

1 B. The original Class Action Complaint alleged, among other things, that the
2 Martinezes had participated in and invested in defendant MXI Corp. (“**MXI**”); that MXI was an
3 illegal pyramid scheme; and that various individuals named as defendants in the Class Action
4 Complaint promoted and profited from the MXI pyramid scheme;

5 C. On August 9, 2016, the Martinezes filed an Amended Class Action Complaint,
6 adding Beckie Lobb and Paula Wilson as named plaintiffs;

7 D. The Defendants deny the substantive allegations in the Amended Class Action
8 Complaint and deny any and all liability to both the Plaintiffs and the members of the putative
9 class;

10 E. The Plaintiffs and the Defendants (collectively, the “**Parties**”) now desire to
11 resolve the issues in this Action, without further proceedings and without admitting fault or
12 liability;

13 F. Plaintiffs, the Defendants, and their respective counsel, have engaged in lengthy
14 good-faith discussions regarding the possibility of settling the Action and have reached an
15 agreement concerning the proposed settlement of the Action as set forth herein; and

16 G. Plaintiffs’ counsel, having made a thorough investigation of the facts and law,
17 believe that the proposed settlement is fair, reasonable, adequate, and in the best interests of the
18 putative class.

19 NOW THEREFORE, it is hereby STIPULATED AND AGREED, by and among
20 Plaintiffs and the Defendants, subject to final approval of U.S. District Court for the District of
21 Nevada (the “**Court**”) pursuant to Rule 23 of the Federal Rules of Civil Procedure, to settle the
22 Action on the terms set forth below:
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1 **I. DEFINITIONS**

2 In addition to the foregoing defined terms, the following terms shall have the meanings
3 set forth below:

4 A. "Accepted Consumer Claims List" shall have the meaning ascribed in Section
5 XIII.F.

6 B. "Accepted Income Claims List" shall have the meaning ascribed in Section
7 XIII.F.

8 C. "Account Holder" shall have the meaning ascribed in Section XII.C.3.

9 D. "Adjusted Base Claim Amounts" means the Base Claim Amounts for the Income
10 Members, adjusted for any Reimbursement Reductions, as described in Section XIII.G.3.

11 E. "Alternative Judgment" shall have the meaning set forth in Section VIII.A.1.

12 F. "Base Claim Amount" shall have the meaning set forth in Section XII.C.2.

13 G. "Cash Awards" shall mean the monetary awards to Income Members as described
14 in Section XII.C.

15 H. "Cash Payments" shall have the meaning set forth in Section II.A.

16 I. "Claims Deadline" is the deadline by which Class Members must return a Claims
17 Form for the Form to be valid. A Claims Form must be postmarked 60 days after, and received
18 70 days after, the Settlement Administrator initially sends out Claims Forms pursuant to the
19 Notice Program.

20 J. "Claims Form" shall mean a document substantially in the form of the document
21 attached hereto as Exhibit B.

22 K. "Claims" means any and all actions, debts, claims, counterclaims, defenses,
23 demands, liabilities, damages, causes of action, costs, expenses, and compensation of every kind
24 and nature whatsoever, in law or in equity.
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- 1 L. “Class” shall have the meaning set forth in Section IV.C.
- 2 M. “Class Counsel” means the law firms Reid Collins & Tsai LLP and Dickinson
3 Wright LLP.
- 4 N. “Class Members” and “Class Member” shall reference persons who are members
5 of the Class, defined in Section IV.C.
- 6 O. “Consumer Members” shall have the meaning ascribed in Section XII.A.2.
- 7 P. “Current Consumer Members” shall have the meaning ascribed in Section
8 XII.A.3.
- 9 Q. “Cy Pres Recipient” shall be the AARP Foundation for education, research, and
10 advocacy to protect against business opportunities fraud, specifically including pyramid
11 schemes, subject to the Court’s approval.
- 12 R. “Defense Counsel” means (i) Nathan Jenkins at Jenkins Law Firm; (ii) Brian
13 Howie, Edward Salanga, and Kevin Quigley at Quarles and Brady LLP; (iii) Douglas Rands at
14 Rands, South & Gardner; and (iv) Lesley Miller at Kaempfer Crowell.
- 15 S. “Effective Date” shall have the meaning set forth in Section VIII.A.
- 16 T. “Estimated Fees and Expenses” shall have the meaning ascribed in Section
17 XIII.G.5.
- 18 U. “Excluded Claimants” shall have the meaning set forth in Section XIII.E.
- 19 V. “Execution Date” is the date set forth below and immediately preceding the
20 Parties’ signatures.
- 21 W. “Fairness Hearing” shall mean the hearing scheduled by the Court described in
22 Section V.A.1.b.
- 23 X. “Fee Award” means any award of attorneys’ fees and expenses to Class Counsel
24 approved by the Court or Service Awards.
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- 1 Y. "Final Claim Amount" has the meaning ascribed in Section XII.C.1.
- 2 Z. "Final Order And Judgment" shall mean an order substantially in the form as the
3 document attached hereto as Exhibit D.
- 4 AA. "Finalized Cash Award List" shall have the meaning ascribed in Section XIII.G.6.
- 5 BB. "Former Consumer Members" shall have the meaning ascribed in Section
6 XII.A.3.
- 7 CC. "Income Members" shall have the meaning ascribed in Section XII.A.1.
- 8 DD. "Initial Loss Amounts" shall have the meaning ascribed in Section VI.A.
- 9 EE. "Injunctive Relief" will mean the relief described in Section XV.
- 10 FF. "Marketing Program" includes, but is not limited to, any multilevel marketing
11 program, business opportunity, pyramid marketing scheme, Ponzi scheme, or chain marketing
12 scheme.
- 13 GG. "Memoranda of Understanding" shall refer to the documents the Parties executed
14 prior to the drafting of the Settlement Agreement that set forth their understanding of the terms
15 of settlement.
- 16 HH. "MXI Associates" shall mean all persons who agreed with MXI to purchase MXI
17 products at wholesale from MXI and receive compensation from MXI for recruiting other MXI
18 Associates and based on the other MXI Associates' purchase of MXI product. "MXI
19 Associates" does not include people who only purchased MXI product pursuant to MXI's
20 "Preferred Customer Program."
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- 22 II. "MXI Backoffice" means the online site personalized to each MXI Associate
23 where MXI Associates may order additional products, check the status of their accounts, and
24 otherwise interact with MXI regarding their participation in the MXI program.
- 25 JJ. "MXI Backoffice Interface" shall have the meaning ascribed in Section VI.D.
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KK. “MXI Master List” shall have the meaning set forth in Section XIII.D.

LL. “MXI Notice List” shall have the meaning set forth in Section VI.A.

MM. “Net Settlement Fund” shall have the meaning ascribed in Section XIII.G.5.c.

NN. “Notice Program” shall mean that program for the dissemination of notice described in Section VI.

OO. “Payor” shall have the meaning ascribed in Section XII.D.3.

PP. “Preliminary Approval Order” shall mean an order substantially in the form of the document attached hereto as Exhibit A.

QQ. “Pro Rata Reduction” shall have the meaning ascribed in Section XII.C.4.

RR. “Product Award Amount” is the amount of credit or the amount of a gift certificate Consumer Members will receive toward purchase of MXI product as described in Section XII.D.1.

SS. “Product Fund” shall have the meaning set forth in Section XII.D.2.

TT. “Reimbursement Reduction” shall have the meaning ascribed in Section XII.C.3.

