

IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
(Teranchi, et al. v. Rexall Sundown, Inc. Case No. BC 232370)

IN THE JUDICIAL COURT FOR THE FIFTEENTH CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
(LaRaia, et al. v. Rexall Sundown, Inc. Case No. CL 007021 AF)

NOTICE OF CLASS ACTION, PROPOSED SETTLEMENT, AND HEARING

**If you bought Cellasene
you could benefit from a
class action settlement.**

State courts in Florida and California authorized this notice. This is not a solicitation from a lawyer.

- The settlement will provide up to \$12 million to pay claims from consumers who bought Cellasene.
- The settlement resolves lawsuits over whether Rexall, the U.S. distributor of Cellasene, misled consumers about the product.
- Your legal rights are affected whether you act, or don't act. Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Submit a Claim Form	The only way to get payment.
Exclude Yourself	Get no payment. This is the only option that allows you to ever be part of any other lawsuit against Rexall about the legal claims in this case.
Object	Write to the Court about why you don't like the settlement.
Go to a Hearing	Ask to speak in Court about the fairness of the settlement.
Do Nothing	Get no payment. Give up rights.

- These rights and options - **and the deadlines to exercise them** - are explained in this notice.
- The Courts in charge of this case still have to decide whether to approve the settlement. Payments will be made if the Court approves the settlement and after appeals are resolved. Please be patient.

I. **WHY SHOULD I READ THIS NOTICE?**

You may be a member of the Class. This is a class action lawsuit that the parties have proposed to settle. If the proposed Settlement is approved by the Court, your legal rights may be affected.

This Notice describes what the lawsuit is about, explains the terms of the proposed Settlement, tells you who would be covered and what legal claims would be resolved by the Settlement if the Court approves

it, and explains that the Court will hold a hearing to consider the fairness, reasonableness and adequacy of the proposed Settlement.

II. WHAT IS THIS PROPOSED SETTLEMENT ABOUT?

Teranchi filed the first of five lawsuits against Rexall Sundown, Inc. ("Rexall") on June 26, 2000 in Los Angeles County Superior Court. Levine's lawsuit was later filed and then consolidated with Teranchi's case on October 26, 2000. The Federal Trade Commission ("FTC") filed an action against Rexall in the United States District Court for the Southern District of Florida on July 19, 2000. What is now known as the LaRaia action was filed on July 20, 2000 in Circuit Court for the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida. Finally, on August 9, 2002, the District Attorney of San Bernardino County filed a Complaint against Rexall.

These lawsuits assert claims against Rexall for violations of California and Florida state and federal laws against unfair competition and false advertising laws in connection with its distribution and sales of Cellasene to consumers nationwide. Plaintiffs allege that Rexall marketed, distributed and sold Cellasene, a dietary supplement Rexall claimed would help eliminate cellulite, without adequate scientific data to support the advertising claims made. The lawsuits seek disgorgement of profits and restitution as well as injunctive relief from Defendant. Rexall denies all allegations of wrongdoing. It maintains that there is nothing improper or unlawful about the way it marketed, advertised, distributed and sold Cellasene to consumers nationwide. Rexall further contends that its advertising was neither false nor misleading. Rexall also maintains that consumers have not been injured and therefore, are not entitled to money damages or any other form of relief. The Court has made no determination about the strengths or weaknesses of either the Plaintiffs' or the Defendant's contentions in these cases.

III. WHO IS COVERED BY THESE CLASS ACTION LAWSUITS AND THE PROPOSED SETTLEMENT?

A. The Class. On February 8, 2002 a California state Court certified a class action consisting of all residents of the state of California who purchased Cellasene anytime on or after March 1999 (hereinafter "California Class"). On August 9, 2002, a Florida Court certified a class consisting of all residents of the United States, except in California, who purchased Cellasene anytime on or after March 1999 (hereinafter "Nationwide class"). For settlement purposes the Class is defined to include all residents in the United States of America who purchased Cellasene at any time on or after March 1999.

Excluded from the Class are Rexall officers, directors, employees, and those who validly request exclusion from it in accordance with procedures ordered by the Court.

