

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GLEN ELLYN PHARMACY, INC.,)	
)	
Plaintiff,)	
)	No. 11 C 968
v.)	
)	Honorable William T. Hart
LA ROCHE-POSAY, LLC, L'OREAL, INC.)	
and JOHN DOES 1-10)	
)	
Defendants.)	

CLASS SETTLEMENT AGREEMENT

RECITALS

1. **Parties.** Plaintiff Glen Ellyn Pharmacy, Inc. ("Plaintiff") individually and as representative of the settlement class of persons defined below in Paragraph 8 (the "Settlement Class") and Defendant La Roche-Posay, LLC, ("Defendant") enter into this Settlement Agreement ("Agreement"). It is expressly understood and agreed that the Released Parties (as defined herein below) are intended third party beneficiaries of this Agreement.

2. **Nature of litigation.** In this lawsuit, Plaintiff alleges that Defendant La Roche-Posay, LLC¹ violated the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq. ("TCPA") and state law by causing unsolicited facsimile advertisements to be transmitted to a nationwide class of individuals and entities.

3. **No Admission of Liability.** By entering into this agreement Defendant does not admit that it is liable to Plaintiff and the Settlement Class. Defendant enters into this Agreement solely to avoid the expense, burden, and uncertainty of further litigation, and to put to rest all claims, known or unknown, that have been or might have been asserted by the Plaintiff or the

¹ Plaintiff also named "L'Oreal, Inc." as a defendant but no such entity exists.

Settlement Class against Defendant and its parent(s) and affiliated entities including but not limited to L'Oreal USA, Inc. and L'Oreal USA S/D, Inc., concerning the matters alleged in the Class Action Complaint.

4. Plaintiff, individually and on behalf of the Settlement Class, believing that La Roche-Posay, LLC violated the TCPA and would be found liable, desires to settle its claims against Defendant, having taken into account through Plaintiff's counsel, the risks, delay, and difficulties involved in establishing a right to recovery and the ability to in fact recover, in excess of that offered by this settlement and the likelihood that further litigation will be protracted and expensive.

5. Plaintiff's counsel has investigated the facts and the applicable law. Based on the foregoing, and upon an analysis of the benefits afforded by this Agreement, Plaintiff's counsel considers it to be in the best interest of the class to enter into this Agreement.

6. In consideration of the foregoing and other valuable consideration, Plaintiff and Defendant agree to settle the claims of the Plaintiff and the Settlement Class, subject to the Court's approval, under the terms and conditions set forth herein.

7. **Effective Date.** This Agreement shall become effective (hereinafter the "Effective Date") upon the occurrence of all of the following: (1) the Court's entry of a final order substantially in the form of Exhibit 4 to this Agreement, approving this Agreement as fair, reasonable, and adequate to the Settlement Class; finding that this Agreement is fair and made in good faith; finally certifying the Settlement Class; and dismissing the claims of Plaintiff and the class members against Defendant with prejudice; and (2) (a) the expiration of five (5) days from the time that the final approval order becomes a final, non-appealable order, or (b) if an appeal has been sought, the expiration of five (5) days after the disposition of any such appeal from any

such final order, judgment, and decree, which disposition (i) approves the Court's final order, judgment and decree, and the terms and provisions of this Agreement, and (ii) orders the consummation of the settlement in accordance with the terms and provisions of this Agreement and (iii) is not subject to further appellate review nor remands the case to the trial court.

8. **Certification of Settlement Class.** Solely for the purposes of settlement, the parties stipulate to the certification of the following class (the "Settlement Class"), which is defined as:

All persons and entities throughout the United States who during November 2010 were sent facsimile advertisements similar to Exhibit A to the Complaint, by or on behalf of La Roche-Posay, LLC or its parent(s) or related entities, promoting Anthelios sunscreen products.