UU. “Service Awards” means any award to the Plaintiffs ordered by the Court to compensate them for the time, risk, and effort they incurred in pursuing the Action for the benefit of the Class.

VV. “Settlement Account” shall mean the bank account selected by the Claims Administrator and Class Counsel to hold the Settlement Fund, as described in Section X.A.

WW. “Settlement Administrator” shall mean the entity designated in Section IX.A.

XX. “Settlement Fund” shall mean the total Cash Payments, plus any interest earned on the Settlement Account, as described in Section II.A.

YY. “Settlement Notice” shall mean a document substantially in the form of the document attached hereto as Exhibit C.

1 ZZ. “Unpaid Fees and Expenses” shall have the meaning ascribed in Section XIII.G.5.

2 **II. DEFENDANTS’ SETTLEMENT CONSIDERATION**

3 The Defendants will provide the following consideration in return for the Releases set
4 forth in Section III, below.

5 A. **Cash Consideration:** Within 14 days of the Effective Date, the Defendants shall
6 pay the following amounts of cash (the “**Cash Payments**”) into the Settlement Account:

- 7 1. MXI Defendants: \$4,000,000;
- 8 2. Pritchard Defendants: \$250,000;
- 9 3. Green Defendants: \$32,000; and
- 10 4. Reynolds Defendants: \$50,000.

11 Each defendant group’s Cash Payment obligations under subsection II.A.1 are joint and several
12 among only the Defendants to each particular group. For example, MXI is not jointly and
13 severally liable for contributions to the settlement fund owed by other defendant groups. These
14 Cash Payments, together with any interest earned thereon in the Settlement Account, shall
15 constitute the Settlement Fund.

16 B. **Product Consideration:** MXI shall provide gift certificates and credits to the
17 Class Members totaling up to \$1,750,000, based on prices MXI currently charges its distributors.

18 C. **Injunctive Relief:** MXI will agree to and will implement the Injunctive Relief
19 (as described in Section XV), which will, pursuant to Federal Rule of Civil Procedure 65, be
20 required of MXI in the Final Order And Judgment.

21 D. **Settlement Support:** All Defendants will support the Settlement Agreement,
22 will not encourage any Class Member to opt out of or object to the Settlement and, if requested
23 by Plaintiffs, will encourage Class Members to stay in the Class and support the Settlement.

1 **III. RELEASES**

2 A. **Party Releases:** As of the Effective Date, the Parties, their spouses, and their
3 counsel all release one another of any and all Claims, known or unknown, suspected or
4 unsuspected, reasonably discoverable or not, present, fixed or contingent, no matter the basis,
5 other than any rights arising under this Settlement Agreement.
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7 B. **The Class Released Claims:**

8 1. As of the Effective Date, the Class Members who do not opt out of the
9 Settlement will release the Defendants, including their past, present and future parents,
10 subsidiaries, predecessors, successors, insurers, officers, directors, and employees from any and
11 all Claims, known or unknown, suspected or unsuspected, reasonably discoverable or not,
12 present, fixed or contingent, which the Class Members may have or ever had against the
13 Defendants, arising out of or relating to the Defendants' alleged operation of a pyramid scheme,
14 any tortious conduct relating to the operation of a pyramid scheme, any consumer fraud, or any
15 misrepresentation or omission made as of the Effective Date.
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17 2. As discussed further herein, MXI will alter its business model and
18 agreements with Class Members in accordance with the Injunctive Relief. Class Members
19 release any and all claims they may have against MXI based on MXI's alteration of its business
20 model and agreements with Class Members in accordance with the Injunctive Relief stated
21 herein. Notwithstanding anything stated herein, MXI will continue to pay all earned
22 commissions under its current system until the Injunctive Relief takes effect, at which point MXI
23 will pay all earned commissions based on the provisions set out in the Injunctive Relief. Class
24 Members' claims based on rights arising under this Settlement Agreement are not released.
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26 C. IN ADDITION, EACH SETTLEMENT CLASS RELEASOR HEREBY
27 EXPRESSLY WAIVES AND RELEASES, UPON THIS AGREEMENT BECOMING
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1 EFFECTIVE, ANY AND ALL PROVISIONS, RIGHTS, AND BENEFITS CONFERRED BY §
2 1542 OF THE CALIFORNIA CIVIL CODE AND/OR ANY STATUTE, LAW OR PRINCIPLE
3 OF COMMON LAW, WHICH IS SIMILAR, COMPARABLE, OR EQUIVALENT TO § 1542
4 OF THE CALIFORNIA CIVIL CODE, WHICH READS:

5 SECTION 1542. GENERAL RELEASE; EXTENT. A GENERAL RELEASE
6 DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT
7 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
8 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST
9 HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR;
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11 Each Settlement Class Releasor may hereafter discover facts other than or different from
12 those which he, she, or it knows or believes to be true with respect to the claims which are the
13 subject matter of this Paragraph, but each Class Member hereby expressly waives and fully,
14 finally, and forever settles and releases, upon Final Approval, any known or unknown, suspected
15 or unsuspected, contingent or non-contingent released past claims and released future claims
16 arising out of or relating to the Defendants' alleged operation of a pyramid scheme, any tortious
17 conduct relating to the operation of a pyramid scheme, any consumer fraud, or any
18 misrepresentation or omission made as of the Effective Date, whether or not concealed or
19 hidden, without regard to the subsequent discovery or existence of such different or additional
20 facts. Each Class Member also hereby expressly waives and fully, finally, and forever settles and
21 releases any and all released past claims and released future claims it may have against
22 Defendants under § 17200, et seq., of the California Business and Professions Code and/or under
23 any similar code or statute of any other State or under federal law.
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1 **IV. CLASS CERTIFICATION**

2 A. Promptly after the execution of this Agreement, the Plaintiffs will seek, and the
3 Defendants will not oppose, the Court's certification of the Class for settlement purposes only
4 pursuant to Rule 23(b)(2) and (3) of the Federal Rules of Civil Procedure.

5 B. The Parties agree that Plaintiffs will serve as representatives of the Class and that
6 Class Counsel will serve as class counsel.

7 C. The "Class" shall be all MXI Associates who (1) received less money from MXI
8 than they paid MXI in fees or product purchases over the course of their associations with MXI,
9 up to the Execution Date, (2) made any payment to MXI to purchase product or pay fees between
10 May 1, 2011 and the Execution Date, and (3) were U.S. residents at any time between May 1,
11 2011 and the present. The Defendants, their affiliates, their management, their employees and
12 their spouses are excluded from the Class, provided that the foregoing exclusions shall not cover
13 MXI Associates other than Defendants.

14 D. The Parties' agreement as to certification of the Class is only for purposes of
15 effectuating this Settlement and for no other purpose. Defendants retain all of their objections,
16 arguments, and defenses with respect to any other request for class certification, and they reserve
17 all rights to contest class certification if (i) the Settlement Agreement does not receive the
18 Court's final approval, (ii) the Court's approval is reversed or vacated on appeal, (iii) this
19 Settlement Agreement is terminated as provided herein, or (iv) the Settlement Agreement
20 otherwise fails to be effectuated for any other reason.

21 **V. SETTLEMENT APPROVAL**

22 The Parties agree to take all necessary steps to obtain preliminary and final approval of
23 this Settlement Agreement and take the actions described below.