B. The Effect of Membership in the Class. If you fit the definition of the Class, you are automatically a Class Member unless you exclude yourself ("opt out") by following the procedures for exclusion set forth in this Notice. Class Members are eligible to receive the benefits under the proposed Settlement and will be bound by the Settlement if it is approved by the Court. Persons who exclude themselves from the Class will not be bound by the Settlement and will not share its proceeds.

IV. WHAT ARE THE TERMS OF THE SETTLEMENT?

The Proposed Settlement was negotiated with Rexall by the attorneys for the Settlement Class ("Class Counsel"). Class Counsel believe that this Settlement, which has received preliminary approval from the Court, and which is subject to final approval after Settlement Hearings to be held on October 20, 2003 at 10:30 a.m. in California and October 24, 2003 at 2:00 p.m. in Florida, is in the best interest of the members of the Class. As part of the Proposed Settlement, Rexall and the attorneys for the Settlement Class have agreed to the following:

A. The Redress Program. Purchasers of Cellasene will be allowed to obtain redress for a maximum eight (8) boxes of Cellasene, to be valued at \$30 per box. In order to obtain redress, Class Members will have to complete a claim form ("Proof of Claim" form enclosed), stating how many boxes of Cellasene they purchased, that they were dissatisfied with it and sign the form as a waiver of rights to make any further claims against Rexall for the sale of Cellasene. Class Members will not be required to provide proof of purchase, such as empty bottles or receipts, but may include such proof if it is in their possession. The Claims Administrator will have discretion to request additional information from consumers, and to request such submissions be made under penalty of perjury. If valid claims plus costs of Class Notice and claims administration exceed \$8 million, the Claims Administrator may request consumers seeking in excess of 6 boxes to resubmit claims under penalty of perjury. If the total value of all claims received combined with

the notice and administration costs exceed the \$12 million dollar Redress Fund, each class member will receive a pro rata share of the distribution.

B. Injunctive Relief. Rexall agrees to several forms of injunctive relief that are outlined in full in Rexall's Consent Judgment with the Federal Trade Commission. The Consent Judgment can be located on the FTC's website, www.ftc.gov.

C. Fees and Costs. Rexall has agreed to pay the costs of notice and claims administration, including the costs of mailing this Notice and of distributing the redress fund if this Settlement is approved. If the proposed Settlement is approved by the Courts, Class Counsel will apply to the Courts for an award of fees and expenses in the amount not to exceed \$4 million. Rexall has agreed to pay that amount subject to Courts' approval. If the proposed Settlement is approved by the Courts, Settlement Class members will not be responsible for the fees and expenses of Class Counsel. The attorneys' fees and expenses were negotiated only after the parties had negotiated and agreed upon the benefits for the Settlement Class.

D. Releases. The proposed Settlement is intended to settle all claims covered by the release in the proposed Settlement Agreement. This includes but is not limited to all such claims (known or unknown) of Class members arising in whole or in part out of Rexall's sale of the dietary supplement Cellasene, any communications, representations, statements or omissions to members of the Settlement Class with respect to the purchase of Cellasene, or any acts, transactions, and/or occurrences alleged or otherwise asserted or referred to in the pending lawsuits or the Settlement Agreement or that could have been asserted in the pending lawsuits, known or unknown, whether arising under federal, state, territorial, or local common law, statutes, ordinances, or regulations. This Settlement includes not only such claims against the Defendant, but also claims against any of its respective current or former officers, directors, employees, domestic agents, international agents, attorneys, auditors, accountants, experts, parent companies, subsidiaries, affiliates, divisions, stockholders, heirs, executors, representatives, distributors, wholesalers, retailers, advertisers and publicists, predecessors, successors and assigns. If you do not exclude yourself from the Class following the procedures set forth in this Notice and the Courts approve the proposed Settlement, you will be deemed to have entered into the release in the Settlement Agreement, whether or not you receive a portion of the Redress Fund.

V. DO I NEED TO DO ANYTHING NOW IN ORDER TO PARTICIPATE IN THE SETTLEMENT?

If you purchased Cellasene distributed by Rexall you are a member of the Settlement Class. To claim a refund for your purchases from the Redress Fund, you are required to complete the claim form that is enclosed with this Notice and mail it to the Redress Administrator, postmarked on or before December 31, 2003. Claim forms are also available by calling the toll free number set forth below or by contacting Class Counsel. If you change your address, and want to receive a claim form at your new address, you should send a notice of your change in address to the Rexall/Cellasene Settlement Litigation at the address set forth below.