For settlement purposes only, the Parties agree that, as part of the Preliminary Approval Order the Court may make preliminary findings and enter an order granting provisional certification of the Settlement Class subject to final findings and certification in the Final Order, and appointing both Plaintiff and Class Counsel as representatives of the Settlement Class. For settlement purposes only, the Settlement Class is certified pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure. If this Agreement is not approved by the Court or is terminated pursuant to its terms or for any other reason, or is disapproved in a final order by any court of competent jurisdiction, (a) the order certifying the Settlement Class and all preliminary and/or final findings or stipulations regarding certification of the Settlement Class shall be automatically vacated upon notice to the Court of this Agreement's termination or disapproval; (b) this Action will proceed as though the Settlement Class had never been certified and any related findings or stipulations had never been made; and (c) La Roche-Posay, LLC reserves all procedural or substantive rights as of the date of execution of this Agreement. The Parties agree that subject to Court approval,

Edelman Combs Lattuner & Goodwin, LLC ("Class Counsel") shall be appointed Class Counsel. Upon appointment by the Court, Edelman Combs Lattuner & Goodwin, LLC and its attorneys appearing in this case, agree to perform the tasks to be performed by Class Counsel as set forth herein, as ordered by the Court or as necessary for the benefit of the Settlement Class.

9. The Parties estimate, based on their review of records, that the Settlement Class is comprised of no more than 7,143 individuals or entities to whom Defendant or its parent or affiliated companies caused to be sent 1 facsimile advertisement during the relevant time period.

10. **Relief to Plaintiff and the Settlement Class.** Defendant or its parent or affiliated entities shall pay the sum of \$1,000,000.00 to a settlement fund (the "Settlement Fund") which Class Counsel or its agent agrees to hold in trust for the benefit of the Settlement Class. Upon payment of the \$1,000,000.00 into the Settlement Fund and the turnover of the Settlement Fund to Class Counsel, Defendant shall have no further payment obligation to the Settlement Class.

11. **Distribution of Settlement Fund.** The Settlement Fund shall be used to provide the following relief to Plaintiff and the Settlement Class, subject to the Court's approval:

- a. \$5,000.00 of the Settlement Fund shall be paid to Glen Ellyn Pharmacy, Inc. as an incentive award in recognition of its services as Class Representative;
- b. counsel for Plaintiff and the Settlement Class, Edelman, Combs, Lattuner & Goodwin, LLC, shall request and Defendant will not oppose 30% of the Settlement Fund as payment for attorney fees and expenses including costs related to providing notice to the Settlement Class and delivery of settlement payments to the Settlement Class and class administration;
- c. each Settlement Class member who timely submits a valid and completed claim form will receive a check for its pro rata share of the Settlement Fund after the amounts set forth in paragraphs 11(a) and 11(b) and 16 are paid. Payments to Settlement Class Members shall not exceed \$500 per fax number.

12. **Delivery of Settlement Fund.** Defendant or its parent or an affiliated company shall transfer to their Counsel, Ice Miller LLP, to be held in its Client Trust Account in trust for the Settlement Class, the Settlement Fund of \$1,000,000.00 at least five (5) business days in advance of the date set for the Final Approval Hearing. Either prior to, or immediately upon entry of an Order granting Final Approval to the Settlement Agreement, Defendant shall cause the Settlement Fund to be transferred to Class Counsel.. Class Counsel shall hold the Settlement Fund in its client trust account in trust for the Settlement Class and shall distribute it only as permitted in this Agreement as approved by the Court.

13. The claim bar date or the date by which Settlement Class members must submit claims, shall not be less than 60 days after the date Class Counsel causes notice to be issued to the Settlement Class members via facsimile.

14. **Right to Opt Out.** Settlement Class members shall have the right to opt out of or exclude themselves from the Settlement Class by faxing or mailing a request for exclusion to Class Counsel within the time period set by the Court in the Preliminary Approval Order.

15. **Defendant's Right to Rescind Agreement.** In the event that more than 50 persons or entities in the Settlement Class submit valid and timely requests to opt out or exclude themselves from the settlement. Defendant shall have the right at its sole discretion to rescind this Agreement. Defendant's right to rescind as set forth in this paragraph must be exercised within 30 days after the date established by the Court or any extension thereof, for the submission of opt outs or exclusion requests by Settlement Class members. Defendant shall exercise its right to rescind by filing a notice of its exercise of its right to rescind with the Clerk of the Court..

16. Costs associated with notice, claims administration and distribution of settlement checks shall come from the Settlement Fund. Class Counsel shall ensure all costs of notice and claims administration are reasonable.

17. The settlement checks to be issued to the Settlement Class members filing valid claims will be void after 60 days from the date of issuance.

18. **Cy Pres Payment.** Any amounts remaining in the Settlement Fund following the last void date of the checks issued to the Settlement Class members, including any uncashed checks or undistributed funds, shall be designated as a *Cy Pres Award*. Such funds will be returned by Class Counsel to Defendant within 30 days of the last void date of the Settlement Class members' settlement checks. Subject to Court approval, any such funds will be donated by Defendant to the Women's Dermatologic Society as a cy pres award. Defendant shall provide Class Counsel with proof of delivery any such distribution.