1 A. **Preliminary Approval:**

2 1. Promptly after this Agreement has been fully executed, Class Counsel
3 shall make a motion to the Court for entry of the Preliminary Approval Order, substantially in
4 the form annexed hereto as Exhibit A. The requested Preliminary Approval Order will
5 preliminarily approve this Settlement Agreement and find that the Class should be certified for
6 settlement purposes. The requested Preliminary Approval Order will also:

7 a. Preliminarily approve this Settlement Agreement as the product of
8 good faith negotiations and as sufficiently fair and reasonable so as to warrant sending the
9 Settlement Notice and the Claims Form to the Class Members;

10 b. Schedule, on such date that is at least 90 days after the Court issues
11 the Preliminary Approval Order, the Fairness Hearing at which the Court may consider the
12 fairness, reasonableness, or adequacy of the proposed Settlement Agreement, whether it should
13 be finally approved by the Court, and whether to approve any requests for Fee Awards or Service
14 Awards;

15 c. Provide that the Fairness Hearing may, from time-to-time and
16 without further notice to the Class Members, be continued or adjourned by order of the Court;

17 d. Require each Class Member who wishes to object to (i) the
18 fairness, reasonableness, or adequacy of this Settlement Agreement, (ii) the appropriateness of
19 any request for a Fee Award or for Service Awards, or (iii) the entry of the Final Order And
20 Judgment, to deliver to Class Counsel and Defense Counsel and to file with the Court by a date
21 no less than 21 days before the Fairness Hearing, or at such other time as the Court may direct, a
22 statement of such objection, or be forever barred from objecting;

23 e. Require that any Class Member who files a written objection and
24 who intends to make an appearance at the Fairness Hearing, either in person or through counsel
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1 at the Class Member's expense, to deliver to Class Counsel and Defense Counsel and file with
2 the Court no less than 14 days before the Fairness Hearing, or as the Court may otherwise direct,
3 a notice of intention to appear and a statement identifying any documents the Class Member will
4 seek to introduce or witnesses the Class Member will seek to call at the Fairness Hearing;

5 f. Require that any person falling within the definition of the Class
6 who desires to be excluded from the Class must request exclusion by sending a written request to
7 the Settlement Administrator not later than 21 days before the Fairness Hearing, which request
8 shall list the person's name, name at the time the persons was an MXI Associate, telephone
9 number, address, social security number, and MXI account number (if known);
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11 g. Provide that, on the Effective Date, all Class Members, whether or
12 not they file a Claim Form, shall be conclusively deemed to have released and forever discharged
13 the Class Released Claims, in the manner described in Subsection III.B;
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15 h. Direct Class Counsel and Defense Counsel to promptly furnish
16 each other with copies of any and all objections to the Settlement Agreement that might come
17 into their possessions and that are not filed with the Court;

18 i. Find that the Settlement Notice, the Claim Form, and the Notice
19 Program implemented pursuant to the Settlement Agreement to distribute these documents
20 constitutes notice that is reasonably calculated, under the circumstances, to apprise the Class
21 Members of the terms of the Settlement Agreement and any requests for a Fee Award or Service
22 Awards, their right to object to or to opt out of the proposed Settlement, and their right to appear
23 at the Fairness Hearing, and that the Settlement Notice, the Claim Form, and the Notice Program
24 meet all applicable requirements of the Federal Rules of Civil Procedure and the United States
25 Constitution;
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27 j. Approve retention of the Settlement Administrator;
28

1 k. Direct the Plaintiffs and the MXI Defendants to promptly proceed
2 with the Notice Program; and

3 1. Appoint Class Counsel and Plaintiffs to represent the Class.

4 2. The Settlement Notice and Claims Form have dates that depend on the
5 date set by the Court for the Fairness Hearing and the date the Court issues the Preliminary
6 Approval Order. Class Counsel will complete these documents with the addition of the dates
7 derived from the date set for the Fairness Hearing in the Preliminary Approval Order and the
8 date the Preliminary Approval Order issues. The dates to be set are as follows:

- 10 • Fairness Hearing;
- 11 • Deadline for Notice of Appearance by Objecting Class Member or Class
12 Member's Counsel: 14 days prior to Fairness Hearing;
- 13 • Objections Deadline and Opt-Out Deadline: 21 days prior to Fairness
14 Hearing;
- 15 • Deadline for Emailing Settlement Notices, Claims Forms, and Opt-Out
16 Requests: 60 days prior to Fairness Hearing; and
- 17 • Claims Deadline: postmarked 60 days after, and received 70 days after,
the Settlement Administrator initially emails the Claims Forms.

18 B. **Final Approval:** If the Court issues the Preliminary Approval Order, Plaintiffs
19 shall move the Court to enter the Final Order And Judgment substantially in the form annexed
20 hereto as Exhibit D. The requested Final Order And Judgment shall:

21 1. Grant final certification of the Class and attach a list of persons who have
22 been excluded from the Class pursuant to timely requests to opt out;

23 2. Finally approve the Settlement Agreement as fair, reasonable, and
24 adequate, and in the best interests of the Class Members;

25 3. Direct consummation of the Settlement Agreement pursuant to its terms;

1 4. Find that the notice provided the Class Members constituted due,
2 adequate, and sufficient notice of the Settlement Agreement, meeting the requirements of due
3 process and the Federal Rules of Civil Procedure;

4 5. Dismiss the claims of the Plaintiffs and the Class brought in this Action
5 with prejudice, without fees or costs to any party except as the Court may award Class Counsel
6 or Plaintiffs from the Settlement Fund;

7 6. Direct that the releases set forth in the Settlement Agreement be deemed
8 effective as of the Effective Date;

9 7. Without affecting the finality of the Final Order And Judgment, retain
10 jurisdiction as to all matters relating to the administration, consummation, enforcement, and
11 interpretation of this Settlement Agreement and the Final Order And Judgment, and for any other
12 necessary purpose; and
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14 8. Incorporate any other provisions into the Final Order And Judgment that
15 the Court deems necessary and just.
16

17 C. **Appeal:** In the event of an appeal from a Final Order And Judgment, the Parties
18 will work cooperatively to defend the Final Order And Judgment on appeal.

19 D. **Cooperation:** The Parties agree to cooperate fully with one another with respect
20 to the Parties' seeking (1) the Court's preliminary approval of the Settlement Agreement and
21 class certification; (2) the Court's approval of the Settlement Notice, the Claims Form, and the
22 Notice Program; and (3) the Court's final approval of the Settlement Agreement. The Parties
23 agree to promptly agree upon and execute all such other documentation as may be reasonably
24 required to obtain final approval by the Court of the Settlement Agreement.
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1 **VI. NOTICE PROGRAM**

2 A. **MXI Notice List:** Within 7 days of the Court’s issuance of the Preliminary
3 Approval Order, MXI will provide Class Counsel and the Settlement Administrator with an
4 Excel spreadsheet (the “**MXI Notice List**”) identifying all Class Members. This spreadsheet will
5 include as much of the following information for each Class Member that is in MXI’s
6 possession, custody, or control:
7

- 8 • Name;
- 9 • MXI Associate ID number;
- 10 • Mailing address;
- 11 • Telephone number(s);
- 12 • Email address(es);
- 13 • Individual payments to MXI, including purpose (*i.e.*, fees, product,
shipping, *etc.*) and dates of payments;
- 14 • Total payments to MXI;
- 15 • Individual payments from MXI, including purpose and dates of payments;
- 16 • Total payments from MXI; and
- 17 • The difference between total payments to and from MXI (“**Initial Loss
Amounts**”).

