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13 Elixir Cosmetics OPCO, LLC

14 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF SOLANO**
16

17 DANIELLE SKARPNES, individually and on
behalf of all others similarly situated,

18
19 Plaintiffs,

20 v.

21 ELIXIR COSMETICS OPCO, LLC,

22
23 Defendants.
24
25

CASE NO. CU23-04638

Assigned for All Purposes to the Hon Tim P.
Kam, Dept. 7

CLASS ACTION

**AMENDMENT TO STIPULATED CLASS
SETTLEMENT AGREEMENT AND
RELEASE**

1 In accordance with Paragraph 6.13 of the Stipulated Class Settlement Agreement and Release
2 (“Settlement Agreement”)¹, Plaintiff Danielle Skarpnes, individually and on behalf of all others
3 similarly situated (“Plaintiff”), and Defendant Elixir Cosmetics OPCO LLC (“Defendant”)
4 (collectively, the “Parties”), hereby agree to amend the Settlement Agreement, subject to final court
5 approval as follows:

6 **RECITALS**

7 WHEREAS, the Parties agreed to the Settlement Agreement on November 6, 2023, and the
8 Court granted preliminary approval on January 19, 2024;

9 WHEREAS, following notice to the Settlement Class, the Court held a final approval hearing
10 on May 20, 2024, and, by order dated July 19, 2024, denied final approval without prejudice (“Final
11 Approval Order”);

12 WHEREAS, on October 4, 2024, the Parties participated in a full-day mediation with the
13 former general counsel of the U.S. Food & Drug Administration (FDA) in Washington, D.C. in order
14 negotiate an amendment to the Settlement Agreement to address the Court’s comments in the Final
15 Approval Order. In addition to the Parties, counsel for objectors and plaintiffs in the pending New
16 York matter, *Cohen et al. v. Elixir Cosmetics*, attended and participated in the mediation;

17 WHEREAS, the Parties have agreed to an Amendment to the Settlement Agreement (the
18 Amendment and the Settlement Agreement are collectively referred to as the “Amended Settlement
19 Agreement”), subject to final approval by the Court.

20 NOW, THEREFORE, THE PARTIES HEREBY STIPULATE AND AGREE TO AMEND
21 THE SETTLEMENT AGREEMENT AS FOLLOWS:

22 1. Paragraph 2.3 is amended as follows (underline indicates modification):

23 **2.3 Injunctive Relief.** No later than sixty (60) days after the Settlement Date, the
24 label changes reflected in **Exhibit F** will be added to Elixir’s Products currently in
25 production, and changes to Elixir’s website and training contemplated by **Exhibit F** will
26 be implemented. Products that are already packaged at the time the new labels are added
to the production line will not be changed. The Parties agree that Elixir may sell through

27 ¹ Unless otherwise noted, the capitalized terms herein have the same meaning as in the Settlement
28 Agreement.

1 any inventory of Product with the existing labels, provided that the other changes are
2 timely implemented. These changes shall remain in effect for a period of at least thirty-
3 six (36) months from the Settlement Date. However, Elixir shall have the right make
4 label changes and changes to its website and training during that thirty-six (36) month
5 period if required by law or regulation or to otherwise enhance product application or
6 safe use.

7
8 2. Exhibit F to the Settlement Agreement is replaced with amended Exhibit F attached
9 hereto.

10 AGREED AND ACCEPTED:

11
12 DATED: October __, 2024

PLAINTIFF, DANIELLE SKARPNES

13
14 By: 

Danielle Skarpnes

15 DATED: October 22, 2024

FARNESE P.C.