19. **Release.** Plaintiff and the Settlement Class grant the following releases:

- a. Upon the Effective Date, Plaintiff, Glen Ellyn Pharmacy, Inc. and all Settlement Class members who do not validly opt out of the settlement, including each and every one of their respective past, present or future officers, employees, agents, representatives, attorneys (as counsel for Glen Ellyn Pharmacy, Inc.), heirs, assigns, or any other person acting on its behalf or for their benefit, or any person claiming through them (collectively "Releasers"), hereby fully release and discharge: (1) La Roche-Posay, LLC and its parent(s) and affiliated companies including L'Oreal USA, Inc. and L'Oreal USA S/D, Inc., as well as their predecessors and successors in interest and present and former, affiliates, parents, subsidiaries, insurers, officers, directors, agents, employees, shareholders, members and partners (with all the foregoing released parties in this paragraph being collectively referred to as the "Released Parties"), from all causes of action, suits, claims, or demands, in law or in equity, known or unknown at this time, which Releasers, now have, did have, or may have in the future against the Released Parties, or any of them, arising from or related to the sending of faxes by or on behalf of La Roche-Posay, LLC or its parent(s) or affiliated entities during November 2010 containing advertisements similar to Exhibit A to the Complaint

promoting Anthelios sunscreen products. Without limiting the generality of the foregoing, Releasors release the Released Parties of all claims that were made or that could have been made in this the Class Action Complaint.

- b. Without admitting that California law or the laws of any other state apply to this Agreement or that the release provided by Plaintiff and the Settlement Class is a general release, the Parties agree that upon the Effective Date, the Releasors shall be deemed to have waived and shall have expressly waived the provisions and benefits of 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 favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Further, Releasors expressly waive any and all provisions and rights or benefits which may be conferred upon them by any law, statute, ordinance or regulation which is similar, comparable or equivalent to California Civil Code §1542.

- c. This Agreement may be pleaded as a full and complete defense to any action, suit or other proceeding that may be instituted or prosecuted with respect to the claims released herein.

20. If this Agreement is not approved by the Court or for any reason does not become effective, it shall be deemed null and void and shall be without prejudice to the rights of the parties hereto and shall not be used in any subsequent proceedings in this or any other litigation, or in any manner whatsoever.

21. **Attorneys' Fees, Notice Costs and Related Matters.** Class Counsel shall administer the settlement and will pay the costs of notice and settlement administration out of the Settlement Fund. Class Counsel will request approval from the Court for attorneys' fees and costs and expenses of this lawsuit, in addition to costs of notice and settlement administration, in an amount not to exceed 30% of the Settlement Fund. Plaintiff's counsel will not request additional fees or costs from La Roche-Posay, LLC, or the Settlement Class other than the

above-referenced sum. La Roche-Posay, LLC agrees not to oppose an award of fees and costs to Plaintiff's counsel of no more than 30% of the settlement funds.

22. **Notice.** Defendant will provide Class Counsel with a list of the names and the last-known facsimile numbers of the members of the Settlement Class, according to its records ("Class List"). Class Counsel agrees that it keep the Class List confidential and it will not use the Class List for any purpose other than issuing notice to the Settlement Class. Class Counsel or their agent shall, within thirty (30) days of entry of the Preliminary Approval Order (as described in Paragraph 21), cause actual summary notice ("Class Notice"), in the form of Exhibit 1, to be sent via facsimile to the facsimile telephone numbers of the persons and entities that comprise the Settlement Class, on the Class List. In the event the initial attempt to transmit the notice via facsimile to a Settlement Class member is unsuccessful, Class Counsel shall attempt to resend the notice a second time to the Settlement Class member. If Class Counsel is unable to successfully transmit the Notice to a Settlement Class member by facsimile after 2 attempts, it will attempt to send Notice, in the form of Exhibit 2, to the Class Members by U.S. Mail First Class. Class Counsel agrees that it shall also post the full form of notice on its website, www.edcombs.com from the date of the Preliminary Approval Order until 120 days after all claims checks are issued. Within 10 business days of the date it completes issuing notice to the Settlement Class, Class Counsel shall file an affidavit with the Court attesting that it has issued notice to the Settlement Class in accordance with this Agreement and any order of this Court and detailing the steps it took to issue notice. The fact that the Court may require non-substantive changes in the forms of notice does not invalidate this Settlement Agreement. Class Counsel shall review all claims forms submitted by Settlement Class members. If the claimant does not appear on the Class List and if the Claim Form appears to be fraudulent, Class Counsel shall

notify the claimant by mail that the Claim Form has been rejected and stating the reasons therefore and advise the claimant that he/she/it may appeal the claim denial to the Court. The Class List, will be maintained by Class Counsel, in electronic form, until a date two years following the Effective Date of the Settlement Agreement. The parties may destroy documents generated in the notice process one year after the Final Order (as defined in Paragraph 22) is entered and is no longer subject to appeal.

