shall be appointed as the single referee with respect to all issues relating to any dispute concerning the compliance of the Parties to the Agreement with **Sections 13(a) and 13(b)**; (ii) that pursuant to California Code of Civil Procedure Section 644(a), Judge Weinstein's decision must stand as the decision of the Court with respect to the dispute; and (iii) that Judge Weinstein shall have the authority to grant injunctive relief and/or impose monetary or other sanctions to ensure compliance with this Section 13 or to compensate a Party to the Agreement for a violation of this Section 13; (iv) that in the event of Judge Weinstein's unavailability a new referee will be selected by agreement of the parties; and (v) the Parties to the Agreement waive objections to Judge Daniel Weinstein (Ret.) which may be made pursuant to Code of Civil Procedure Sections 640(c), 641 and 642.

(d) Nothing in this **Section 13** shall in any way abridge Plaintiffs' Counsel's right or ability to communicate with Plaintiffs and individual members of the Settlement Class on a one-on-one basis and the Court regarding the Agreement.

NO ADMISSION OF WRONGDOING

14. This Agreement, whether or not consummated, and any proceedings taken pursuant to it:

(a) shall not be offered or received against Defendants or Alticor, or any of them, as evidence of, or construed as, or deemed to be evidence of, any presumption, concession, or admission by Defendants or Alticor, or any of them, with respect to the truth of any allegations by Plaintiffs or the members of the Settlement Class, or any of them, or the validity of any claim that has been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, or wrongdoing of Defendants or Alticor, or any of them;

(b) shall not be offered or received against Defendants or Alticor, or any of them, as evidence of any presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved, made by, or attributed to, Defendants;

(c) shall not be offered or received against Defendants or Alticor, or any of them, as evidence of any presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against Defendants or Alticor, or any of them, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Agreement; *provided, however*, that, if this Agreement is approved by the Court, the Defendants or Alticor, or any of them, may refer to it to effectuate the liability protection granted to them in this Agreement;

(d) shall not be construed or received in evidence as any admission, concession or presumption against Defendants or Alticor, or any of them, that the consideration to be given hereunder represents the amount that would or could be

recovered after trial or at any other stage of this Action; and

(e) shall not be construed as or received in evidence as any admission, concession or presumption against Plaintiffs, or any of them, or the members of the Settlement Class, or any of them, that any of their claims is without merit, or that any defenses asserted by the Defendants, or any of them, has any merit, or that damages recoverable in the Action would not have exceeded the value of the Gross Fund.

MISCELLANEOUS PROVISIONS

15. **Extensions Of Time.** Unless otherwise ordered by the Court, the parties may jointly agree to reasonable extensions of time to carry out any of the provisions of this Agreement, provided that the extensions are set forth in a written instrument signed by counsel to the Parties to the Agreement and approved by the Court.

16. **No Pending Actions.** Each of the Parties represents and warrants that he, she or it is not aware of any other lawsuits or administrative proceedings regarding Shape Up! Products.

17. **Integration.** This Agreement, including all exhibits, which form an integral part hereof, constitutes a single, integrated written contract expressing the entire Agreement of the Parties to the Agreement relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party to the Agreement, except as provided for herein. This Agreement supersedes all prior agreements and understandings among the Parties to the Agreement with respect to the Settlement.

18. **Governing Law.** The Agreement shall be construed in accordance with, and

be governed by, the laws of the State of California, without regard to the principles thereof regarding choice of law.

19. **Gender and Plurals.** As used in this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

20. **Survival of Warranties and Representations.** The warranties and representations of this Agreement are deemed to survive the date of execution hereof.

21. **Authority of Parties to the Agreement** The signatories hereto hereby represent that they are duly authorized to enter into this Agreement and bind their respective Parties to the Agreement to the terms and conditions hereof.

22. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties to the Agreement do not sign the same counterparts.