VI. WHO REPRESENTS THE CLASS?

The California Court designated Lindsey Teranchi and Joanne Levine as representatives of the California Cellasene purchaser class. The California Court designated Hagens Berman LLP and The Rossbacher Firm as co-lead counsel for this class. The Florida Court designated Patricia LaRaia, Christine Harrison, and Theresa Haney as representatives of the Nationwide Cellasene purchaser class. The Florida Court designated Shepherd, Finkelman, Miller & Shah, LLC and Hagens Berman LLP as co-lead counsel for this class. If these class actions are successful, class counsel in each case will make a claim for attorneys' fees and expenses from defendant.

VII. WHAT ARE THE REASONS FOR SETTLEMENT?

Class Counsel reached this Proposed Settlement after weighing the risks and benefits to the Settlement Class of this Settlement compared with those of continuing the litigation. The factors that Class Counsel considered included the uncertainty and delay associated with continued litigation, a trial and appeals, and the uncertainty of particular legal issues that have yet to be determined. Class Counsel balanced these and other substantial risks in determining that the Proposed Settlement is fair, reasonable and adequate in light of all circumstances and in the best interests of Settlement Class Members.

VIII. WHAT ARE MY RIGHTS AND OPTIONS?

A. First, you may remain a member of the Settlement Class, represented by Class Counsel, in which case you only need to submit your claim form prior to the filing deadline in order to preserve your right

to receive a portion of the Redress Fund. As a Settlement Class Member, you will be represented by Class Counsel and will have rights to participate in the Settlement. If the Settlement is approved by the Courts, the Settlement will result in a dismissal of your claims. As a member of the Settlement Class, you will not be charged for the services of Class Counsel.

B. Second, you may remain a member of the Settlement Class but elect to hire your own attorney to represent you. If you do not wish to be represented by Class Counsel, you may hire your own attorney. Your attorney must file an Appearance with the Rexall/Cellasene Settlement Litigation Administrator, postmarked no later than September 18, 2003. Even though you are represented by your own attorney you will continue to be a Class Member. You will be responsible for any fees and costs charged by your attorney.

C. Third, you may exclude yourself from the Settlement Class. If you are a member of the Class, but do not want to remain in the Class, you may exclude yourself ("opt out") and we will have no further contact with you on this issue. If you exclude yourself from the Settlement Class you will lose any right to participate in the settlement. You will also lose the right to have objections to the Settlement considered by the Courts before they rule on the Settlement. You will be free to pursue any claims you may have against the Defendant on your own behalf, but you will not be represented by Class Counsel. In order to exclude yourself from the Class, you must submit a request for exclusion, which must contain: (1) the name of the lawsuit, In re Rexall/Cellasene Litigation, Case Nos. BC 232370 and CL 007021 AF; (2) your full name and current address; (3) your signature; (4) a statement of the approximate number of boxes of Cellasene you purchased during the Class Period; and (5) a specific statement of your intention to exclude yourself from this lawsuit (For example, "Please exclude me from the Settlement Class in the Rexall/Cellasene Litigation, California Class or Nationwide Class.") Requests for Exclusion must be postmarked no later than September 18, 2003, and sent to the Rexall/Cellasene Settlement Litigation Administrator at the following address: P.O. Box 8060, San Rafael, CA 94912-8060.

If you do not comply with these procedures and the deadline for exclusions, you will lose any opportunity to exclude yourself from the Settlement Class, and your rights will be determined in this lawsuit by the Settlement Agreement if it is approved by the Courts.

