2008 DEC 16 AM 9: 48 1 2 KING COUNTY SUPERIOR COURT 3 4 5 6 7 STATE OF WASHINGTON 8 KING COUNTY SUPERIOR COURT STATE OF WASHINGTON, 9 NO. 08-2-42958-09FA 10 Plaintiff, CONSENT DECREE AND JUDGMENT 11 v. [Clerk's Action Required] 12 AIRBORNE HEALTH, INC., doing business as AIRBORNE and AIRBORNE, INC., 13 formerly doing business as KNIGHT-MCDOWELL LABS: AIRBORNE 14 HOLDINGS, INC., VICTORIA KNIGHT MCDOWELL, individually, and THOMAS 15 JOHN MCDOWELL, individually, 16 Defendants. 17 I. JUDGMENT SUMMARY 18 Judgment Creditor: State of Washington 19 Judgment Debtors: AIRBORNE HEALTH, INC., dba AIRBORNE and AIRBORNE, INC., formerly dba KNIGHT-20 MCDOWELL LABS; AIRBORNE HOLDINGS, INC., VICTORIA KNIGHT MCDOWELL, and 21 THOMAS JOHN MCDOWELL. 22 Principal Judgment Amount: All injunctive and compliance provisions as set forth in Paragraphs 16-19 of the Consent 23 Decree, plus \$7,000,000 for all 26 states plus the District of Columbia, of which Washington 24 State shall receive \$150,000 under the terms set forth in Paragraph 20. Washington State's 25 share may be used for any purpose permitted under Paragraph 20, including but not limited 26



1 2 3 4 5		to costs and attorneys' fees related to this matter, for future consumer protection enforcement costs and fees, funding programs directed at prescription or over-the-counter drug abuse or diversion, general consumer protection education, or any other use allowed by law all at the choice and discretion of the Attorney General of Washington.							
6	Costs & Attorneys Fees:	See above							
7	Total Judgment:	\$150,000 for the State of Washington							
8	Post Judgment Interest Rate:	None if paid in accordance with the provisions in Paragraph 20, otherwise the maximum rate allowed by law, which currently is 12%.							
9	Attorney for Judgment Creditor	Robert M. McKenna, Attorney General of Washington and Robert Lipson, Senior Counsel							
11	Attorney for Judgment Debtor:	Peter J. Mintzer Cozen & O'Connor							
12		1201 Third Avenue, Suite 5200 Seattle, WA 98101							
13									
14	II. G	ENERAL TERMS							
15	1. Plaintiff, the Attorney Ge	eneral of the State of Washington ("the Attorney							
16	General," or "Plaintiff"), having filed its	Complaint and Defendants Airborne Health, Inc., a							
17	Delaware corporation, currently doing bus	Delaware corporation, currently doing business as Airborne, Inc. and "Airborne," and formerly							
18	doing business as Knight-McDowell Labs,	Airborne Holdings, Inc. (collectively "Airborne" or							
19	"Corporate Defendants"), and Victoria Knight-McDowell, individually, and Thomas John								
20	McDowell, individually (all collectively	"Defendants"), stipulate that this Consent Decree							
21	(hereafter "Judgment") may be signed and	entered by a judge.							
22	2. The parties have consented	to the entry of this Judgment for the purposes of							
23	settlement only without this Judgment con	stituting evidence against or any admission by any							
24	party and without trial of any issue of fac	et or law. This Judgment does not constitute any							
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25		er express or implied, by Defendants or any other							

party. Further, this Judgment shall not be competent evidence in any judicial or other proceeding of any liability or wrongdoing by Defendants.