23. **Cooperation of Parties.** The Parties to the Agreement agree to cooperate to facilitate Court approval of the Agreement, including without limitation by (i) complying with reasonable requests to execute documents, (ii) complying with reasonable requests for information from other Parties to the Agreement, (iii) supporting the Agreement before the Court; and (iv) refusing to provide express or tacit support to objectors. Notwithstanding the foregoing: (i) Plaintiffs and Plaintiffs' Counsel shall have the initial and primary responsibility to obtain Court approval of the Agreement, to oppose objections to the Agreement, and to obtain entry of the Preliminary Approval Order and

Final Approval Order; (ii) Defendants and Alticor may duly provide a Termination Notice; and (iii) Defendants and Alticor shall have no obligation to support the Agreement before the Court in the event the conditions for the Effective Date cannot be satisfied, including upon submission by members of the Settlement Class of five thousand (5,000) or more Valid Requests for Exclusion.

24. Execution Voluntary and After Consultation with Counsel. This Agreement is executed voluntarily by each of the Parties without any duress or undue influence on the part, or on behalf, of any of them. The Parties to the Agreement represent and warrant to each other that they have read and fully understand the provisions of this Agreement and have relied on the advice and representation of legal counsel of their own choosing.

25. Construction. Each of the Parties to the Agreement has cooperated in the drafting and preparation of this Agreement and has been advised by counsel regarding the terms, effects, and consequences of this Agreement. Accordingly, in any construction to be made of this Agreement, this Agreement shall not be construed in favor or against any Party by reason of the extent to which any Party, or his, her or its counsel, participated in the drafting of this Agreement.

26. Modification and Amendment. This Agreement may be amended or modified only by a written instrument signed by the Parties' counsel and approved by the Court.

27. Survival of Orders Regarding Confidentiality. All agreements and orders entered into during the course of the Action relating to the confidentiality of information shall survive this Agreement, including without limitation the Stipulation and Protective

Order Re Confidential Information, entered by the Court on November 3, 2004.

28. **Return of Documents.** Within thirty (30) days of the Effective Date, Class Counsel and Plaintiffs shall return or destroy any documents produced in this Action by Defendants and/or Alticor and all copies, abstracts, summaries or notes thereof, and Class Counsel shall certify in writing that such documents, copies, abstracts, summaries or notes thereof have been returned or destroyed.

29. **Assignment.** Each Party to the Agreement represents, covenants and warrants that he, she or it has not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, cause of action or rights that he, she or it herein releases, including without limitation the Released Claims.

30. **Binding on Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties and the Settling Class Members and their respective heirs, trustees, executors, successors and assigns.

31. **Captions and Interpretations.** Section titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or any provision hereof. Each term of this Agreement is contractual and not merely a recital.

32. **Class Member Signatures.** It is agreed that, because the Settling Class Members are so numerous, it is impossible or impractical to have each Settling Class Member execute this Agreement. The notice plan set forth in **Section 4** will advise all Class Members of the binding nature of the Releases and, in the absence of a Valid

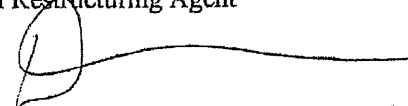
Request for Exclusion, the Preliminary Approval Order and the Order and Judgment shall have the same force and effect as if each Settling Class Member executed this Agreement.

33. **No Collateral Attack.** This Agreement shall not be subject to collateral attack by any member of the Settlement Class at any time on or after the Effective Date. Such prohibited collateral attacks shall include allegations that a Claim was improperly denied, that the payment to a member of the Settlement Class was improperly calculated, and/or that a member of the Settlement Class failed to receive timely notice of the Agreement.

Dated: September __, 2006

CSA NUTRACEUTICALS, GP, LLC

By: 1107, LLC (fka Alan James Group, LLC)
Its: Chief Restructuring Agent

By: 
Member & Chief Operating Officer

Dated: September __, 2006

ALTICOR INC.

By: _____
Title:

Dated: September __, 2006

PHILLIP C. McGRAW \

By: _____
Phillip C. McGraw

Dated: September __, 2006

JOANNE LEVINE

Request for Exclusion, the Preliminary Approval Order and the Order and Judgment shall have the same force and effect as if each Settling Class Member executed this Agreement.

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Dated: September __, 2006

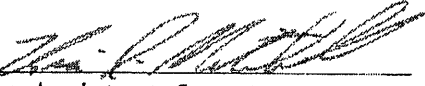
CSA NUTRACEUTICALS, GP, LLC

By: 1107, LLC (fka Alan James Group, LLC)
Its: Chief Restructuring Agent

By: _____
Member & Chief Operating Officer

Dated: September 14, 2006

ALTICOR INC.