23. **Preliminary Approval.** As soon as practicable after execution of this Agreement, the Parties shall make application to the Court to approve the Preliminary Approval Order, and enter a Preliminary Approval Order substantially in the form of Exhibit 3 which:

- a. Preliminarily approves this Agreement;
- b. Certifies the Settlement Class as defined in Paragraph 8 for settlement purposes;
- c. Appoints Edelman, Combs, Lattuner & Goodwin, LLC as Settlement Class counsel;
- d. Schedules a hearing for final approval of this Agreement;
- e. Approves Exhibits 1 and 2 hereto as notice to the Settlement Class, to be directed via fax and supplemental mail as necessary to the Settlement Class members as shown in Defendant's records;
- f. Finds that the Notice Plan described herein and the other measures specified in Paragraph 22 is the only notice required and that such notice satisfies the requirements of due process and Federal Rule of Civil Procedure 23; and

24. **Final approval.** At the conclusion of, or as soon as practicable after, the close of the hearing on the fairness, reasonableness and adequacy of this Agreement, and no earlier than after the expiration of 90 days from the preliminary approval of the settlement (as required by CAFA), Plaintiff and Plaintiff's counsel, shall request that the Court enter a Final Order substantially in the form of Exhibit 4, approving the terms of this Agreement as fair, reasonable,

and adequate, providing for the implementation of those terms and provisions, finding that the notice given to the Settlement Class satisfies the requirements of due process and Federal Rule of Civil Procedure 23, dismissing the claims of Plaintiff and the Settlement Class with prejudice and without costs, and directing the entry of a final order.

25. The parties agree to request the entry of a final approval order substantially in the form of Exhibit 4. This Agreement is expressly conditioned upon the Court entering a final approval order substantially in the form of Exhibit 4. The fact that the Court may require non-substantive changes in the notice or order does not invalidate this Agreement.

26. **Release of Attorneys' Lien.** In consideration of this Agreement, Plaintiff's counsel and Class Counsel hereby waives, discharges and releases the "Released Parties," as defined in Paragraph 16(a) above, of and from any and all claims for attorneys' fees, by lien or otherwise, for legal services rendered by Plaintiff's counsel in connection with this Class Action Complaint, other than the amount awarded by the Court as specified above.

27. **Miscellaneous Provisions.** This Agreement shall be governed by and interpreted in accordance with the laws of Illinois. Headings in this Agreement are for the convenience of reference and are not to be considered to be a part of this Agreement nor to control the meaning or interpretation of provisions of this Agreement.

28. The parties and their attorneys agree to cooperate fully with one another in seeking approval of this Agreement, and to use their best efforts to effect the consummation of this Agreement and the settlement provided for herein. Whether or not this Agreement and the settlement contemplated hereunder are consummated, this Agreement and the proceedings had in connection herewith shall in no event be construed as, or be deemed to be, evidence of an

admission or concession on the part of either La Roche-Posay LLC or L'Oreal, Inc. of any liability or wrongdoing whatsoever.

29. **Claims Administration.** Class Counsel agrees to act as Claims Administrator to process all claims submitted by the Settlement Class and to issue claims payment checks to Settlement Class members in accordance with this Agreement and as approved by this Court. Class Counsel may retain a third party claims administration entity to perform claims administration tasks with the approval of Defendant, and the reasonable expenses for claims administration shall be paid from the Settlement Fund. Defendant shall have access to all claims submitted and any other claims administration documentation upon request. Class Counsel or its agent shall retain all claims administration records for a period of five years (5) following the Effective Date.

30. **CAFA Notices.** Defendant will issue all notices required under the Class Action Fairness Act to the required parties and Plaintiff shall cooperate in this process.

