

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

ELLEN CHEPIGA, JACKIE
EISENBERG, DEBRA HALL, ROBERT
BEDELL, MILCAH HINES, and SUSAN
GOODMAN, on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

CONAIR CORPORATION,

Defendant.

No. 3:17-cv-01090 (BRM/LHG)

AMENDED SETTLEMENT AGREEMENT

This Amended Settlement Agreement (the “Settlement Agreement”) is entered into between (1) Plaintiffs Ellen Chepiga, Jackie Eisenberg, Debra Hall, Robert Bedell, Milcah Hines, and Susan Goodman (collectively, “Plaintiffs”), on behalf of the putative class defined below, and (2) Defendant Conair Corporation (“Conair”), in the matter of *Chepiga v. Conair Corporation*, No. 3:17 Civ. 1090 (BRM/LHG), pending in the United States District Court for the District of New Jersey (the “Class Action”).

WHEREAS, this Settlement Agreement states the terms of the settlement of the Class Action (“Settlement”) and is intended by the parties hereto to fully and finally compromise, resolve, discharge and settle the Class Action

subject to the terms and conditions set forth below. This Settlement is subject to approval by the Court under Federal Rule of Civil Procedure 23. If the Court fails to certify the class defined below or to approve the Settlement, the parties may revise or terminate the Agreement;

WHEREAS, the Class Action arises out of Conair's December 13, 2016 recall of blades supplied with certain Cuisinart food processors (the "Recall"). On February 17, 2017, Plaintiffs, on behalf of a putative class, filed their initial complaint (D.E. 1). On March 31, 2017, Plaintiffs filed their First Amended Complaint (D.E. 10, the "Complaint") alleging violations of the New Jersey Consumer Fraud Act, § 56-8:1 *et seq.*, and of the express and implied warranties for Cuisinart food processors. Plaintiffs seek certification of a putative nationwide class of Cuisinart food processor owners. Conair denies all liability;

WHEREAS, recognizing the risks each party faces if this Class Action proceeds, the parties hereto have decided to enter into this Settlement Agreement to avoid the expense and uncertainty of litigation. The parties hereto agree that this Settlement Agreement, including any documents filed seeking approval of this Settlement, is not and shall not be deemed or construed to be an admission of any fact or legal issue by or evidence against Conair; and

WHEREAS, Plaintiffs' counsel is satisfied that the terms and conditions of this Settlement Agreement are fair, reasonable, and adequate, and

that this Settlement is in the best interests of Plaintiffs and the putative class.

Plaintiffs' counsel believe the consideration provided by this Settlement will benefit Plaintiffs and the putative class, and that the consideration is appropriate in light of the strengths and weaknesses of Plaintiffs' claims, Conair's defenses, and the uncertainties of litigation;

WHEREAS, for the above reasons, the parties entered into the Settlement Agreement on July 31, 2017;

WHEREAS, on October 25, 2017, the parties have agreed to certain modifications to the Settlement Agreement as indicated in their October 25, 2017 letter to the Court;

NOW, THEREFORE, it is agreed by and among the parties hereto, subject to the approval of the Court, that the Class Action be settled in accordance with the terms of this Settlement Agreement, and without costs against Plaintiffs, the putative class, or Conair (except as provided below), on the following terms and conditions:

1. **Certification of Settlement Class.** Plaintiffs shall seek Court approval of the certification of a nationwide settlement class (the "Class") defined as follows:

All Conair customers who are eligible to receive a replacement blade pursuant to the December 13, 2016 product recall.

Conair will not contest Plaintiffs' effort to seek Court approval of the Class for settlement purposes. The parties' stipulation to Court approval of certification of the Class is only for purposes of effectuating this Settlement, and for no other purpose. The parties retain all of their respective objections, arguments and/or defenses with respect to class certification in the event that there is no Settlement. If this Settlement Agreement does not become final pursuant to the terms of Section 6 hereof, the stipulation as to this Class shall be null and void.