- 3. The parties acknowledge that, in addition to this Judgment, Airborne has simultaneously consented to the entry of Judgments with the Attorneys General of Alaska, Arkansas, California, Connecticut, Delaware, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Washington, Wisconsin, and the District of Columbia. The Attorney General of Washington and the other states attorneys general are referred to collectively, hereafter, as the "Settling Attorneys General."
- 4. The entry of this Judgment has been consented to by Defendants as their own free and voluntary act and with full knowledge and understanding of the nature of the proceedings and the obligations and duties imposed upon them by this Judgment, and they consent to its entry without further notice, and aver that no offer, agreement, or inducements of any nature whatsoever have been made to them by the Plaintiff or their attorneys or any employee of the Attorney General's Office to procure this Judgment.
- 5. In the event the Court shall not enter this Judgment, this proposed Judgment shall be of no force and effect against the Attorney General of Washington or any of the Defendants.
- 6. This Judgment shall bind Defendants, their officers, directors, agents, representatives, parents, affiliates, subsidiaries, and employees, and shall be binding on any and all successors and assigns, future purchasers, acquired parties, acquiring parties, successors-in-interest, shareholders, and their officers, agents, representatives, and employees, directly or indirectly or through any corporation or anyone acting directly or indirectly on their behalf.

- 7. Defendants have, by their signatures and the signatures of their respective counsels hereto, waived any right to appeal, petition for certiorari, move to reargue or rehear or be heard in connection with entry of this Judgment concerning past conduct addressed in this Judgment.
- 8. In exchange for the consideration set forth herein, upon execution of this Agreement, the Attorney General agrees to release Defendants, all of their parent entities, subsidiaries and affiliated entities, and the officers, directors, members, agents, servants, employees of each of them, and shareholders (collectively, "Defendant Parties") from all civil claims, causes of action, suits and demands, of any kind or character for violations of the R.C.W. 19.86.020 (The Consumer Protection Act) arising out or based upon the matters addressed in this Judgment and the State's Complaint.
- 9. The Court having considered the pleadings and the proposed Judgment executed by the parties and their attorneys and filed herewith, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Judgment may be entered in this matter as follows:

III. JURISDICTION AND VENUE

10. Pursuant to R.C.W. 19.86.020, .080, and .160, and 4.28.185, jurisdiction of this Court over the subject matter and over the Defendants for the purpose of entering into and enforcing this Judgment is admitted. Jurisdiction is retained by this Court for the purpose of enabling the Attorney General or the Defendants to apply to this Court for such further orders and directions as may be necessary or appropriate for the construction and modification of the injunctive provisions herein, or execution of this Judgment, including punishment for any violation of this Judgment. If the Attorney General is required to file a petition to enforce any provision of this Judgment against any (or all) Defendants, the particular Defendant(s) involved in such petition agree to pay all court costs and reasonable attorneys' fees associated

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with any successful petition to enforce any provision of this Judgment against such Defendant(s). Pursuant to R.C.W. 4.12.025, venue as to all matters between the parties relating hereto or arising out of this Judgment is in the King County Superior Court.

- The Defendants waive any defect associated with service of the Attorney 11. General's Complaint and this Judgment and do not require issuance or service of a Summons.
- 12. The Corporate Defendants sold and continue to sell some or all of the following products: Airborne - Original, Airborne - Pink Grapefruit, Airborne-Lemon-Lime, Airborne-Nighttime, Airborne, Jr., Airborne On-The-Go, Airborne Seasonal (formerly known as Airborne Seasonal Relief), Airborne Soothing Throat Gummi Lozenges (formerly known as Airborne Sore Throat Gummi Lozenges), and Airborne Power Pixies in King County. The Individual Defendants previously sold Airborne - Original.

IV. **PARTIES**

Defendants represent that they are the proper defendants to this Judgment. 13. Defendant Airborne Health, Inc. and Defendant Airborne Holdings, Inc. represent that they are the true legal names of the corporate entities entering into this Judgment. Defendant Airborne, Inc. was incorporated in California on April 22, 1999 and had a principal place of business in Carmel, California until May 2005. Airborne, Inc. ceased to exist in December 2005 when it merged with and into Airborne Health, Inc., which continued to do business under the original name "Airborne, Inc." Defendant Airborne Health, Inc. was incorporated as a Delaware corporation on December 22, 2005, and has a principal place of business in Bonita Springs, Florida and offices in Carmel, California and New Jersey. Defendant Airborne Holdings, Inc. wholly owns Airborne Health, Inc. and is also incorporated in Delaware. Defendant Victoria Knight-McDowell represents that this is her true legal name. Defendant Thomas John McDowell represents that this is his true legal name.