18 MXI will provide payment data for May 1, 2011, to the present for each Class Member in the
19 MXI Notice List.

20 B. **Notice by Settlement Administrator:** No less than 60 days before the Fairness
21 Hearing, and as soon as possible after MXI provides the MXI Notice List, the Settlement
22 Administrator will provide notice to the Class Members in the following manner:

- 23 1. Sending a copy of the Settlement Notice and the Claims Form via email to
24 the Class Members; and
 - 25 2. Sending a copy of the Settlement Notice and the Claims Form via U.S.
26 regular mail to all Class Members whose noticing emails sent pursuant to the previous paragraph
27 “bounced back”.
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1 C. **Notice to Government Officials:** The Settlement Administrator will provide
2 notice to the required state and federal officials as set out in 28 U.S.C. § 1715(b), within 10 days
3 of Plaintiffs filing the motion for entry of the Preliminary Approval Order.

4 D. **Notice by MXI:** No less than 60 days before the Fairness Hearing, and as soon
5 as possible after MXI provides the MXI Notice List, MXI will create an interface (the “**MXI**
6 **Backoffice Interface**”) on the MXI Backoffice site for each Current Class Member that will
7 provide a link to the website established by the Settlement Administrator described below.
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9 E. **Class Action Website:** The Settlement Administrator will prepare and publish a
10 website that will contain documents relating to the Action and the Settlement Agreement,
11 including the following:

- 12 • The Court’s order on the motions to dismiss;
- 13 • The Amended Class Action Complaint;
- 14 • The Settlement Agreement;
- 15 • The motions for issuance of the Preliminary Approval Order, any Fee Award,
16 and any Service Awards; and
- 17 • The Settlement Notice and the Claims Form.
18

19 Class Members will be able to fill out and submit their Claims Form on the class action website.
20 The Settlement Notice will direct the Class Members to this website. The Settlement
21 Administrator may publish additional materials on the website to provide the Class Members
22 with updated information regarding Settlement Agreement, such as various deadlines and the
23 motion for entry of the Final Order And Judgment, as directed by Class Counsel.
24

25 **VII. OBJECTION TO THE PROPOSED SETTLEMENT AGREEMENT**

26 A. Any Class Member who wishes to object to the fairness, reasonableness or
27 adequacy of this Settlement Agreement must, by the date specified in the Settlement Notice
28 (which will be no later than 21 days before the Fairness Hearing or such other time as the Court

1 may direct) deliver to Class Counsel and Defense Counsel and file with the Court a statement of
2 such objection, as well as the specific reasons for each objection, including any legal and
3 evidentiary support the Class Member wishes to bring to the Court's attention. Class Members
4 may object on their own or through counsel hired at their own expense.

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6 B. Any Class Member who files and serves a written objection and who intends to
7 make an appearance at the Fairness Hearing, either in person or through counsel at that Class
8 Member's expense, must deliver to Class Counsel and Defense Counsel and file with the Court
9 by the date specified in the Settlement Notice, which will be no later than 14 days before the
10 Fairness Hearing, or as the Court may otherwise direct, a notice of intention to appear and a
11 statement identifying any documents the Class Member will seek to introduce or witnesses the
12 Class Member will seek to call at the Fairness Hearing.

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14 C. Any Class Member who fails to comply with subsections A and B of this Section
15 VII shall waive and forfeit any and all rights that Class Member may have to appear separately
16 or object, or to take any appeal of the orders of judgment in this action, and shall be bound by all
17 terms of this Agreement, should the Court enter the Order And Final Judgment.

18 D. Class Members who opt out of the Settlement Agreement may not object to the
19 Settlement Agreement.

20 E. Class Counsel and Defense Counsel will promptly furnish each other with copies
21 of any and all objections to the Settlement Agreement that might come into their possessions and
22 that are not filed with the Court.
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24 **VIII. EFFECTIVE DATE OF SETTLEMENT; TERMINATION**

25 A. The "Effective Date" of the Settlement Agreement shall be the date when both of
26 the following have occurred:
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1 1. Entry by the Court of the Final Order And Judgment, substantially in the
2 form set forth in Exhibit D annexed hereto, or the entry of a final judgment other than the Final
3 Order And Judgment (“**Alternative Judgment**”) and none of the Parties hereto elect to terminate
4 the Settlement Agreement; and

5 2. Expiration of the time for judicial review and, in the event of an appeal,
6 affirmance the Final Order And Judgment either on appeal or after remand from an appellate
7 court.
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9 **B. Termination:**

10 1. Any Party shall have the right to terminate this Settlement Agreement by
11 providing written notice of their election to do so to all other Parties hereto within 7 days of (a)
12 the Court’s denying the motion for entry of the Preliminary Approval Order or modifying it in
13 any material respect, (b) the Court’s denial of the motion for entry of the Final Order And
14 Judgment or modifying it in any material respect, (c) denial of certification or modification of the
15 scope of the proposed Class, (d) filed objections from any regulator or state Attorney General
16 from a state or states in which 10% or more of the Class Members reside, according to MXI’s
17 records, or (e) an appellate court’s reversal of the Final Order And Judgment.
18

19 2. MXI shall have the right to terminate this Settlement Agreement in the
20 event that more than 3% of the Class Members opt out of this Settlement Agreement.
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22 **C. Reversion to Status Quo:** Except as otherwise provided herein, in the event the
23 Settlement Agreement is terminated or ultimately fails to become effective for any reason, then
24 the Parties to this Settlement Agreement shall be deemed to have reverted to their respective
25 positions in the Action immediately prior to their execution of the Memoranda of Understanding
26 and, except as otherwise expressly provided, the Parties shall proceed in all respects as if this
27 Settlement Agreement had not been entered into.
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1 **IX. SETTLEMENT ADMINISTRATOR**

2 A. Subject to approval by the Court, the Parties have agreed that Class Counsel will
3 retain Lain Faulkner & Co., PC as the neutral Settlement Administrator.

4 B. The Settlement Administrator's fees and expenses will be paid out of the
5 Settlement Fund. The Settlement Administrator's fees and expenses will be subject to review
6 and approval by Class Counsel. In the event Class Counsel and the Settlement Administrator are
7 unable to agree as to the amount of appropriate fees and expenses, either may request resolution
8 of the issue by the Court with each side to bear their own fees and expenses.

9 C. The Settlement Administrator's fees and expenses incurred prior to the Effective
10 Date will be paid out of the Settlement Account after the Effective Date. In the event the Court
11 does not issue a Final Order And Judgment, or a Final Order And Judgment is reversed on
12 appeal, Class Counsel will pay the Settlement Administrator's fees and expenses.

13 D. Defendants are not liable for settlement administration, or any acts or omissions
14 of the Settlement Administrator and/or Class Counsel in connection with settlement
15 administration.

16 **X. SETTLEMENT ACCOUNT**

17 A. Within 5 days of the Effective Date, Class Counsel and the Settlement
18 Administrator will open an interest-bearing account (the "**Settlement Account**") at a financial
19 institution agreeable to both Class Counsel and the Settlement Administrator.

20 B. The Settlement Administrator will have the sole ability to write checks against or
21 order transfers from the Settlement Account. However, the Settlement Administrator will only
22 be able to write checks against or order transfers from the Settlement Account with the approval
23 of Class Counsel.