16
17 By: 

Peter J. Farnese

18 Attorneys for Plaintiff

19
20
21 DATED: October 22, 2024

DEFENDANT, ELIXIR COSMETICS OPCO, LLC

22
23 By: 

Jeffrey Nicholai

24
25 DATED: October 22, 2024

LOCKE LORD LLP

26
27 By: 

Daniel A. Solitro
Thomas J. Cunningham

28 Attorneys for Defendant

**EXHIBIT F TO AMENDMENT
TO STIPULATED CLASS SETTLEMENT AGREEMENT AND RELEASE**

Exhibit A

Elixir Cosmetics OPCO, LLC agrees to make the following changes to its outer packaging, insert and website:

1. Elixir agrees to adopt the expanded cautionary warning statements contained in Exhibit A1 (the “Expanded Warning Statements”).
2. Elixir agrees to adopt the expanded cautionary instructions contained in Exhibit A2 (the “Expanded Instructions”).
3. Elixir agrees to adopt the additional ingredient declaration in Exhibit A3 (the “New Ingredient Declaration”).

Outer Packaging

Prominent labeling: “This product contains a small amount of isopropyl cloprostenate, a synthetic prostaglandin analog. See directions & warnings inside the box.”

Elixir agrees to include the Expanded Warning Statements on the outer packaging.

Elixir agrees to include the New Ingredient Declarations on the outer packaging.

Product Insert

Elixir agrees to include the Expanded Instructions, the Expanded Warning Statements and the New Ingredient Declarations on the product insert.

Website

Elixir agrees to include the Expanded Instructions, the Expanded Warning Statements and the New Ingredient Declarations on its website. Website to include prominent Warning tab with drop down menu to include above referenced warning immediately following the How to Use and Ingredients sections on the product landing pages.

Ingredients

Elixir agrees to use the New Ingredient Declaration whenever an ingredient declaration is used.

**EXHIBIT F1 TO
AMENDMENT TO STIPULATED CLASS SETTLEMENT AGREEMENT AND RELEASE**

Exhibit A1

(Expanded Lash Warning Statement)

Warning: For external use. Avoid getting in eyes; if so, immediately rinse thoroughly with cool water. Not for use by customers under the age of 18. Do not use on damaged or irritated skin, if pregnant or nursing, or undergoing treatment for glaucoma or cancer. Not recommended if you have ever experienced conjunctivitis, dry eyes, eye infections, styes, irritation from other cosmetics applied to the eye area or any other eye-related disorder or illness. If redness, irritation or other unwanted effects occur, stop using product immediately. If symptoms persist, seek medical attention. Keep out of reach of children. Only apply with applicator provided. Do not share applicator.

(Expanded Brow Warning Statement)

Warning: For external use. Avoid getting in eyes; if so, immediately rinse thoroughly with cool water. Not for use by customers under the age of 18. Do not use on damaged or irritated skin, if pregnant or nursing, undergoing treatment for glaucoma or cancer, or if you are being treated for a facial skin condition. If redness, irritation or other unwanted effects occur, stop using product immediately. If symptoms persist, seek medical attention. Keep out of reach of children. Only apply with applicator provided. Do not share applicator.

**EXHIBIT F2 TO AMENDMENT
TO STIPULATED CLASS SETTLEMENT AGREEMENT AND RELEASE**

Exhibit A2

(Expanded Lash Instructions for Use)

Directions: As with all cosmetic products used in the area of the eye (or close proximity to the eye), it is important to carefully read all directions and warnings. Carefully apply Babe Lash Essential Serum once daily on a clean, dry upper lash line **only using a single stroke** on your eyelid just above your upper lash line. Use one dip into the bottle for both upper lash lines and allow 2-3 minutes for the serum to fully dry before lying down or applying other products to your eye area. If serum gets into the eye, immediately rinse thoroughly with cool water to completely remove serum from the eye. **Do not apply to the lower lash line.** Apply every day, then once satisfied with results, use 2 to 3 times per week for maintenance.

This cosmetic product contains (a small amount of) isopropyl cloprostenate, an analog of prostaglandin. It is important to use the product as instructed so that it does not get into the eye. As instructed in the directions for application, if product does come into contact with the eye, immediately rinse thoroughly with cool water to completely remove the cosmetic serum from the eye. When applied as directed, Babe Lash Essential Serum should not get into the eyes. A very small percentage of users reported temporary sensitivity including irritation, redness, itchiness and/or inflammation of eyelid or eye, transient dry eyes, watering of the eyes, styes, temporary darkening of the skin at or around the lash line, and/or lash shedding. It is not known whether Babe Lash Essential Serum or some other factor caused the reported temporary reactions. Stop use immediately if you experience these or other symptoms. If symptoms persist, seek medical attention.