2. **Certification for Settlement Purposes Only.** If the Settlement is not approved or implemented for any reason, Conair and the Released Parties reserve all rights to oppose any request for class certification in this or any other action and to assert any defense, argument, or claim concerning any other issue.

3. **Motion for Preliminary Approval.** Following execution of this Settlement Agreement, Plaintiffs shall file with the Court a motion and proposed Order certifying the Class for purposes of the Settlement and preliminarily approving this Settlement Agreement. The motion for preliminary approval shall request the entry of a preliminary approval order that includes the following provisions: (i) certification of the Class as defined herein in light of the Settlement, (ii) approval of the Settlement set forth in this Settlement Agreement as fair, reasonable and adequate and in the best interests of the Class, and within a range that responsible and experienced attorneys could accept considering all

relevant risks and factors of litigation, (iii) approval of notice to the class, in substantially the form attached hereto as Exhibit A, and (iv) a schedule for a hearing by the Court after the notice period has expired to approve the Settlement and to consider Plaintiffs' counsel's applications for attorneys' fees, costs, and expenses and for named plaintiff incentive awards as set forth in this Settlement Agreement.

4. **Notice to the Class.** In the event that the Court preliminarily approves the Settlement, Conair shall provide the Class with notice of the settlement pursuant to Rule 23 of the Federal Rules of Civil Procedure. The parties have provided a proposed form of notice attached as Exhibit A. Subject to Court approval, Conair will provide notice to the Class (i) on Conair's web site, Facebook and Twitter pages, (ii) by email to all customers who have submitted replacement blade requests and provided valid email addresses, and (iii) as otherwise ordered by the Court, provided, however, that Conair shall have the right to withdraw from the Settlement if notice costs are anticipated to exceed an aggregate of \$75,000.

5. **Motion for Final Approval and Entry of Final Judgment.** If the Court preliminarily approves this Settlement Agreement, the parties shall submit a motion for final approval of this Settlement Agreement by the Court, after appropriate notice to the Class, and shall seek entry of an order and final judgment:

- a) certifying the Class for purposes of the Settlement Agreement;
- b) finally approving this Settlement Agreement and its terms as being a fair, reasonable and adequate settlement as to the Plaintiffs and the Class within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation pursuant to its terms;
- c) directing that the Class Action be dismissed with prejudice and, except as provided for herein, without costs;
- d) reserving exclusive jurisdiction over the Settlement and this Settlement Agreement, including the administration and consummation of this Settlement; and
- e) ordering dismissal of all claims that have or could have been alleged in the Class action with prejudice against the Plaintiffs and the members of the Class who have not timely excluded themselves from the Class Action.

If this Settlement Agreement is finally approved by the Court in its current form, or in a form not materially different therefrom, Conair agrees not to take any appeal from entry of judgment. Final approval of the Settlement Agreement shall not be contingent upon the Court making any particular award of attorneys' fees, costs, or expenses to Plaintiffs' counsel or of incentive awards to the named plaintiffs.

6. **Finality of the Settlement.** This Settlement Agreement shall become final upon the occurrence of all of the following:

- a) Conair has not availed itself of its right to cancel and terminate the Settlement Agreement pursuant to Sections 4, 12, or 13;
- b) the Settlement is approved by the Court as required by Rule 23 of the Federal Rules of Civil Procedure; and

- c) the time for appeal from the Court's approval of this Settlement Agreement and entry of a final judgment has expired or, if appealed, approval of this Settlement Agreement and the final judgment has been affirmed in its entirety by the Court of last resort to which such appeal has been taken and such affirmance is no longer subject to further appeal or review.