1 C. Within 14 days of the Effective Date, the Defendants will make the Cash
2 Payments into the Settlement Account.

3 D. Any fees for the maintenance of the Settlement Account will be paid out the
4 Settlement Account.

5 E. The Settlement Administrator must make the following payments, and only the
6 following payments, out of the Settlement Account:
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8 1. The Cash Awards to Income Members;
9 2. Any Service Awards approved by the Court;
10 3. Any Fee Award approved by the Court;
11 4. Any fees and expenses incurred by the Settlement Administrator
12 (including notice costs) in performing its obligations under this Agreement and approved by
13 Class Counsel or the Court;

14 5. Any cy pres payment to the Cy Pres Recipient; and
15 6. Any fees imposed by the financial institution holding the Settlement
16 Account.
17

18 F. **Closing the Account:** After the balance of the Settlement Account reaches \$0,
19 the Settlement Administrator will close the Settlement Account.

20 G. **Taxes on Settlement Account:** The Settlement Fund shall constitute a qualified
21 settlement fund within the meaning of Treasury Regulations Sections 1.468B-1 through 1.468B-
22 5, 26 C.F.R. §§ 1.468B-1 through 1.468B-5 (1992). The Parties shall treat the Settlement Fund
23 as qualified settlement funds for all reporting purposes under the federal tax laws. For the
24 purpose of Section 468B of the Internal Revenue Code of 1986, as amended, and the regulations
25 promulgated thereunder, the “administrator” shall be the Settlement Administrator, which is
26 acting as an escrow agent. The Settlement Administrator, as escrow agent, shall timely and
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1 properly file all informational and other tax returns necessary or advisable with respect to the
2 Settlement Fund (including without limitation, the returns described in Treas. Reg. Sec. 1.468B-
3 2(k)). Such returns shall be consistent with this subsection and in all events shall reflect that all
4 taxes (including any interest or penalties) on the income earned by the Settlement Fund shall be
5 paid out of the income earned by the Settlement Fund. Taxes and tax expenses shall be treated
6 as, and considered to be, a cost of administration of the Settlement Fund and paid without prior
7 order from the Court. The Settlement Administrator shall be obligated (notwithstanding
8 anything herein to the contrary) to withhold from the income earned by the Settlement Fund any
9 funds necessary to pay such taxes, including the establishment of adequate reserves for any taxes
10 and tax expenses (as well as any amounts that may be required to be withheld under Treas. Reg.
11 Section 1.468B-2(1)(2)). The Settlement Administrator shall maintain accurate records of all
12 expenditures made pursuant to this subsection, and shall provide the records upon request to
13 Class Counsel, Defense Counsel, and the Court. None of the Parties or any of their counsel shall
14 have any responsibility for the payment of taxes described in this subsection. The Parties agree
15 to cooperate with the Settlement Administrator, each other, and their tax attorneys and
16 accountants to the extent reasonably necessary to carry out the provisions of this subsection.
17
18

19 H. The Cash Fund shall be within the control and jurisdiction of the Court until such
20 time as it is distributed pursuant to this Settlement Agreement.
21

22 **XI. ATTORNEYS' FEES AND EXPENSES AND SERVICE AWARDS**

23 A. Class Counsel shall apply to the Court for a Fee Award, and Plaintiffs shall apply
24 to the Court for Service Awards, prior to the Fairness Hearing. The fact of and the amount of
25 these requests will be noted in the Settlement Notice provided to Class Members.
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1 B. Any Fee Award and Service Awards will be paid out of the Settlement Fund.
2 Defendants will not pay any amount of any Fee Award or Service Awards, except that
3 Defendants will make the Cash Payments that will fund the Settlement Fund.

4 C. The Parties have not made any agreement regarding what amount of Fee Award
5 should be paid, nor whether Defendants will object to or support any application for Fee Awards.
6 Nor have the Parties made any agreement about what amount of Service Awards should be paid,
7 nor whether Defendants will object to or support any application for Service Awards.
8

9 D. No amount of the Settlement Fund will revert to the Defendants, or any of them,
10 and the Defendants have no financial interest in what amount of Fee Award or Service Awards
11 the Court may approve.

12 E. Any orders or proceedings relating to any request for a Fee Award or for Service
13 Awards shall not operate to terminate or cancel this Settlement Agreement, and shall have no
14 effect on the finality of the Final Order And Judgment.
15

16 F. The Settlement Administrator will pay any Fee Award from the Settlement
17 Account by wire transfer, to the following account:

18 Broadway National Bank
19 1177 Northeast Loop 410
20 San Antonio, Texas 78209
21 ABA No. 114021933
Credit Account No. 4100059288
Reid Collins & Tsai LLP (IOLTA)

22 The Settlement Administrator will make that payment within 5 business days of the latter of
23 (a) the expiration of time to appeal the Court's approving the Fee Award, (b) the Effective Date,
24 and (c) the Defendants' making the Cash Payments.

25 G. The Settlement Administrator will pay any Service Awards by check, written in
26 the name of the particular recipient, and will deliver those checks via Federal Express to:

27 R. Adam Swick
28 Reid Collins & Tsai LLP

1 1301 Capital of Texas Highway, Suite C300
2 Austin, Texas 78746

3 The Settlement Administrator will make those payments within 5 business days of the latter of
4 (a) the expiration of time to appeal the Court's approving of the Service Awards, (b) the
5 Effective Date, and (c) the Defendants' making the Cash Payments.

6 **XII. SETTLEMENT AWARDS**

7 A. **Income Members and Consumer Members:** Class Members will be
8 categorized as "**Income Members**" and "**Consumer Members.**"

9 1. Income Members are Class Members who principally participated in the
10 MXI program to earn income. Income Members may receive a Cash Award.

11 2. Consumer Members are Class Members who are not Income Members.
12 They may receive a Product Award.

13 3. Consumer Members will be further categorized as "**Current Consumer**
14 **Members**" and "**Former Consumer Members**" depending on whether they are current in their
15 MXI fees as of the Execution Date. Current and Former Consumer Members have the same
16 entitlement to compensation.
17

18 B. **Final Designations:** A Class Members' ultimate designation as an Income
19 Member or a Consumer Member will depend upon their willingness to certify, under oath, in
20 their Claims Form that the Class Member participated in the MXI program principally to earn
21 income.
22

23 C. **Cash Awards to Income Members:** Income Members submitting a valid Claims
24 Form may receive a Cash Award from the Settlement Fund in that Class Members' Final Claim
25 Amount.
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1 1. **Final Claim Amount:** The Final Claim Amount for each Income
2 Member is the Base Claim Amount, subject to the Reimbursement Reduction and the Pro Rata
3 Reduction.

4 2. **Base Claim Amount:** The Base Claim Amount is the amount of money
5 the Income Member has ever paid MXI, less the amount of money the Income Member has ever
6 received from MXI. The Base Claim Amount is not restricted to money paid for that particular
7 Income Member's MXI account and may include money paid by that Income Member for other
8 Class Members' accounts. To receive compensation based on payments made on behalf of
9 another MXI Associate, an Income Member may provide additional information substantiating
10 that he or she made such payments. This additional information may include credit card
11 statements, credit card numbers, correspondence with MXI, and names and MXI Associate ID
12 numbers for other Associates. The Income Member cannot receive an award based on payments
13 for other Class Members unless the Income Member and the Settlement Administrator can
14 identify specific payments made for specific MXI accounts.
15

16 3. **Reimbursement Reduction:** An Income Member's Base Claim Amount
17 will be reduced by a Reimbursement Reduction where one Income Member (the "**Account**
18 **Holder**") filing a claim held the MXI account and another Income Member filing a claim
19 presents evidence that he or she (the "**Payor**") made a payment to MXI for the Account Holder's
20 account. If the Account Holder certifies that he or she reimbursed the Payor for any amounts the
21 Payor paid on behalf of the Account Holder, the Payor's Base Claim Amount will be reduced by
22 the amount of the claimed reimbursement to yield the Adjusted Base Claim Amounts.
23

24 4. **Pro Rata Reduction:** If the total amount of Adjusted Base Claim
25 Amounts for all Income Members exceeds the Net Settlement Fund, each Income Member's
26 Adjusted Base Claim Amounts will be reduced on a pro rata, proportionate basis, until the total
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1 Adjusted Base Claim Amounts equals the Net Settlement Fund. The Adjusted Base Claim
2 Amounts after any Pro Rata Reductions are the Final Claim Amounts.