D. Fourth, you may remain a member of the Settlement Class, and on your own behalf, or through your own attorney, object to the certification of the Class, to the Settlement and/or to the Application for Attorneys' fees. If you do not exclude yourself from the Class, you may object to the certification of the Settlement Class, to the terms of the proposed Settlement or to the application for attorneys' fees. To do so, you or your own attorney must file a written objection, which must contain: (1) the name of this lawsuit, In re Rexall/Cellasene Litigation, Case Nos. BC 232370 and CL 007021 AF; (2) your full name and current address; (3) your signature; (4) a statement of the approximate number of boxes of Cellasene you purchased during the Class Period; (5) the specific reason(s) for your objection; and (6) any and all evidence and supporting papers (including, without limitation, all briefs, written evidence, and declarations) that you would like the Court to consider. If you wish to appear at the Settlement Hearing and be heard orally in support of, or in opposition to, the Settlement, you may do so only if you indicate your desire to appear personally in your written objection. Objections must be mailed to the respective court and the parties in care of the Cellasene Litigation Settlement Administrator, accompanied by any supporting papers or briefs and postmarked no later than September 18, 2003, at the address listed in paragraph C above.

If you do not comply with these procedures and the deadline for objections, you will lose any opportunity to have your objection considered at the Settlement Hearing or otherwise to contest the approval of the Settlement or to appeal from any orders or judgments entered by the Courts in connection with the proposed Settlement.

IX. WHEN ARE THE COURT HEARINGS AND WHAT ARE THEY FOR?

On October 20, 2003 at 10:30 a.m., the Los Angeles Superior Court will hold a public hearing in Department 309 of the California Superior Court for the County of Los Angeles to determine whether the California Class was properly certified and whether the proposed Settlement is fair, adequate and reasonable and should be approved. On October 24, 2003 at 2:00 p.m., the Palm Beach County Circuit Court will hold a public hearing in Courtroom 9A to determine whether the Nationwide Class was properly certified and whether the proposed Settlement is fair, adequate and reasonable and should be approved and whether to approve Class Counsel's application for attorneys' fees and expenses. These hearings may be continued or rescheduled by the Courts without further notice. Class members who support the Proposed Settlement do not need to appear at the hearings or take any other action to indicate their approval. Class members who

object to the Proposed Settlement are not required to attend the Settlement Hearings. If you want to be heard orally in opposition to the Settlement, either personally or through counsel, you must indicate your intention to appear at the Hearing(s) in your written objection:

X. WHERE CAN I GET MORE INFORMATION?

If you have questions about this Notice or the Settlement, or if you did not receive this Notice in the mail and you believe you are or may be a Class Member, you should call 800-811-8719, visit the Settlement website addresses: www.gilardi.com/cellasene, www.hagens-berman.com, and www.classactioncounsel.com, or write to the Rexall/Cellasene Settlement Litigation, P.O. Box 8060, San Rafael, CA 94912-8060, for more information or to request that a copy of this Notice be sent to you in the mail. If you wish to communicate directly with Class Counsel, you may contact Kevin P. Roddy Hagens Berman LLP, 700 South Flower Street, Suite 2940, Los Angeles, CA 90017 or visit their website at www.hagens-berman.com. You may also seek advice and guidance from your own private attorney at your own expense, if you so desire. This Notice, which has been approved by the Courts, is only a summary. For more detailed information, you may review the Settlement Agreement, containing the complete terms of the Proposed Settlement, which is on file with the Courts and available to be inspected at any time during regular business hours at the Clerk's Office or at the website addresses listed above. You may also review the pleadings, records, and other papers on file at the Clerk's Office. The Clerk of the Court for Los Angeles Superior Court is located at 600 South Commonwealth Avenue, Los Angeles, California, 90005 and the Palm Beach County Circuit Court, Clerk of Court, 15th Judicial Circuit is located at 205 North Dixie Highway, West Palm Beach, FL 33401.

PLEASE DO NOT WRITE OR TELEPHONE THE COURT, REXALL OR ANY OF ITS AGENTS FOR INFORMATION ABOUT THE PROPOSED SETTLEMENT OR THIS LAWSUIT.

Dated: April 16, 2003

The Honorable Anthony J. Mohr

Dated: June 3, 2003

The Honorable Diana Lewis

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 00-7016-CIV-MARTINEZ

FEDERAL TRADE COMMISSION,
Plaintiff

v.

REXALL SUNDOWN, INC., Defendant.