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14. Defendants further acknowledge that they understand that the Attorney General expressly relies upon these representations, and that if any of them are false, deceptive, misleading or inaccurate, the Attorney General has the right to move to vacate or set aside in whole or in part this Judgment with respect to the pertinent Defendant(s), or request that such Defendant(s) be held in contempt, if the Attorney General so elects.

V. DEFINITIONS

15. Unless otherwise specified, the following definitions shall apply:

- A. "Advertise," "Advertisement," or "Advertising," shall mean any oral, written, graphic or pictorial statement or representation, including but not limited to testimonials, endorsements, or other Third Party representations, regardless of the Medium of communication employed, disseminated in or from Washington by Defendants or by any third party on behalf of Defendants for the purpose of inducing, or that are likely to induce, directly or indirectly, the purchase of a Product; and includes but is not limited to Product Labels, Labeling, Product literature, television commercials, radio sponsorship or commercials, magazine advertisements, and Internet sites.
- B. "Attorney General" means the Attorney General of Washington and the Office of the Attorney General of Washington.
- C. "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 has 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.
- D. "Corporate Defendants" shall mean Airborne Health, Inc. (d/b/a Airborne, Inc. and Knight-McDowell Labs) and Airborne Holdings, Inc., their officers, directors, agents, representatives, parents, subsidiaries, affiliates, and employees, and includes any and all successors and assigns, future purchasers, acquired parties, acquiring parties,

1	successors in interest, and their officers, agents, representatives, and employees, and anyone
2	acting directly or indirectly on their behalf. This definition shall not include independent
3	retailers or independent distributors of any Product.
4	E. "Dietary Supplement" means a food intended to supplement the diet
5	that bears or contains one or more of the following dietary ingredients:
6	1. a vitamin;
7	2. a mineral;
8	3. an herb or other botanical;
9	4. an amino acid;
10	5. a dietary substance for use by man to supplement the diet by
11	increasing the total dietary intake; or
12	6. a concentrate, metabolite, constituent, extract, or combination of any ingredient described in 1-5 above.
13	F. "FDA" or "Food and Drug Administration" means the Food and
14	Drug Administration of the United States Department of Health and Human Services.
15	G. "Individual Defendants" means Victoria Knight-McDowell and
16	Thomas John McDowell.
17	H. "Judgment" shall mean this document entitled State of Washington v.
18	Airborne Health, Inc., doing business as Airborne and Airborne, Inc., formerly doing business
19	as Knight-McDowell Labs; Airborne Holdings, Inc.; Victoria Knight-McDowell, individually,
20	and Thomas John McDowell, individually.
21	I. "Label" means a display of written, printed, or graphic matter upon
22	the immediate container of any article.
23	J. "Labeling" means all labels and other written, printed, or graphic
24	matters (1) upon any article or any of its containers or wrappers, or (2) accompanying such
25	article.
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1	K.	"Market" or "Marketing" means any act or process or technique of
2	promoting, offering,	selling or distributing a product or service.
3	L.	"Medical Food" means:
4		1. a specially formulated and processed product (as opposed to a naturally occurring foodstuff used in its natural state) for the partial or
5		exclusive feeding of a patient by means of oral intake or enteral feeding by tube;
6		2. that is intended for the dietary management of a patient who,
7		because of therapeutic or chronic medical needs, has limited or impaired capacity to ingest, digest, absorb, or metabolize ordinary foodstuffs or
8		certain nutrients, or who has other special medically determined nutrient requirements, the dietary management of which cannot be achieved by
9		the modification of the normal diet alone;
10		3. that provides nutritional support specifically modified for the management of the unique nutrient needs that result from the specific
11		disease or condition, as determined by medical evaluation;
12		4. that is intended to be used under medical supervision; and
13		5. that is intended only for a patient receiving active and ongoing medical supervision wherein the patient requires medical care on a
14		recurring basis for, among other things, instructions on the use of the medical food.
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16	М.	"Medium" means any method of communicating or Advertising to the
17	public in or from Was	shington whether the message is contained in the written or spoken word,
18	audio, video, recordeo	d or presented live and includes but is not limited to television and closed
19	circuit television such	n as those found on airplanes, radio, the Internet, short films, movies,
20	newspaper advertisen	nents, magazine advertisements, brochures, web sites, electronic mail,
21	coupons, flyers, or ele	ctronic mail.
22	N.	"Product" means Airborne - Original, Airborne - Pink Grapefruit,
23	Airborne-Lemon-Lim	e, Airborne - Nighttime, Airborne, Jr., Airborne On-The-Go, Airborne
24	Seasonal Relief, Airb	orne Sore Throat Gummi Lozenges, Airborne Soothing Throat Gummi
25	Lozenges, Airborne P	ower Pixies, any products derived from the ingredients and formulation
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of Airborne Original, or any substantially similar products that are produced, owned, distributed, or manufactured by any of the Defendants intended for human use.