By:  _____
Title: Assistant Secretary

Dated: September __, 2006

PHILLIP C. McGRAW \

By: _____
Phillip C. McGraw

Dated: September __, 2006

JOANNE LEVINE

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Dated: September __, 2006

CSA NUTRACEUTICALS, GP, LLC

By: 1107, LLC (fka Alan James Group, LLC)
Its: Chief Restructuring Agent

By: _____
Member & Chief Operating Officer

Dated: September __, 2006

ALTICOR INC.

By: _____
Title:

Dated: September __, 2006

PHILLIP C. McGRAW

By: _____
Phillip C. McGraw

Dated: September __, 2006

JOANNE LEVINE

9/14/06

By: Joanne Levine
Joanne Levine

Dated: September __, 2006

STEVEN BURDA

By: _____
Steven Burda

Dated: September __, 2006

NANCY HARMON

By: _____
Nancy Harmon

APPROVED AS TO FORM:

Dated: September __, 2006

HIRSCHMANN & BARMANN LLP

By: _____
Ralph F. Hirschmann
Attorneys for Defendant
CSA NUTRACEUTICALS, GP, LLC

Dated: September __, 2006

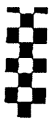
BRINKS HOFER GILSON & LIONE

By: _____
James R. Sobieraj
Attorneys for Alticor Inc.

Dated: September __, 2006

MUNGER, TOLLES & OLSON LLP

By: _____



By: _____
Joanne Levine

Dated: September 14, 2006

STEVEN BURDA

By: _____
Burda
Steven Burda

Dated: September __, 2006

NANCY HARMON

By: _____
Nancy Harmon

APPROVED AS TO FORM:

Dated: September __, 2006

HIRSCHMANN & BARMANN LLP

By: _____
Ralph F. Hirschmann
Attorneys for Defendant
CSA NUTRACEUTICALS, GP, LLC

Dated: September __, 2006

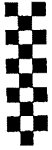
BRINKS HOFER GILSON & LIONE

By: _____
James R. Sobieraj
Attorneys for Alticor Inc.

Dated: September __, 2006

MUNGER, TOLLES & OLSON LLP

By: _____



By: _____
Joanne Levine

Dated: September __, 2006

STEVEN BURDA

By: _____
Steven Burda

Dated: September 15, 2006

NANCY HARMON

By: *Nancy Harmon*
Nancy Harmon

APPROVED AS TO FORM:

Dated: September __, 2006

HIRSCHMANN & BARMANN LLP

By: _____
Ralph F. Hirschmann
Attorneys for Defendant
CSA NUTRACEUTICALS, GP, LLC

Dated: September __, 2006

BRINKS HOFER GILSON & LIONE

By: _____
James R. Sobieraj
Attorneys for Alticor Inc.

Dated: September __, 2006

MUNGER, TOLLES & OLSON LLP

By: _____

By: _____
Joanne Levine

Dated: September __, 2006

STEVEN BURDA

By: _____
Steven Burda

Dated: September __, 2006

NANCY HARMON

By: _____
Nancy Harmon

APPROVED AS TO FORM:

Dated: September 14, 2006

HIRSCHMANN & BARMANN LLP

By: _____
Ralph F. Hirschmann
Attorneys for Defendant
CSA NUTRACEUTICALS, GP, LLC

Dated: September 14, 2006

BRINKS HOFER GILSON & LIONE

By: _____
James R. Sobieraj
Attorneys for Allicor Inc.

Dated: September 14, 2006


MUNGER, TOLLES & OLSON LLP

By: _____
Gregory Sullivan

Gregory D. Phillips
Attorneys for Defendant Phillip C. McGraw

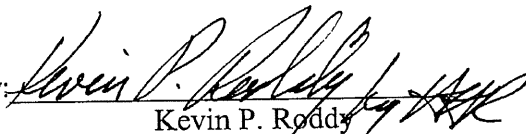
Dated: September 14, 2006

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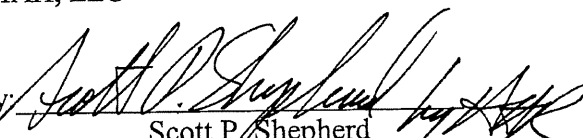
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