**STIPULATED FINAL ORDER FOR PERMANENT INJUNCTION
AND SETTLEMENT OF CLAIMS FOR MONETARY RELIEF**

WHEREAS plaintiff, the Federal Trade Commission, has commenced this action by filing the Complaint herein; the parties have been represented by the attorneys whose names appear hereafter; and the parties have agreed to settlement of this action upon the following terms and conditions, without adjudication of any issue of fact or law and without defendant admitting liability for any of the matters alleged in the Complaint;

THEREFORE, upon stipulation of plaintiff and defendant, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and jurisdiction over all parties. Venue in the Southern District of Florida is proper.
2. The complaint states a claim upon which relief can be granted against the defendant.
3. The activities of defendant are in or affecting commerce, as defined in the FTC Act, 15 U.S.C. § 44.
4. Defendant waives all rights to seek judicial review or otherwise challenge or contest the validity of the Order. Defendant also waives any claim that it may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order.
5. Each party shall bear it own costs and attorneys' fees.
6. Entry of this Order is in the public interest.
7. Pursuant to Federal Rule of Civil Procedure 65(d), the provisions of this Order are binding upon defendant, and its officers, agents, servants, employees, and all other persons or entities in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise.

DEFINITIONS

EXHIBIT C

For purposes of this Order, the following definitions shall apply:

1. Unless otherwise specified, "defendant" shall mean Rexall Sundown, Inc., a corporation, its divisions and subsidiaries, its successors and assigns, and its officers, agents, representatives, and employees.
2. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.
3. "Cosmetic," "food" or "drug" shall mean as defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. § 55.
4. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
5. "FTC" or "Commission" shall mean the Federal Trade Commission.
6. A requirement that defendant "notify the Commission" or "file with the Commission" shall mean that the defendant shall send the necessary information via first class mail, costs prepaid, to the Associate Director for Advertising Practices, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Attn: *FTC v. Rexall Sundown, Inc.* (S.D. Fla.).
7. The term "including" in this Order shall mean "including, without limitation."
8. The terms "and" and "or" in this Order shall be construed conjunctively or disjunctively as necessary, to make the applicable phrase or sentence inclusive rather than exclusive.
9. The term "class action" or "class actions" shall refer to the consolidated class action pending in Los Angeles County, California Superior Court entitled Lindsay Teranchi and JoAnne Levine v. Rexall Sundown, Inc., and the class action pending in West Palm Beach County, Florida, entitled Patricia LaRaia, et al. v. Rexall Sundown, Inc.
10. The term "plaintiffs' class action counsel" shall mean the attorneys approved as co-lead counsel on behalf of plaintiffs in the class actions.

EFFECTIVE DATE AND CONDITIONS

I.

IT IS ORDERED that this Order shall become effective upon its entry by the United States District Court for the Southern District of Florida, except that:

- A. Section VI.A shall become effective upon entry of Final Orders approving the settlement in the class actions.
- B. Section VI.B-K shall become effective when all of the following events have occurred:

1. Entry of Final Orders approving the settlement in the class actions; and
2. Expiration of the time for, or exhaustion of, any appeal from Final Orders approving the settlement in the class actions.

The effective date of this Order shall not be delayed or affected in any manner by any unresolved dispute over fees to be paid to plaintiffs' class action counsel.

IT IS FURTHER ORDERED that beginning upon entry of this Order and continuing through such time as Sections VI.B-K become effective, Rexall shall provide the Commission with a full and complete copy of every document (including all attachments) submitted to any court in connection with the class actions. Copies shall be provided to the Commission via overnight mail or facsimile within 24 hours of Rexall receiving or filing such document. In the event that the Commission seeks to intervene in the class actions, Rexall will not object to such intervention by the Commission.

IT IS FURTHER ORDERED that in the event that an appeal of the class action settlement is successful in overturning the class action settlement, the Commission and Rexall shall negotiate in good faith to attempt to jointly agree to a modification of Section VI of this Order. If, after 90 days, the parties are unable to reach a mutually agreeable resolution, the Commission shall, upon written request by Rexall, return to Rexall all funds that remain in the "redress account" established pursuant to Section VI.A. Once the remaining funds are returned to Rexall, the parties shall be returned to their respective positions in the litigation titled *FTC v. Rexall Sundown, Inc.*, Case No. 00-7016-Civ.-Martinez (S.D. Fla.), as of the date of entry of this Order, with respect to liability for monetary relief. The remainder of this Order will remain in full force and effect. The parties further agree that in the event this action is reinstated by the Commission pursuant to this provision, Rexall's maximum liability for monetary relief shall not exceed \$12 million pursuant to the same terms and conditions as set forth in Section VI, less the costs of notice paid by Rexall pursuant to Section VII.