- O. "Settling Attorneys General" shall mean the Attorneys General Offices of the States of Alaska, Arkansas, California, Connecticut, Delaware, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Washington, Wisconsin, and the District of Columbia.
- P. "Structure/Function Claim" means statements that describe the role of a nutrient or dietary ingredient intended to affect the structure or function in humans or that characterize the documented mechanism by which a nutrient or dietary ingredient acts to maintain such structure or function, provided that such statements do not purport to diagnose, treat, cure, or prevent any disease.

VI. PERMANENT INJUNCTION

- 16. Pursuant to R.C.W. 19.86.080, and subject to any jurisdictional limitations of such statute, Corporate Defendants (as defined above), Individual Defendants (as defined above), and anyone acting indirectly or directly on behalf of the Individual Defendants are hereby permanently enjoined and restrained from:
- A. Making any express or implied statement in connection with the Marketing or Advertisement of any Product that is false, or has the capacity, tendency or effect of deceiving or misleading consumers; or omitting any material information such that the express or implied statement deceives or tends to deceive consumers.
- **B.** Making any express or implied claim, in connection with the Marketing or Advertising of its Products, that a Product may be used in the diagnosis, cure, mitigation, treatment or prevention of a disease in humans except as provided in paragraph 17.

- C. Making any express or implied Structure/Function Claim in connection with the Marketing or Advertising of its Products unless at the time the claim is made, Competent and Reliable Scientific Evidence exists substantiating such claim, and except as provided in paragraph 17.
- D. Making any express or implied claim in connection with the Marketing or Advertising of its Products, concerning the health benefit, performance, efficacy or safety of a Product marketed as a Dietary Supplement unless at the time the claim is made, Competent and Reliable Scientific Evidence exists substantiating such claim, and except as provided in paragraph 17.
- E. Making any representation, in connection with the Marketing or Advertising of a Product, about research that has been performed, including but not limited to any representation that a Product has been clinically tested unless at the time the claim is made, Competent and Reliable Scientific Evidence exists substantiating such claim, and except as provided in paragraph 17.
- F. Making, in connection with the Marketing or Advertising of a Product. in addition to any and all requirements set forth in this Judgment, any statements or representations concerning a Product that materially contradict or conflict with any other statements or representations the Defendants make about such Product and render such statements or representations misleading and/or deceptive.
- G. For any Product Labeled as a Dietary Supplement requiring or demanding, that a Product be placed in the "cough/cold" aisle or department of any retail facility or otherwise influencing a Product's placement in the "cough/cold" aisle or department of any retail facility through direct affirmative action taken by the Individual or Corporate Defendants.

