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Class Counsel

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 9 **UNITED STATES DISTRICT COURT**
 10 **EASTERN DISTRICT OF CALIFORNIA**

11 YESENIA MELGAR, on Behalf of Herself and
 12 all Others Similarly Situated,
 13
 14 **Plaintiff,**
 v.
 15
 16 ZICAM LLC and MATRIXX INITIATIVES,
 17 INC.
 18 **Defendants.**

Case No. 2:14-cv-00160-MCE-AC
 Hon. Morrison C. England, Jr.

**ORDER GRANTING PRELIMINARY
 APPROVAL OF PROPOSED
 SETTLEMENT**

1 WHEREAS, Class Representative Yesenia Melgar and Defendants Zicam LLC and Matrix
2 Initiatives, Inc., have reached a proposed settlement and compromise of the claims in the above-
3 captioned matter, which is embodied in the Stipulation of Settlement that has been provided to the
4 Court;

5 WHEREAS, the parties have applied to the Court for preliminary approval of the proposed
6 Settlement; and

7 WHEREAS, the capitalized terms herein shall have the same meaning as in the Stipulation
8 of Settlement;

9 NOW, THEREFORE, the Court, having read and considered the Stipulation of Settlement
10 and accompanying documents, as well as the Motion for Preliminary Approval of Settlement and
11 supporting papers, and the parties to the Stipulation of Settlement having consented to the entry of
12 this order, and good cause appearing,

13 IT IS HEREBY ORDERED AS FOLLOWS:

14 1. Subject to further consideration by the Court at the time of the Final Approval
15 Hearing, the Court preliminarily approves the Settlement as fair, reasonable, and adequate to the
16 Settlement Class, as falling within the range of possible final approval, and as meriting submission
17 to the Settlement Class for its consideration.

18 2. The Stipulation of Settlement set forth in the parties' Settlement is within the range
19 of reasonableness and possible final approval in that it appears fair, reasonable, and adequate. The
20 agreement contained in that Stipulation of Settlement was reached as a result of extensive arm's
21 length negotiations between the parties and their counsel. This included four separate in-person
22 mediations before this Stipulation of Settlement was reached. Additionally, before entering into the
23 Stipulation of Settlement, this Action had been vigorously litigated for more than four years and
24 was on the eve of trial. Thus, Plaintiffs and their counsel had sufficient information to evaluate the
25 strengths and weaknesses of the case and to conduct informed settlement discussions.

26 3. For purposes of the Settlement only, the Court certifies the Settlement Class, which
27 consists of all purchasers of Zicam RapidMelts Original, RapidMelts Ultra, Oral Mist, Ultra
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1 Crystals, Liqui-Lozenges, Lozenges Ultra, Soft Chews, Medicated Fruit Drops, and Chewables in
2 the United States from February 15, 2011 to the date this order was signed.

3 4. The requirements for certification of the Settlement Class under Fed. R. Civ. P.
4 23(a), and (b)(3) have been satisfied for settlement purposes. The Court finds, for settlement
5 purposes only, that: (a) the Settlement Class is defined by objective criteria and ascertainable; (b)
6 the numerosity requirement is satisfied; (c) there are questions of law and fact that are common to
7 the Settlement Class, and those questions of law and fact common to the Settlement Class
8 predominate over any questions affecting any individual Settlement Class Member; (d) the claims
9 of the Plaintiffs are typical of the claims of the Settlement Class they seek to represent for purposes
10 of settlement; (e) a class action is superior to other available means of adjudicating this dispute; (f)
11 and Plaintiffs and Class Counsel are adequate representatives of the Class. The Court has also
12 conducted the choice of law analysis required by *In re Hyundai and Kia Fuel Economy Litigation*,
13 881 F.3d 679 (9th Cir. 2018) and determined that it can certify a nationwide class under Arizona
14 law and that Arizona has a substantial interest in regulating the conduct of companies based in
15 Arizona.

16 5. The Court provisionally appoints Yesenia Melgar as Class Representative of the
17 Settlement Class.

18 6. The Court appoints Bursor & Fisher, P.A., as Class Counsel for purposes of this
19 Settlement.

20 7. A Final Approval Hearing shall be held before this Court at 2:00 p.m., on Thursday
21 December 13, 2018, in Courtroom 7, on the 14th floor, of the Robert T. Matsui United States
22 Courthouse, 501 I Street, Sacramento, CA 95814, to address: (a) whether the proposed Settlement
23 should be finally approved as fair, reasonable and adequate; (b) whether the Final Approval Order
24 and Judgment should be entered; (c) whether the application for approval of the payment of
25 attorneys' fees to Class Counsel from the Settlement Fund should be approved; (d) whether Class
26 Counsel's application for reimbursement of costs and expenses and the payment of incentive
27 awards to the Class Representatives from the Settlement Fund should be approved; and (e) any
28 other matters that the Court deems appropriate.

1 8. Since the Settlement set forth in the parties' Stipulation of Settlement is within the
2 range of reasonableness for possible Final Approval, Class Notice should be provided to the
3 Settlement Class pursuant to the Stipulation of Settlement, as follows:

4 a. The Court appoints RG/2 Claims Administration LLC, a well-qualified and
5 experienced claims and notice administrator, as the Settlement Administrator.