CONDUCT PROHIBITIONS

II.

IT IS FURTHER ORDERED that defendant, directly or through any corporation, subsidiary, division, trade name, or other device, and its officers, agents, servants, employees, and all persons and entities in active concert or participation with it who receive actual notice of this Order, by personal service or otherwise, in connection with the manufacturing, labeling, promotion, offering for sale, sale, or distribution of Cellasene or any substantially similar product, in or affecting commerce, is hereby permanently restrained and enjoined from making any representation, in any manner, expressly or by implication, that such product eliminates or substantially reduces cellulite, unless, at the time the representation is made, defendant possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

III.

IT IS FURTHER ORDERED that defendant, directly or through any corporation, subsidiary, division, trade name, or other device, and its officers, agents, servants,

employees, and all persons and entities in active concert or participation with it who receive actual notice of this Order, by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any drug, dietary supplement or cosmetic, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the effect of such product on cellulite, body fat or weight, unless, at the time the representation is made, defendant possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

IV.

IT IS FURTHER ORDERED that defendant, directly or through any corporation, subsidiary, division, trade name, or other device, and its officers, agents, servants, employees, and all persons and entities in active concert or participation with it who receive actual notice of this Order, by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any drug, dietary supplement or cosmetic, in or affecting commerce, shall not misrepresent, in any manner, directly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test or study.

V.

Nothing in this Order shall prohibit defendant from making any representation for any drug that is permitted in the labeling for such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration. Nothing in this Order shall prohibit defendant from making any representation for any product that is specifically permitted in labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

MONETARY RELIEF

VI.

IT IS FURTHER ORDERED that defendant shall pay to the Federal Trade Commission the sum of up to Twelve Million Dollars (\$12,000,000.00) as follows:

- A. Not later than ten (10) days after the effective date of this provision of the Order, defendant shall deposit by certified check or electronic funds transfer into a redress account to be established by the Federal Trade Commission for the purpose of receiving payments due under the provisions of this Order ("the redress account"), the sum of Eight Million Dollars (\$8,000,000.00), minus any costs of notice that Rexall has previously paid pursuant to Section VII of this Order.
- B. The funds paid by defendant pursuant to Subparagraph A above, together with accrued interest, shall be used by the Federal Trade Commission or its Redress Administrator, to provide refunds to persons who purchased Cellasene in the United States, and to pay any additional costs of notice and/or administration for such a redress program. Payment to such persons represents redress and is intended to be compensatory in nature, and no portion of such payment shall be deemed a payment of any fine, penalty, or punitive assessment. The Redress Administrator shall be selected by the Federal Trade Commission, after consultation with defendant and plaintiffs' class action

counsel.

C. The parameters of the redress program are as follows: Purchasers of Cellasene will be allowed to obtain redress for a maximum of eight boxes of Cellasene, to be valued at \$30 per box. In order to obtain redress, consumers will have to complete a claim form stating how many boxes of Cellasene they purchased, and where they purchased those boxes. Consumers will not be required to provide proof of purchase, such as empty bottles or receipts, but may be given the option to do so. Consumers will be required to sign a statement that "I declare under the laws of the United States of America that the information in my request for refund is true and correct to the best of my knowledge, that I was not satisfied with Cellasene, and that I have not previously received a refund for my purchase(s) of Cellasene." In order to participate in the redress distribution, a consumer must sign a waiver of rights to make any claim against defendant for the amount of the refund received. The Redress Administrator will have discretion to request additional information from consumers, and to request such submissions be made under penalty of perjury. If valid claims plus costs of notice and administration exceed \$8 million, the Redress Administrator shall, in the exercise of its discretion, request that consumers who claim to have purchased in excess of 6 boxes resubmit claims under penalty of perjury.

D. Any additional procedures with respect to the administration of the redress program shall be established by the Redress Administrator, after consultation with the Federal Trade Commission, defendant's counsel and plaintiffs' class action counsel.