7. **Settlement Consideration.** Subject to the provisions hereof,

and in full, complete and final settlement of the Class Action, Conair agrees that:

- a) All requests for replacement blades submitted on or before April 1, 2017 will be filled by Conair by September 30, 2017;
- b) All requests for replacement blades submitted between April 2, 2017 and June 30, 2017 will be filled by Conair by September 30, 2017 or within 150 days of receipt, whichever is later;
- c) All requests for replacement blades submitted between July 1, 2017 and September 30, 2017 will be filled by Conair by December 1, 2017;
- d) All requests for replacement blades submitted after September 30, 2017 will be filled by Conair within 90 days of receipt; provided, however, that customers who submit their requests after December 13, 2020 (four years after the recall was announced) are not guaranteed to receive their replacement blades within 90 days of receipt of their request;
- e) Commencing May 1, 2017, if Conair receives more than 20,000 new requests for replacement blades in a given calendar month, the deadlines in (b), (c), and (d) will be extended by 45 days for every 20,000 new requests received (or fraction of 20,000 new requests received);
- f) In the event Conair fails to fill requests for replacement blades by the applicable deadline in (a) through (d), and if necessary adjusted by (e), Conair will provide each customer who submitted a request and who has not yet received a replacement blade by the applicable deadline with a \$15 check, as well as a replacement blade; provided, however, that customers who

submit their requests after December 13, 2020 will not receive checks. In the event Conair fails to fill requests for replacement blades that were submitted on or before April 1, 2017 within 60 days of the applicable September 30, 2017 deadline in (a), so that the replacement blades are not received by November 29, 2017, Conair will provide each customer who submitted a request covered by (a) and who has not yet received a replacement blade by that date with an additional \$15 check; and

- g) Conair will provide a three-year limited warranty on its standard terms for each replacement blade.

Provision of the checks described in subparagraph (f) above shall be the sole and exclusive remedy for the Class in the event Conair misses applicable deadlines.

8. **Attorneys' Fees, Costs, and Expenses.** Plaintiffs' counsel intends to seek attorneys' fees plus the reimbursement of reasonable costs and expenses incurred in the prosecution of the Class Action. Conair agrees to take no position with respect to an application by Plaintiffs' counsel for (i) \$215,000, which represents Plaintiffs' counsel's attorneys' fees, costs, and expenses to date, and (ii) reasonable future attorneys' fees, costs, and expenses incurred in connection with the final approval process, provided that the total application does not exceed \$300,000, except in the case of extraordinary circumstances, such as an appeal to the Third Circuit. Conair agrees, subject to any order of the Court, that Plaintiffs' counsel will be paid any Court-approved attorneys' fees, costs, and expenses within fourteen business days after this Settlement becomes final pursuant to Section 6 of this Settlement Agreement.

9. **Named Plaintiff Incentive Awards.** Plaintiffs' counsel intends to seek incentive awards for the named six named plaintiffs in the Class Action. Conair agrees to take no position with respect to the application by Plaintiffs' counsel for incentive awards not to exceed \$2,500 for each named plaintiff. Conair agrees, subject to any order of the Court, that any Court-approved incentive awards will be paid within fourteen business days after this Settlement becomes final pursuant to Section 6 of this Settlement Agreement.

10. **Requests for Exclusion.** Any request for exclusion must be submitted in accordance with the instructions set forth in the class notice, supported by such documents as are designated therein. All requests for exclusion must be submitted by the date set by the Court in the Preliminary Approval Order. Any member of the Class who does not submit a valid request for exclusion will be bound by all of the terms of this Settlement Agreement and will be permanently barred and enjoined from bringing any action, claim, or other proceeding of any kind against Conair with respect to the Released Claims (defined in Section 11 of this Settlement Agreement).