Patch test recommendation to be added.

(Expanded Brow Instructions for Use)

Directions: As with all cosmetic products used in the area of the eye (or close proximity to the eye), it is important to carefully read all directions and warnings. Carefully apply Babe Brow Amplifying Brow Serum once daily on a clean, dry eyebrows. **One dip of the wand is enough** for one brow. Using short strokes, follow the natural shape of your eyebrow, especially on thin, sparse or over-plucked areas. Allow 2-3 minutes for the serum to fully dry before applying other products to your brow or eye area. **If serum gets into the eye, immediately rinse thoroughly with cool water to completely remove serum from the eye and surrounding area.** Apply every day, then once satisfied with results, use 2 to 3 times per week.

This cosmetic product contains (a small amount of) isopropyl cloprostenate, an analog of prostaglandin. It is important to use the product as instructed so that it does not get into the eye. As instructed in the directions for application, if product does come into contact with the eye, immediately rinse thoroughly with cool water to completely remove the cosmetic serum from the eye.

Patch test recommendation to be added.

**EXHIBIT F3 TO AMENDMENT
TO STIPULATED CLASS SETTLEMENT AGREEMENT AND RELEASE**

Exhibit A3

(New Ingredient Declaration)

Elixir will add the following statement in the ingredient declaration after Isopropyl Cloprostenate: “(an analog of prostaglandin)”. See below for example:

(Lash Example)

Ingredients: Aqua (Water), Glycerin, Panthenol, Sodium Citrate, Leuconostoc / Radish Root Ferment Filtrate, Alanine, Alcohol, Arbutin, Arginine, Aspartic Acid, Biotin, Calcium Gluconate, Caprylyl Glycol, Chamomilla Recutita (Matricaria) Flower Extract, Disodium Phosphate, Ethylhexylglycerin, Gluconolactone, Glycine, Hexylene Glycol, Histidine, Hydrolyzed Glycosaminoglycans, Hydroxyethylcellulose, Isoleucine, Sodium Lactate, Magnesium Ascorbyl Phosphate, Panax Ginseng Root Extract, PCA, Valine, Phenylalanine, Polydextrose, Polysorbate 20, Proline, Propylene Glycol, Serine, Vitis Vinifera (Grape) Seed Extract, Sodium Hyaluronate, Isopropyl Cloprostenate (an analog of prostaglandin), Yeast Extract, Sodium PCA, Threonine, Tocopheryl Acetate, Triethanolamine, Phenoxyethanol, Sodium Benzoate, Sodium Metabisulfite.

(Brow Example)

Aqua (Water), Glycerin, Polysorbate 20, Panthenol, Sodium Citrate, Leuconostoc/Radish Root Ferment Filtrate, Alanine, Alcohol, Arbutin, Arginine, Aspartic Acid, Biotin, Calcium Gluconate, Caprylyl Glycol, Chamomilla Recutita (Matricaria) Flower Extract, Disodium Phosphate, Ethylhexylglycerin, Gluconolactone, Glycine, Hexylene Glycol, Histidine, Hydrolyzed Glycosaminoglycans, Hydroxyethylcellulose, Isoleucine, Sodium Lactate, Magnesium Ascorbyl Phosphate, Panax Ginseng Root Extract, PCA, Valine, Phenylalanine, Polydextrose, Proline, Propylene Glycol, Ricinus Communis (Castor) Seed Oil, Serine, Vitis Vinifera (Grape) Seed Extract, Sodium Hyaluronate, Isopropyl Cloprostenate (an analog of prostaglandin), Yeast Extract, Sodium PCA, Threonine, Tocopheryl Acetate, Triethanolamine, Phenoxyethanol, Sodium Benzoate, Sodium Metabisulfite.