6 b. The Court hereby approves the Long-Form Notice attached as Exhibit B to
7 the parties' stipulation of settlement. ECF No. 180-1. Not later than thirty (30) days following the
8 date this Order is electronically filed, Class Counsel shall cause a copy of the Long Form Notice, in
9 both English and Spanish, to be posted on a dedicated website together with links to important case
10 documents, such as the Preliminary Approval Order, this Stipulation of Settlement, the First
11 Amended Class Action Complaint, Defendants' Answer to First Amended Class Action Complaint,
12 and the Second Amended Class Action Complaint.

13 c. Class Counsel shall register www.ZicamClassAction.com for notice
14 purposes, along with several additional domains that will mirror and/or link to that website. Class
15 members will be directed to the website by hyperlinks embedded in the email version of the Short
16 Form Notice. The www.ZicamClassAction.com website will allow Class Members to submit
17 Claim Forms online and will contain information relevant to Class Members, including but not
18 limited to the Long Form Notice, all applicable deadlines, the Stipulation of Settlement, Class
19 Notice, a downloadable Claim Form, all papers filed by the parties in support of the proposed
20 Settlement (including Plaintiffs' anticipated motion for a Fee and Expense Award), orders of the
21 Court pertaining to the Stipulation of Settlement, and contact information for the Settlement
22 Administrator, including a toll-free telephone number, e-mail, and U.S. mail.

23 d. The Court hereby approves the Short Form Notice attached as Exhibit E to
24 the parties' stipulation of settlement. ECF No. 180-1. Not later than thirty (30) days following the
25 date this Order is electronically filed, the Settlement Administrator shall cause a copy of the Short
26 Form notice to be sent by email to all class members for whom email addresses are identified.

1 e. The Settlement Administrator shall undertake Publication Notice, which
2 means publication of the Short Form Notice in accordance with the Media Plan attached hereto as
3 Exhibit 3.

4 f. The Publication Notice shall run from thirty (30) days after the electronic
5 filing of this Order to one hundred twenty (120) days after the electronic filing of this Order.

6 g. The Court approves the Class Notice and Claims forms, including the Long
7 Form Notice, the Short Form Notice, and the Claim Form, attached as Exhibit A to the parties'
8 stipulation of settlement. ECF No. 180-1.

9 h. The Court determines that the Class Notice, as set forth in the parties'
10 Stipulation of Settlement, complies with all legal requirements, including but not limited to the Due
11 Process Clause of the United States Constitution. Thus, the Court directs that Class Notice shall be
12 given to the Class as provided herein and in Section IV of the parties' Stipulation of Settlement.

13 9. Settlement Class Members will have until the Claim Deadline, which shall be ninety
14 (90) days after the start of Publication Notice, to submit a Claim Form.

15 10. If a Settlement Class Member wishes to exclude himself or herself from the
16 Settlement, that Settlement Class Member will have until the Opt-Out Date, which shall also be
17 ninety (90) days after the start of Publication Notice, to submit a valid Request for Exclusion in the
18 manner set forth in Article 5.3 of the Stipulation of Settlement. All Settlement Class Members who
19 do not timely submit a valid Request for Exclusion will be bound by the Final Order and Final
20 Judgment, and enjoined from bringing or prosecuting any action relating to the Released Claims.

21 11. At least seven (7) calendar days prior to the Fairness Hearing, Class Counsel shall
22 prepare or cause the Settlement Administrator to prepare a list of the persons who have excluded
23 themselves in a valid and timely manner from the Settlement Class, and Class Counsel shall file
24 that list with the Court.

25 12. The deadline for the Plaintiffs to file and serve papers in support of their application
26 for final approval of the Stipulation of Settlement, as well as Class Counsel's motion for fees, costs,
27 and incentive awards, shall be fourteen (14) days before the Objection deadline. Class Counsel will
28 also include contemporaneous time records sufficient to enable the court to do a lodestar analysis.

1 13. Any objections by any Settlement Class Member to the certification of the
2 Settlement Class, the approval of the proposed Stipulation of Settlement set forth in the parties'
3 Stipulation of Settlement, or the award of attorneys' fees, costs, and incentive awards, shall be
4 heard and any papers submitted in support of said objections shall be considered by the Court at the
5 Fairness Hearing only if, on or before the Objection deadline, which shall be ninety (90) days after
6 the start of Publication Notice, such objector files with the Court a written objection and notice of
7 the objector's intention to appear, and otherwise complies with the requirements set for in Article V
8 of the Stipulation of Settlement.


9 14. The deadline for the parties to file and serve any response to any timely objections
10 shall be fourteen (14) days after the Objection deadline.

11 15. The parties shall, pursuant to the terms and conditions of the Stipulation of
12 Settlement, take all necessary and appropriate steps to execute the terms and conditions of the
13 Stipulation of Settlement and this Preliminary Approval Order.

14 16. Pending the Fairness Hearing, all proceedings, other than the proceedings necessary
15 to carry out or enforce the terms and conditions of the Stipulation of Settlement and the Preliminary
16 Approval Order in the Action are stayed, and Class Members are enjoined from bringing or
17 prosecuting any action relating to the Released Claims.

18 IT IS SO ORDERED.

19 Dated: June 4, 2018

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21 MORRISON C. ENGLAND, JR.
22 UNITED STATES DISTRICT JUDGE
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