11. **Releases.** Upon this Settlement Agreement becoming final in accordance with its terms, Plaintiffs and each member of the Class shall release and forever discharge Conair and its present and former parents, subsidiaries, divisions, departments, affiliates, stockholders, officers, directors, employees,

agents, attorneys, and any of their legal representatives (and the predecessors, heirs, executors, administrators, successors and assigns of each of the foregoing) (collectively, the “Released Parties”) from any and all claims, rights, demands, obligations, damages, actions or causes of action, or liabilities whatsoever, known or unknown, fixed or contingent, in law or in equity, (i) relating to the design, production, manufacturing, advertising, marketing, sale, distribution, support, or servicing of the Cuisinart food processor blades covered by the Recall, from the beginning of time through the date of this Settlement Agreement, or (ii) relating to the Recall, including, without limitation, the administration of, or communications regarding, the Recall, or (iii) that have been or could have been asserted by the Class in this Court or in any other action or proceeding in this Court or any other court or forum arising out of, or based upon, the conduct alleged in the Complaint or in any other complaint or pleading filed in this action, whether based on federal, state, local, statutory, or common law, including any state consumer protection statute, or any other law, rule, or regulation, (collectively, the “Released Claims”), provided, however, that the parties do not intend this Settlement Agreement, any part hereof or any other aspect of the proposed Settlement, to release or otherwise affect any rights Plaintiffs and the Class may have to pursue personal injury claims against Conair in connection with the Cuisinart food processors covered by the Recall. Upon this Settlement Agreement becoming final in accordance with its

terms, each member of the Class will be deemed to have covenanted and agreed that it shall not hereafter seek to establish liability against any Released Party based in whole or in part upon any of the Released Claims. In addition, Plaintiffs and the Class hereby expressly waive and release, upon this Settlement Agreement becoming final, any and all provisions, rights and benefits conferred by § 1542 of the California Civil Code, which states:

Section 1542. Certain Claims Not Affected by General Release. 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.

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to § 1542 of the California Civil Code. Each Class member may hereafter discover facts other than or different from those which he, she or it knows or believes to be true with respect to the claims which are the subject matter of this Settlement Agreement, but each Class member hereby expressly waives and fully, finally and forever settles and releases, upon this Settlement Agreement becoming final, any known or unknown, suspected or unsuspected, contingent or non-contingent claim as provided herein, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. The parties acknowledge, and shall

be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for and is a key element of the Settlement.

12. **Effect of Court Action.** If the Court declines to finally approve this Settlement Agreement, or if such approval is set aside on appeal, or if the Court does not enter the final judgment in substantially the form provided for in Section 5, or if the Court enters the final judgment and appellate review is sought, and on such review, such final judgment is not affirmed, or if the terms of this Settlement Agreement are materially changed except by mutual consent of the parties, then this Settlement Agreement may be cancelled and terminated, and shall become null and void upon the election of Conair or Plaintiffs. Any modification or reversal on appeal of any amount of Plaintiffs' counsel's attorneys' fees, costs, or expenses or of named plaintiff incentive awards awarded by the Court shall not be deemed a modification of this Settlement Agreement or such final judgment and shall not allow cancellation of this Settlement Agreement.

13. **Conair's Right of Withdrawal.** If the percentage of Class Members who validly request exclusion from this Settlement Agreement or are otherwise permitted by the Court to opt out of the Class exceeds the confidential trigger in the parties' July 31, 2017 side letter, the Settlement Agreement may be cancelled and terminated at Conair's option. In order to allow Conair a reasonable opportunity to exercise its option to cancel and terminate under this Section,

Plaintiffs' counsel shall promptly notify Conair's counsel in writing upon the receipt of any request for exclusion and shall provide Conair's counsel with copies of any such requests. Conair shall exercise its option to cancel and terminate by giving written notice to Plaintiffs' counsel no later than fourteen business days following the close of the period during which Class members can request exclusion from this Settlement or fourteen business days following the date of any Court order permitting any additional opt-outs from the Class, whichever is later.

