Todd D. Gardner (#5953) BATEMAN, GOODWIN & GARDNER 4120 South Highland Drive, Suite 100 Salt Lake City, Utah 84124 Telephone: (801) 424-3451 Facsimile: (801) 424-3429 Attorney for Plaintiffs

## IN THE UNITED STATES DISTRICT COURT

# DISTRICT OF UTAH

SHEILA LEAFTY, individually and as	:	
The parent and legal guardian of BRAYDEN	:	
BLANDA, a minor	:	
Plaintiffs,	:	
v.	:	PETITION FOR APPROVAL OF PERSONAL INJURY TO FILE SETTLEMENT OF A MINOR CHILD
	:	
NATURAL SELECTION FOODS, LLC;	:	
A California corporation; and NATURAL SELECTION FOODS MANUFACTURING,	:	Case No. 2:06CV00787
LLC, a California corporation,	:	Judge Bruce S. Jenkins
	:	
Defendants.	:	
	:	
STATE OF UTAH }		

COUNTY OF SALT LAKE

- I, Sheila Leafty, being first duly sworn, hereby petition the Court to approve the settlement of a personal injury claim of my son, Brayden Blanda, who is eight (8) years old (DOB: 12/02/98).
- 2. I am the natural parent and guardian of Brayden Blanda.

} ss:

- 3. Brayden Blanda currently resides with me in my home in Salt Lake City, Utah.
- Brayden Blanda was injured last fall after eating Defendants' spinach in an E. Coli O157:H7 outbreak.

- 5. Defendants' have offered the \$42,750 as a full and final settlement in this matter.
- 6. The child has made a good recovery and is doing well.
- A breakdown of all costs associated with this matter are shown below and total \$2,466.17.
- 7. Petitioner submits that the \$42,750 settlement is reasonable based on the totality of the circumstances, and hereby requests that the Court approve the proposed settlement.
- Marler Clark was retained to represent this child for a 25% contingent fee plus costs expended.
- Twenty-Five percent of the proposed settlement of \$42,750 is \$9,287.63 (The attorney fees calculation was agreed to be calculated after costs are deducted, i.e., 42,750-2,466.17 3,133.32 x .25 =\$9,287.63).
- 11. Petitioner requests that Marler Clark's attorney fees of \$9,287.63 be paid from the proposed settlement.
- 12. Petitioner requests that Marler Clark's and local counsel's costs of \$2,466.17 be paid from the proposed settlement.
- 13. Medical expenses total \$ 3,133.32 and will retained in the attorney trust account and paid as subrogation.
- 14. Petitioner requests authority to deposit the \$27,126.88 cash balance of settlement into a certificate of deposit with a reasonable rate of return of 5.44% (APY 5.55%). Said deposit will be made into a nationally insured credit union certificate of deposit account at Utah Central Credit Union with the account marked "No withdrawals without Court Order until the child's 18<sup>th</sup> birthday." The certificate will renew in four years at the then current rate.

- 15. Petitioner requests that ownership of the account revert to Brayden Blanda, without restriction on his eighteenth (18<sup>th</sup>) birthday.
- 16. This settlement proposal is summarized as follows:

Total Settlement: \$42,750.00

COSTS ADVANCED:

Individual Share of Marler Clark Group Costs:		
Federal Express	\$6.12	
Travel	439.65	
Photocopies	29.36	
Experts:		
Dr. Richard Siegler	32.06	
Dr. John Kobayashi	12.83	
Dr. Sandra McLellan	6.41	
Keith Warriner	8.34	
Dr. Mary Proctor	12.83	
Roy Costa	52.78	
Daniel Funk	19.24	
Dr. Eric Triplett	32.07	
Charles Haas	32.07	
Least Cost Formulations	3.21	
Commonwealth Biotechnologies		
Spinach Testing	12.83	
Midwest Labs – Spinach Testing	.07	
Investigation – Dan Flynn	164.84	

Pacer – Online Court Documents	.09

### Total Individual Share of Marler ClarkGroup Costs:

#### <u>\$898.7</u>1

Marler Clark Individual Costs:

Travel Expenses – Mediation	\$176.00
Photocopies	364.30
Federal Expresss	24.47
Medical Records:	
Cottonwood Hospital	116.93
Pediatric Gastroenterology	69.90
Primary Children's Medical Center	133.61
St. Mark's Hospital	\$73.05
Creek Plaza	24.35
Intermountain Pediatric Clinic	<u>62.35</u>

Total Marler Clark Individual Costs: \$1,044.96

LESS TOTAL COSTS ADVANCED: (\$1,943.67)

## LESS MEDICAL SUBROGATION:

Beech Street EBMS (\$3,133.32)

LESS WAGE LOSS:

Sheila Leafty (\$736.00)

Bateman Goodwin & Gardner(local counsel) Individual Costs:

Filing Fee:	\$350.00
Service of Process Fees(3):	\$172.50
Total Bateman Goodwin & Gardner	
Individual Costs:	\$522.50
LESS ATTORNEY FEES:	<u>(\$9,287.63)</u>
Contingent Fee Agreement – 25%	
NET SETTLEMENT TO CLIENT:	\$27,126.88

17. Sheila Leafty requests that she be appointed as Special Conservator of the Estate of Brayden Blanda for the purpose of executing the Release and administering the funds recovered in this settlement.

18. Petitioner, Sheila Leafty hereby consents to serve as special conservator of the estate of Brayden Blanda, and hereby submits to the jurisdiction of the Utah Courts for all matters related to the administration of the funds recovered in this case.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

Sheila Leafty

## **NOTARY STATEMENT**

I hereby certify that the foregoing was signed under oath and in my presence.

Service of Process Fees(3):	\$172.50	
Total Bateman Goodwin & Gardner		
Individual Costs:	\$522.50	
LESS ATTORNEY FEES:	<u>(\$9.287.63)</u>	
Contingent Fee Agreement - 25%		
NET SETTLEMENT TO CLIENT:	\$27,126.88	

17. Sheila Leaffy requests that she be appointed as Special Conservator of the Estate of Brayden Blanda for the purpose of executing the Release and administering the funds recovered in this settlement.

18. Petitioner, Sheila Leafly hereby consents to serve as special conservator of the estate of Brayden Blanda, and hereby submits to the jurisdiction of the Utah Courts for all matters related to the administration of the funds recovered in this case. Dated this <u>M</u>day of <u>AuguST</u>, 2007.

Sheila Leafly NOTARY STATEMENT I hereby certify that the foregoing was signed under out my presence З ×k Notary Date SUANNA ARMITAGE Notery Public State of Utah My Commission Expension April 15, 2008 1486 E 1705 S. Sai Lake City, UT 84105.