31. Notices and objections related to this Agreement and requests by Class Members to opt of the Settlement Agreement shall be sent to Counsel at:

Julie Clark
EDELMAN, COMBS, LATTURNER
& GOODWIN, LLC
120 S. LaSalle Street, Suite 1800
Chicago, Illinois 60603
(312) 739-4200
(312) 419-0479 (FAX)

Counsel for Plaintiff and the Settlement Class

Bart T. Murphy
Ice Miller LLP
2300 Cabot Dr., Suite 455
Lisle, IL 60532

Counsel for La Roche-Posay LLC

The persons and addresses designated in this paragraph may be changed by any signatory hereto by written notice to the other signatories hereto.

32. Each and every term of this Agreement shall be binding upon and inure to the benefit of the Plaintiff and the Settlement Class, and any of their successors and personal representatives, and shall bind and shall inure to the benefit of the Released Parties, all of which persons and entities are intended to be beneficiaries of this Agreement.

33. The Parties hereby represent to one another that they have full power and authority to enter into this Agreement and carry out their obligations. The corporate Parties and the Third Parties referenced in paragraph 10 further represent that all necessary corporate action has been duly taken to authorize the execution and delivery of this Agreement and that this Agreement has been duly executed and delivered.

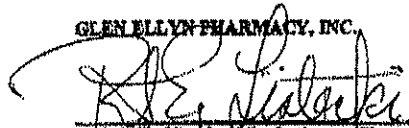
34. The Parties respectively acknowledge that they have consulted with legal counsel of their choice before entering into and executing this Agreement. Further, both Parties, through their respective counsel, either have or had the opportunity to participate in the drafting of this Agreement and agree that in construing the terms of this Agreement, the terms are not to be strictly construed against either Party.

35. **Restriction on Publicity.** The Parties acknowledge that this Agreement represents a compromise of a disputed claim and that there has been no finding or admission of fault on the part of La Roche-Posay, LLC or the Released Parties. Plaintiff or Class Counsel shall not issue any press release or otherwise initiate any affirmative action to garner publicity regarding this settlement.

36. The foregoing constitutes the entire agreement among the signatories with regard to the subject matter hereof and may not be modified or amended except in writing, signed by all signatories hereto, and approved by the Court.

37. This Agreement may be executed in separate counterparts, in which case the various counterparts shall constitute one instrument for all purposes. The several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies, PDFs and facsimiles of executed copies of this Agreement may be treated as originals.

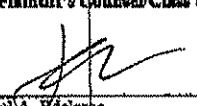
IN WITNESS WHEREOF, the signatories hereto, acting by and through their respective counsel of record, intending to be legally bound, have so agreed, on March __, 2011.

GLEN ELLYN PHARMACY, INC.

On behalf of itself and the Settlement Class

LA ROCHE-POSAY, LLC

By: Robert E. Hirstecki
[Print name & title] *PRESIDENT*
PHARMACIST

By: _____
[Print name & title]

For Plaintiff's Counsel/Class Counsel


Approved as to form by Counsel:

Daniel A. Edelman
Julie Clark
EDELMAN, COMES, LATTURNER
& GOODWIN, LLC
120 S. LaSalle Street, Suite 1800
Chicago, Illinois 60603
(312) 739-4200
(312) 419-0479 (FAX)

Bart T. Murphy
Thomas Hayes
Ice Miller LLP
2300 Cabot Dr., Suite 455
Lisle, IL 60532

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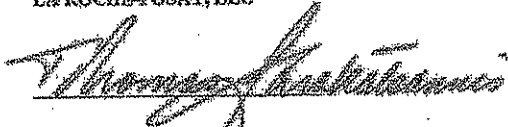
IN WITNESS WHEREOF, the signatories hereto, acting by and through their respective counsel of record, intending to be legally bound, have so agreed, on this ^{APRIL 29} day of _____, 2011.

GLEN ELLYN PHARMACY, INC.

LA ROCHE-POSAY, LLC

On behalf of itself and the Settlement Class

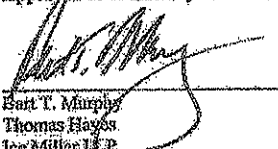
By: _____
(Print name & title)


By: Thomas S. Katsanidis
(Print name & title) *SVP*

For Plaintiff's Counsel/Class Counsel

Approved as to form by Counsel:

Daniel A. Edelman
Julie Clark
EDDMAN, COMBS, LATTURNER
& GODWIN, LLC
120 S. LaSalle Street, Suite 1800
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