14. **Effect of Settlement Agreement Not Becoming Final.** In the event that this Settlement Agreement does not become final in accordance with its terms, then this Settlement Agreement shall be of no force or effect. The parties hereto agree that this Settlement Agreement, whether or not it shall become final, and all negotiations, documents and discussions associated with it shall be without prejudice to the rights of any party, shall not be deemed or construed to be an admission or evidence of any fact, any violation of any statute or law or any liability or wrongdoing by Conair or an acknowledgement of defenses by Plaintiffs, or the truth of any of the claims or allegations contained in the Complaint or any other pleading or the standing of any party to assert claims against Conair or defenses against the Plaintiffs, and evidence thereof shall not be discoverable or used directly or indirectly, by any party or any third party for any purpose whether in the Class Action or in any other action or proceeding.

15. **Binding Effect.** This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto and to the Released Parties. Without limiting the generality of the foregoing, each and every covenant and agreement herein by the Plaintiffs and their counsel shall be binding upon all members of the Class, and their respective successors and assigns.

16. **Entire Agreement.** This Settlement Agreement and the side letter constitute the entire, complete, and integrated statement of each and every term and provision agreed to by the Parties, and are not subject to any conditions not provided therein. There are no promises, understandings, or terms of the Settlement Agreement other than those stated therein. This Settlement Agreement supersedes and renders of no effect all other oral or written communications concerning the subject matter hereof.

17. **Headings.** The headings used in this Settlement Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Settlement Agreement.

18. **No Party is the Drafter.** None of the parties hereto shall be considered to be the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter.

19. **Choice of Law.** All terms of this Settlement Agreement shall be governed by and interpreted according to the substantive laws of the State of New Jersey without regard to its choice of law or conflict of laws principles.

20. **Consent to Jurisdiction.** Conair, Plaintiffs, and each member of the Class hereby irrevocably submit to the exclusive jurisdiction of the United States District Court for the District of New Jersey, for any suit, action, proceeding or dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement.

21. **Confidentiality.** Until this Settlement Agreement is presented to the Court, Plaintiffs, any counsel or other agent for or representative of the Class, and Conair agree not to make or cause to be made any public statement or comment regarding this Settlement Agreement without the prior written consent of the other party.

22. **Intended Beneficiaries.** Nothing in this Settlement Agreement shall be deemed to confer any rights or benefits, or impose any obligations, on any person other than Plaintiffs, the members of the Class, the Released Parties, and their counsel.

23. **Notice.** Notices required by this Settlement Agreement shall be submitted by first-class mail, with a copy by electronic mail, to:

RADICE LAW FIRM, PC
Attn: Cuisinart/Conair Litigation

301 North Harrison St, Suite 9F-429
Princeton, NJ 08540

Attn: John D. Radice, Esq. (jradice@radicelawfirm.com)
April D. Lambert, Esq. (alambert@radicelawfirm.com)
Daniel Rubinstein, Esq. (drubenstein@radicelawfirm.com)

Counsel for Plaintiffs

- and -

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56 Livingston Avenue
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Attn: Timothy E. Corriston, Esq. (tcorriston@connellyfoley.com)
Meghan K. Musso, Esq. (mmusso@connellfoley.com)

Counsel for Conair Corporation

24. **Execution in Counterparts.** The parties to this Settlement Agreement may execute this Settlement Agreement in counterparts, and the execution of counterparts shall have the same effect as if all counsel had signed the same instrument. Facsimile signatures shall be considered as valid signatures as of the date of this Settlement Agreement, but the original signature pages shall subsequently be appended to this Settlement Agreement and filed with the Court.

IN WITNESS WHEREOF, the parties hereto, through their fully authorized representatives, have agreed to this Settlement Agreement on this date.

Dated: October 25, 2017

/s/ John D. Radice

/s/ Lewis R. Clayton

John D. Radice, Esq.
April D. Lambert, Esq.

Lewis R. Clayton, Esq.
James H. Borod, Esq.

RADICE LAW FIRM, PC

PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP

Counsel for Plaintiffs

Timothy E. Corrison, Esq.
Meghan K. Musso, Esq.

CONNELL FOLEY LLP

Counsel for Conair Corporation

Exhibit A – Form of Class Notice