3 **D. Product Awards to Consumer Members:** Current Consumer Members
4 submitting a valid Claims Form may receive a one-time use credit against future product
5 purchases in the Product Award Amount. Former Consumer Members submitting a valid Claims
6 Form may receive a one-time use gift certificate in the Product Award Amount.

7
8 1. **Product Award Amount:** The Product Award Amount is equal to the
9 amount of the Product Fund, divided by the total number of Consumer Members submitting
10 valid Claims Forms, up to a \$50 per Consumer Member cap.

11 2. **Product Fund:** The Product Fund is equal to \$1,750,000.00 in MXI
12 products at their current wholesale prices. Under no circumstances will MXI have to
13 compensate Class Members with product in an amount exceeding the Product Fund.

14 3. **Product Priced Below the Cap:** MXI will offer year round 12 cans of
15 the Xe Energy Drink—one of MXI's most popular products—below the \$50 cap, including
16 shipping and handling. MXI will also offer at certain times of the year ¼ boxes of Nuggets, X
17 Power Squares, Omega Squares, or XoBiotic Squares, for prices, including shipping and
18 handling, below the \$50 cap. Because of the need to keep perishable items cold, shipping
19 charges increase between April 15-October 15 on these items so that they are priced (including
20 shipping and handling) above the cap during that time.

21
22 4. **No Restrictions:** The Consumer Members may use their gift certificates
23 and credits to purchase any MXI products at MXI's wholesale prices, without restriction.

24 5. **Expiration:** The gift certificates and credits will expire 30 days after the
25 distribution of the gift certificates.
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1 **XIII. CLAIMS PROCESS**

2 A. **Claims Deadline:** Income Members and Former Consumer Members who wish
3 to receive an award must return a Claims Form by the Claims Deadline. Current Consumer
4 Members who wish to receive an award must also return a Claims Form by the Claims Deadline.
5 Any Class Member who fails to submit a Claims Form before the Claims Deadline will not be
6 entitled to receive any award but will otherwise be bound by the terms of this Settlement
7 Agreement, including the terms of any Final Order And Judgment entered in this Action and the
8 releases provided for herein, unless that Class Member opts out.
9

10 B. The Settlement Notice and the Claims Form will request that the Class Member
11 return the Claims Form to the Settlement Administrator. However, if a Class Member returns a
12 Claims Form to Class Counsel, Defense Counsel, or Defendants, they will forward that Claims
13 Form to the Settlement Administrator, which will treat the Claims Form as if it were sent to the
14 Settlement Administrator by the Class Member as of the date received by Class Counsel,
15 Defense Counsel, or Defendants.
16

17 C. **Identifying Information:** The Claims Form will ask that the Class Member to
18 provide the following information:

- 19 • Name;
20 • MXI Associate ID;
21 • Social security number;
22 • Date of birth;
23 • Current mailing address;
24 • Mailing address when the Class Member was an MXI Associate, if different;
25 • Current telephone number;
26 • Telephone number when the Class Member was an MXI Associate, if
27 different;
28 • Current email address the Settlement Administrator can use for contacting the
Class Member; and
• Email address at the time the Class Member was an MXI Associate, if
different.

1 This information is requested for identification and communication purposes only. The failure of
2 a Class Member to provide all of the requested information will not be grounds for a denial of an
3 award, so long as the Settlement Administrator is reasonably satisfied that the claimant is a Class
4 Member.

5 D. **MXI Master List:** Within 15 days of the Effective Date, MXI will supplement
6 and update the MXI Notice List so that it includes information regarding every payment every
7 Class Member made or received at any time (not just May 1, 2011, to the date of execution of the
8 Settlement Agreement). This updated and supplemented list will be the MXI Master List. MXI
9 will provide a copy of the MXI Master List to the Settlement Administrator and Class Counsel
10 within 15 days of the Effective Date.

11 E. **Excluded Forms:** The Settlement Administrator will exclude all Claims Forms
12 (1) that were not received by the Claims Deadline, (2) that did not contain sufficient information
13 for the Settlement Administrator to become reasonably satisfied that the claimant is a Class
14 Member, and (3) that were submitted by persons who also requested to opt out of the Settlement.

15 1. Within 14 days of the Effective Date, the Settlement Administrator will
16 provide electronic copies of all excluded Claims Forms to Class Counsel and lists of (a) all
17 claimants whose Claims Forms were excluded and (b) all claimants whose Claims Forms were
18 not excluded.

19 2. If Class Counsel disagrees with any of the Settlement Administrator's
20 exclusion determinations, Class Counsel may confer with the Settlement Administrator regarding
21 the alteration of a particular exclusion determination. Class Counsel must do this within 7 days
22 of receipt of the information described in the preceding paragraph. If Class Counsel and the
23 Settlement Administrator are unable to resolve a question of which forms should be excluded,
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1 Class Counsel may bring the issue to the Court for resolution. The unexcluded claimants will be
2 the “**Accepted Claimants.**”

3 F. **Accepted Claims Lists:** Within 7 days of the deadline for Class Counsel to
4 instruct the Settlement Administrator to alter an exclusion determination, the Settlement
5 Administrator will separate the Claims Forms from Accepted Claimants into two groups: those
6 containing the certification under oath described in Section XII.B, and those that do not. The
7 first group will be the accepted Claims Forms for the Income Members and will be listed on an
8 “**Accepted Income Claims List.**” The second group will be the Claims Forms for the Consumer
9 Members and listed on an “**Accepted Consumer Claims List.**” The Settlement Administrator
10 will provide these lists to Class Counsel.
11

12 G. **Calculating Cash Awards:** The Settlement Administrator will calculate Cash
13 Awards for Income Members awards using the following process:
14

15 1. The Settlement Administrator will assess the Base Claim Amount for each
16 Income Member on the Accepted Income Claims List.

17 a. The Settlement Administrator will first look to the data provided
18 by MXI regarding Class Member payments and receipts on the MXI Master List.

19 b. The Settlement Administrator will also consider evidence
20 submitted by Class Members that they made payments for the benefit of other MXI Associates,
21 as described in section XII.C.2, above. The Settlement Administrator may also consider
22 evidence of payment from MXI’s electronic database where the Class Member provides
23 information regarding the Class Member’s credit card. Upon request from the Settlement
24 Administrator, MXI will provide information from its electronic database regarding what
25 purchases were made with a particular credit card. MXI will not have to provide any other
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1 additional data to assist in calculating payments made by Class Members for the benefit of other
2 MXI Associates.

3 c. The Settlement Administrator will add a column for the Base
4 Claim Amounts to the Accepted Income Claims List and provide it to Class Counsel within 56
5 days of the Effective Date.