E. In the event that funds paid by defendant pursuant to Subparagraph VI.A above, together with accrued interest, less the costs of notice and redress administration, are insufficient to provide full redress to consumers participating in the redress program, defendant shall, within ten (10) days after receiving notice of such insufficiency by the Commission, deposit by certified check or electronic funds transfer into the escrow account established by the Federal Trade Commission for the purpose of receiving payments due under this Order additional monies, not to exceed Four Million Dollars (\$4,000,000.00) to cover the actual remaining costs of redress.

F. At the conclusion of the claims filing period, the Redress Administrator shall notify the Commission as to how the funds are to be disbursed. Defendant and class plaintiffs' counsel shall also be notified as to how the funds are disbursed, but shall have no right to contest the manner of distribution chosen by the Federal Trade Commission, provided that the manner of distribution chosen by the Commission comports with the terms of this Order.

G. In the event that funds paid by defendant pursuant to Subparagraphs VI.A and E above, together with accrued interest, less the costs of notice and administration, are insufficient to provide full redress to consumers who participate in the redress program, the funds will be distributed on a *pro rata* basis. The Commission, after consultation with defendant and plaintiffs' class action counsel, shall determine the precise method of making a *pro rata* distribution.

H. No redress funds shall be disbursed until the expiration of the time for, or exhaustion of, any appeal from the order approving the class action settlement in the class actions, and until expiration of the claims filing period.

I. In the event of any default on any obligation to make payment under this Paragraph, interest, computed pursuant to 28 U.S.C. § 1961(a), shall accrue from the date of default to the date of payment.

J. Except as provided in Section I hereof, defendant relinquishes all dominion, control and title to the funds paid into the escrow account as well as any interest accrued by these funds, and all legal and equitable title to the funds and any accrued interest. Defendant shall make no claim to or demand for the return of the funds paid into the escrow account, directly or indirectly, through counsel or otherwise; and in the event of bankruptcy of defendant, defendant acknowledges that the funds in the escrow account are not part of the debtor's estate, nor does the estate have any claim or interest therein. In the event that direct redress to consumers is wholly or partially impracticable or funds remain in the escrow account after redress is completed, any remaining funds shall be paid out as follows: fifty percent (50%) to the Commission for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the defendant's practices alleged in the complaint or to be deposited in the United States Treasury as disgorgement; and fifty percent (50%) to the plaintiff's class action counsel for use as *cy pres* relief in accord with statute and approval by the state courts in the class actions. A maximum of \$50,000.00 shall be payable only out of the *cy pres* relief to the San Bernardino County, California District Attorney as reimbursement for the costs associated with investigating and instituting the legal action entitled State of California vs. Rexall Sundown, Inc., Superior Court of San Bernardino County, California, Case No. SCVSS 093311.

K. Any and all attorneys' fees or litigation expenses incurred in connection with the above-captioned litigation, whether or not ordered by any Court, shall be paid by the party incurring the expense and shall not be credited against the funds deposited in the redress account pursuant to Paragraph A or E. Any and all attorneys' fees or litigation expenses in connection with the class actions, whether or not ordered by any Court, shall be borne as decided by defendant and plaintiffs' class action counsel and shall not be credited against the funds deposited in the escrow account pursuant to Paragraph A or E.

NOTICE

VII.

IT IS FURTHER ORDERED that Rexall will pay for all costs of notice to the class in the class actions. The Redress Administrator, who will be selected by the Commission after consultation with plaintiffs' class action counsel and defendant, shall arrange for publication of notice to the class in the class actions. Notice will be published in major national and regional newspapers, several women's magazines, and posted on the websites of the Redress Administrator and the FTC. Publications will be similar to where Cellasene was advertised, as determined by the Redress Administrator, subject to parties' and state courts approval. Rexall will attempt to utilize its advertising buying power to obtain reduced publication rates. The costs of notice to be paid pursuant to this Section shall not include any costs for attorney fees.

IT IS FURTHER ORDERED that the Redress Administrator may also use the funds in the redress account established in Section VI.A to pay for administrative costs relating to the development and implementation of the redress program in accordance with this Order and the payment of necessary costs and expenses associated with the redress account.