6 d. If Class Counsel disagrees with any of the Base Claims Amounts,
7 Class Counsel may confer with the Settlement Administrator regarding the alteration of a
8 particular exclusion determination. Class Counsel must do this within 7 days of receipt of the
9 information described in the preceding paragraph. If Class Counsel and the Settlement
10 Administrator are unable to resolve a calculation of Base Claim Amounts, Class Counsel may
11 bring the issue to the Court for resolution.

12 2. Once the Settlement Administrator has established the Base Claim
13 Amount for Income Members on the Accepted Income Claim List, the Settlement Administrator
14 will determine whether Reimbursement Reductions are necessary.

15 a. As described in section XII.C.3, above, an Income Member's Base
16 Claim Amount will be reduced by a Reimbursement Reduction where two Income Members
17 seek compensation based on a payment to MXI for the same MXI Account.

18 b. Where an Account Holder and a Payor (as defined in section
19 XII.C.3, above) seek compensation based on a payment to MXI for the same MXI Account, the
20 Settlement Administrator will contact the Account Holder by email, U.S. Mail, or telephone and
21 inquire whether the Account Holder reimbursed the Payor for the payment. If the Account
22 Holder will certify in writing that the Account Holder reimbursed the Payor, then the Account
23 Holder may recover for the payment and the Payor's Base Claim Amount will be reduced so that
24 two Income Members are not recovering for the same payment.
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1 c. After the Settlement Administrator makes its determination based
2 on the foregoing, it will provide the information relating to a Reimbursement Reduction to Class
3 Counsel.

4 d. If Class Counsel disagrees with any of the Reimbursement
5 Reductions identified by the Settlement Administrator, Class Counsel may confer with the
6 Settlement Administrator regarding the alteration of a particular Reimbursement Reduction.
7 Class Counsel must do this within 7 days of receipt of the information described in the preceding
8 paragraph. If Class Counsel and the Settlement Administrator are unable to resolve an issue
9 regarding Reimbursement Reduction, Class Counsel may bring the issue to the Court for
10 resolution.
11

12 3. Once the Settlement Administrator has assessed Base Claim Amounts and
13 made any necessary Reimbursement Reductions for Income Members on the Accepted Income
14 Claim List, the Settlement Administrator will provide a revised Accepted Income Claims List to
15 Class Counsel. The Settlement Administrator will include in the List identification and contact
16 information regarding each Income Class Member on the List, their Base Claim Amounts, their
17 Reimbursement Reductions, and their Base Claim Amounts adjusted for the Reimbursement
18 Reductions (the “**Adjusted Base Claim Amounts**”). This spreadsheet will also total the
19 Adjusted Base Claim Amounts.
20

21 4. If Class Counsel disagrees with any of the Adjusted Base Claims
22 Amounts, Class Counsel may confer with the Settlement Administrator regarding the alteration
23 of particular Adjusted Base Claim Amounts. If Class Counsel and the Settlement Administrator
24 are unable to resolve an issue regarding the Adjusted Base Claim Amounts, Class Counsel may
25 bring the issue to the Court for resolution.
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1 5. Within 7 days of Class Counsel notifying the Settlement Administrator
2 that their review of the Accepted Income Claims List is complete, the Settlement Administrator
3 will prepare an invoice for its incurred but unpaid fees and expenses (the “**Unpaid Fees and**
4 **Expenses**”) and a binding estimate of fees and expenses (the “**Estimated Fees and Expenses**”)
5 the Settlement Administrator will incur in distributing Cash Awards to the Income Members and
6 the Consumer Members and otherwise completing its work as Settlement Administrator.

7
8 a. At the time the Settlement Administrator provides this invoice and
9 binding estimate to Class Counsel, the Settlement Administrator will calculate the Net
10 Settlement Fund by subtracting the Unpaid Fees and Expenses and the Estimated Fees and
11 Expenses from the amount then existing in the Settlement Account.

12 b. If, for some reason, any Fee Award or Service Awards have not yet
13 been paid, the Settlement Administrator will subtract those amounts from the amount existing in
14 the Settlement Account, also.

15 c. The amount of the Settlement Account less the two subtractions
16 described in the preceding two paragraphs, as well as any unpaid account service fees, will be the
17 “**Net Settlement Fund.**”

18
19 6. 7 days after providing Class Counsel with the statement of Unpaid Fees
20 and Expenses and the Estimated Fees and Expenses, the Settlement Administrator will calculate
21 the Cash Awards. If the total of the Adjusted Base Claim Amounts does not exceed the Net
22 Settlement Fund, then the Adjusted Base Claim Amounts become the Income Members’ Final
23 Claim Amounts. Otherwise, the Settlement Administrator must reduce each Adjusted Base
24 Claim Amount on a pro rata basis so that the total of the Adjusted Base Claim Amounts equals
25 the Net Settlement Fund, and those reduced Adjusted Base Claim Amounts become the Income
26 Members’ Final Claim Amounts. The Settlement Administrator will provide Class Counsel with
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1 a spreadsheet (the “**Finalized Cash Award List**”) including the Final Claim Amounts on the
2 Accepted Income Claim List.

3 7. The Settlement Administrator will cause to issue checks from the
4 Settlement Account for the Income Members in their Final Claim Amounts as set forth on the
5 Finalized Cash Award List. The Settlement Administrator will send, via U.S. Mail to the address
6 indicated on their Claims Form, checks to the appropriate recipients within 30 business days of
7 providing the Finalized Cash Award List to Class Counsel.
8

9 8. The checks disseminating the Cash Awards will expire 90 days after
10 issuance, and that fact will be noted on the checks. If some checks providing Cash Awards are
11 not cashed within 90 days of the Claims Administrator issuing the checks, the checks will
12 become null and void and the Claims Administrator will pay the total of the null and void checks
13 to the Cy Pres Recipient, less any remaining administration costs and Settlement Account costs.
14

15 H. **Calculating Product Awards:** The Settlement Administrator will calculate the
16 Product Award Amount using the following process:

17 1. After eliminating duplicate submissions, the Settlement Administrator will
18 total the number of claimants on the Accepted Consumer Claim List to yield the total number of
19 Consumer Member claimants. If this number is 35,000 or less, then the Product Award Amount
20 is \$50. If this number is more than 35,000, then the Product Award Amount is \$1,750,000
21 divided by the total number of accepted Consumer Member claimants.
22

23 2. Within 42 days of the Effective Date, the Settlement Administrator will
24 inform MXI and Class Counsel what is the Product Award Amount and will provide MXI and
25 Class Counsel with a finalized Accepted Consumer Claim List. The Settlement Administrator
26 will simultaneously email every Consumer Member on the Accepted Consumer Claim List,
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1 notifying them of their Product Award in the Product Award Amount and that they may claim
2 the Award by contacting MXI.

3 3. MXI will then credit the accounts of Current Consumer Members in the
4 Product Award Amount and provide a credit in the Product Award Amount to Former Consumer
5 Members, should they seek to purchase MXI products.

6 4. The gift certificates and credits awarded to the Consumer Members will
7 expire 30 days after issuance, if not used.

8
9 I. **Cooperation:** Class Counsel and Defense Counsel shall work together in good
10 faith, as necessary, to resolve any disputes regarding the administration of the Settlement
11 Agreement. MXI agrees to provide reasonable information from its files, as necessary, for Class
12 Counsel and the Settlement Administrator to assess and distribute the appropriate awards to
13 Class Members and otherwise administrate the Settlement Agreement.