RECORD KEEPING**VIII.**

IT IS FURTHER ORDERED that defendant, for a period of five (5) years after the last date of dissemination of any representation covered by Parts II, III or IV of this Order, shall maintain and upon request make available to the Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession, custody, or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental entities or consumer protection organizations.

MONITORING**IX.**

IT IS FURTHER ORDERED that defendant, for a period of five (5) years after the entry of this Order, shall deliver a copy of this Order to all current and future officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this Order, and shall secure from each such person a signed and dated statement acknowledging receipt of the Order. Defendant shall deliver this Order to such current personnel within thirty (30) calendar days after the entry of this Order, and to such future personnel within thirty (30) calendar days after the person assumes such position or responsibilities. Defendant shall maintain and upon request make to the Commission for inspection and copying each such signed and dated statement for a period of five (5) years after such statement is signed.

X.

IT IS FURTHER ORDERED that defendant shall notify the Commission at least thirty (30) calendar days prior to any change in the corporation that may affect compliance obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however,* that, with respect to any proposed change in the corporation about which defendant learns less than thirty (30) calendar days prior to the date such action is to take place, it shall notify the Commission as soon as is practicable after obtaining such knowledge.

XI.

IT IS FURTHER ORDERED that defendant shall, within sixty (60) calendar days after the entry of this Order, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form

in which it has complied with this Order.

XII.

IT IS FURTHER ORDERED that the Commission is authorized to monitor the compliance of defendant with this Order by all lawful means, including but not limited to the following means:

A. The Commission is authorized, without further leave of court, to obtain discovery from any person in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26-37, including but not limited to the use of compulsory process pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring and investigating the compliance of defendant with this Order.

B. Nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to investigate whether defendant has violated any provision of this Order or Sections 5 or 12 of the FTC Act, 15 U.S.C. §§ 45, 55.

ACKNOWLEDGMENT OF RECEIPT OF ORDER

XIII.

IT IS FURTHER STIPULATED AND ORDERED that, within fifteen days after service of this Order, defendant shall submit to the Commission a truthful sworn statement, in the form shown on Appendix A, that shall acknowledge receipt of this Order on behalf of defendant.

SCOPE OF ORDER

XIV.

This Order resolves only claims against the defendant and its direct or indirect corporate parents, Transmedia Consultants, Inc., Avrett Free & Ginsburg, DS Simon, George Beraka, M.D., Peter Pugliese, M.D., and Cartrecia Dimaggio, and their respective employees, officers, directors, and shareholders, arising out of or relating to the advertising, marketing, promotion, sale and distribution of Cellasene. This Order does not preclude the Commission from initiating further action or seeking any remedy against any other persons or entities, including without limitation persons or entities who may be subject to portions of this Order by virtue of actions taken in concert or participation with defendant, and persons or entities in any type of indemnification or contractual relationship with defendant.

RETENTION OF JURISDICTION

XV.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO STIPULATED:

WILLIAM E. KOVACIC
General Counsel

REXALL SUNDOWN, INC.
by: Ralph Denisco, Chief Executive
Officer

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Theodore H. Hoppock
Shira D. Modell
Daniel Kaufman
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ATTORNEYS FOR DEFENDANT
REXALL SUNDOWN, INC.

ATTORNEYS FOR PLAINTIFF
FEDERAL TRADE COMMISSION

DONE AND ORDERED in Chambers in Miami, Florida, this ____ day of _____,
2003.

JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

Appendix A

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 00-7016-CIV-MARTINEZ

FEDERAL TRADE COMMISSION,
Plaintiff

v.

REXALL SUNDOWN, INC., Defendant.

ACKNOWLEDGMENT OF RECEIPT OF ORDER

_____, hereby states and affirms:

1. My name is _____. I am [title] for defendant Rexall Sundown, Inc. I am a citizen of the United States and am over the age of eighteen. I have personal knowledge of the matters discussed in this declaration, and if called as a witness, I could and would competently testify as to the matters stated herein.

2. My current business address is _____. My current business telephone number is _____.

3. On [date], I received a copy of the Stipulated Final Order and Settlement of Claims for Monetary Relief signed by the Honorable Judge Martinez, United States District Court Judge for the Southern District of Florida. A true and correct copy of the Order that I received is appended to this Acknowledgment.

I hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on [date] _____, at [city, state] _____, ____.

Name
Title