14
15 J. **Movable Deadlines:** The deadlines set forth in this “Claims Process” section
16 requiring action by the Settlement Administrator within a particular period of time may be
17 adjusted by Class Counsel as becomes reasonably necessary. However, the Parties and the
18 Settlement Administrator agree to pursue a prompt distribution of awards to Class Members.

19 **XIV. CY PRES AWARD**

20 Should the Settlement Account contain any funds after the Settlement Administrator has
21 paid (1) the Cash Awards to the Income Members, (2) any Fee Award, (3) any Service Awards,
22 (4) any fees charged by the financial institution holding the account, and (5) the Settlement
23 Administrator’s fees and expenses, then the Settlement Administrator will pay that remaining
24 amount to the Cy Pres Recipient. No portion of the Cash Payments, the Settlement Fund, or the
25 funds in the Settlement Account will be remitted or returned to the Defendants.
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1 **XV. INJUNCTIVE RELIEF**

2 A. The Final Order And Judgment will require as follows with respect to Injunctive
3 Relief:

4 1. Within 150 days of the Effective Date, MXI will provide to Class
5 Counsel: (a) copies of any policies, procedures, rules, regulations, and agreements that then
6 govern or apply to its contractual relationships with its members and its preferred customers; (b)
7 evidence that MXI is no longer encouraging or incentivizing its members to purchase goods or
8 services to maintain eligibility for bonuses, rewards, or commissions; (c) evidence that MXI is
9 no longer inducing others to encourage or incentivize members to purchase goods or services to
10 maintain an eligibility for bonuses, rewards, or commissions; (d) evidence that MXI is
11 encouraging its members to purchase goods or services for resale or personal use; and (e)
12 evidence that MXI requires a member to have at least 51% of his or her group qualifying sales
13 volume of goods or services from preferred customers in order to earn compensation.
14

15 2. Within 30 days of the Effective Date, MXI will be enjoined from paying
16 any compensation to its members unless at least 10% of the member's group qualifying sales
17 volume of goods or services are from preferred customer sales.
18

19 3. Within 60 days of the Effective Date, MXI will be enjoined from paying
20 any compensation to its members unless at least 20% of the member's group qualifying sales
21 volume of goods or services are from preferred customer sales.
22

23 4. Within 90 days of the Effective Date, MXI will be enjoined from paying
24 any compensation to its members unless at least 30% of the member's group qualifying sales
25 volume of goods or services are from preferred customer sales.
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1 5. Within 120 days of the Effective Date, MXI will be enjoined from paying
2 any compensation to its members unless at least 40% of the member's group qualifying sales
3 volume of goods or services are from preferred customer sales.

4 6. Within 150 days of the Effective Date, MXI will be enjoined from paying
5 any compensation to its members unless at least 51% of the member's group qualifying sales
6 volume of goods or services are from preferred customer sales.

7
8 **XVI. MISCELLANEOUS**

9 A. **Privacy:** The Settlement Administrator shall take reasonable measures to the
10 extent permitted by law to assert and to protect the privacy rights of the Class Members,
11 including by maintaining the confidentiality and security of and preventing the unauthorized
12 access or acquisition of personal information submitted in connection with any claim for benefits
13 pursuant to this Agreement. In the event of any unauthorized access to or acquisition of personal
14 information concerning any Class Member as a direct result of the intentional or negligent acts or
15 omission of the Settlement Administrator, the Settlement Administrator shall be responsible for
16 complying with any privacy, data security, or breach notification obligations under state or
17 federal law, and will be solely responsible for directly providing notice to state agencies, affected
18 Class Members, and/or other persons or entities.

19
20 B. **Best Efforts to Effectuate this Settlement:** The Parties agree to cooperate fully
21 with one another in seeking Court approval of the Settlement Agreement and to promptly agree
22 upon and execute all such other documentation as reasonably may be required to obtain final
23 approval by the Court of the Settlement Agreement.

24
25 C. **Entire Agreement:** No representations, warranties, or inducements have been
26 made to any of the Parties other than as expressly set forth in this Settlement Agreement. This
27 Settlement Agreement and the exhibits attached hereto constitute the entire agreement between
28

1 the Parties with regard to the subject matter contained herein, and all prior negotiations and
2 understandings between the Parties, including the Memoranda of Understanding, shall be
3 deemed merged into this Agreement. The Parties agree that they are not relying on any
4 representation other than those in this Settlement Agreement.

5
6 D. **Governing Law:** This Settlement Agreement shall be governed by and
7 interpreted according to the law of the State of Nevada.

8 E. **Notice:** Except as otherwise set forth herein, whenever this Settlement
9 Agreement requires or contemplates that the Parties, or any of them, shall give notice to the
10 other, notice shall be provided as follows:

11 If to Plaintiffs or Class Counsel, then to:

12 J. Benjamin King: bking@rtlegal.com
13 R. Adam Swick: aswick@rtlegal.com
14 John Desmond: jdesmond@dickinsonwright.com
15 Justin Bustos: jbustos@dickinsonwright.com

16 If to the MXI Defendants, then to:

17 Joshua D. Maggard: joshua.maggard@quarles.com

18 If to the Pritchard Defendants, then to:

19 Lesley Miller: lmiller@kcnvlaw.com

20 If to the Green or Reynolds Defendants, then to:

21 Doug Rands: doug_rands@sbcglobal.com

22 F. **Authority of Signatories:** The person signing this Settlement Agreement on
23 behalf of each Party represents, warrants, and covenants that he or she has the authority to sign
24 this Settlement Agreement on behalf of that Party and bind that Party to the Settlement
25 Agreement.

1 G. **Attorneys Consulted:** The Parties have fully discussed the terms and meaning of
2 the signing of this Settlement Agreement with their respective attorneys and fully understand all
3 of the provisions and effects of this Settlement Agreement.

4 H. **No Admission or Waiver:** The Defendants do not admit any liability by entering
5 this Settlement Agreement, nor that Plaintiffs' substantive claims have any basis, nor that the
6 proposed class should be certified outside the context of settlement. By entering this Settlement
7 Agreement Plaintiffs do not admit that any of Defendants' defenses or procedural arguments
8 have any basis.

9 I. **Admissibility:** This Settlement Agreement and all drafts thereof are subject to
10 Federal Rule of Evidence 408 and NRS § 48.105.

11 J. **Non-Disparagement:** The Parties agree that they shall not in the future publicly
12 make, or cause to be made, any disparaging remarks about any Party or any other person or
13 entity released herein, either orally or in writing. This non-disparagement provision applies to
14 remarks made in a private setting that the maker should reasonably believe may be made public,
15 and it applies to Facebook and similar forums. It does not apply to private communications that
16 the Party should not reasonably expect to be made public.

17 K. **Confidentiality and Document Destruction:** Class Counsel and the Settlement
18 Administrator will maintain the MXI Notice List and MXI Master List and any individual
19 information received from MXI regarding the Class Members in strict confidence. Once the
20 Settlement Administrator closes the Settlement Account, the Settlement Administrator and Class
21 Counsel will destroy all information regarding individual Class Members provided by MXI in
22 the course of effectuating this Settlement Agreement, except that Class Counsel may retain
23 information regarding the names of the Class Members and the Cash Awards and Product
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1 Awards they received pursuant to the Settlement Agreement. Class Counsel will continue to
2 keep this information on a confidential basis.

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1 Dated: November 3, 2016

2 DICKINSON WRIGHT PLLC

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9 -and-

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