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- J. Using or showing actors, other persons, or cartoon depictions of individuals, characters, or other figures in any Advertising Medium with a cold, the flu, a cough, other upper respiratory infection, or allergy indicators such as sneezes, coughs, running noses, sniffles, germs or other related indicators including but not limited to grasping at one's throat, blowing one's nose or actions associated with coughing for any Product Labeled as a Dietary Supplement, except as provided in paragraph 17 of this Judgment.
- **K.** Directly suggesting, directing or otherwise calling for an Advertisement or sponsorship of any kind for any Product to be placed in close temporal or physical proximity to a television news story, web page, magazine article, newspaper article, or any other story or article contained in any other Medium about colds, coughs, the flu or upper respiratory infections except as provided in paragraph 17.
- L. Having directions for use for any Product that, if followed, would result in an individual ingesting 15,000 International Units of Vitamin A or more_per day.
- M. Soliciting, using or employing in any Advertising of any Product Labeled as a Dietary Supplement any testimonials by consumers, celebrities, radio talk show hosts, television talk show hosts or any other person that directly or indirectly imply that Airborne's Products can be used to diagnose, mitigate, prevent, treat, or cure a cold, cough, flu, upper respiratory infection, seasonal allergies, or any other disease except as provided in paragraph 17.
- 17. A. Nothing in this Judgment shall prohibit any person or entity from making any representation, statement, or claim (in Labeling or otherwise), directly or indirectly, for any Product: if the representation, statement or claim is (1) lawful under the Federal Food, Drug, and Cosmetic Act or the Dietary Supplement Health Education Act, (2) lawful under any final regulation promulgated by the Food and Drug Administration, (3) lawful under any new drug application applicable to such Product approved by the Food and Drug Administration, (4) part of the lawful marketing of a homeopathic drug, (5) part of

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the lawful marketing of a Medical Food under the Orphan Drug Amendments of 1988, or (6) lawful under a FDA monograph for an over-the-counter drug. The failure of the FDA, FTC, or other law enforcement agency to take an enforcement action, or the mere presence of a representation, statement, or claim in the marketplace does not mean a representation, statement, or claim is lawful.

B. Nothing in this Judgment shall prohibit any person or entity from making any lawful 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.

VII. **EXISTING INVENTORY**

- 18. The Defendants represent that they ceased selling and/or distributing Α. Product in packaging identified in Collective Exhibit A, which contained statements with explicit references to colds, such as "Take at the first sign of a cold symptom" and/or Product packaging containing cartoon vignettes of individuals sneezing, coughing, or blowing their noses by approximately June 9, 2008. The Defendants understand that the Attorney General expressly relies on this representation and reserves the right to initiate enforcement proceedings and/or move to set aside the Judgment if the representation is false, misleading or deceptive.
- As of October 31, 2008, Corporate Defendants represent that they В. ceased selling and/or distributing Product in packaging identified in Collective Exhibit B and associated paper cartons and display trays, and have placed stickers over the white object displayed in the cartoon vignette on the Product packaging to Exhibit C, which is one of the packages that appears in Collective Exhibit B. The Corporate Defendants may not ship or otherwise deliver any inventory of Airborne Products' packaging identified in Collective Exhibits A or B after October 31, 2008.

VIII. COMPLIANCE

- 19. For a period of five (5) years from the date of entry of this Judgment, pursuant to R.C.W. 19.86.080, Corporate Defendants shall, in connection with the Advertising, promotion, offering for sale, or distribution in or from Washington of any covered Product:
- A. Take reasonable steps sufficient to monitor and ensure that Corporate Defendants comply with this Judgment. In conducting periodic monitoring of compliance, Corporate Defendants shall document and retain sufficient evidence to detail and substantiate their monitoring efforts and produce such documentation s as may be requested by the Attorney General within thirty (30) business days of such a request;
- B. Conduct periodic reasonable monitoring of representations made by Corporate Defendants concerning any covered Product when the relevant actors are engaged in sales or other customer service functions, including representations made orally or through electronic communications. In conducting periodic monitoring of the representations made by Corporate Defendants concerning any covered Product, Corporate Defendants shall document and retain sufficient evidence to detail and substantiate their monitoring efforts and produce such documentation to the Attorney General within thirty (30) business days of such a request;
- C. Conduct periodic reasonable monitoring of representations made about any covered Product on all Internet websites operated or maintained by the Corporate Defendants or anyone doing so on their behalf. In conducting periodic monitoring of representations made about any covered Product on Internet websites operated or maintained by Corporate Defendants or anyone doing so on their behalf, Corporate Defendants shall document and retain sufficient evidence to detail and substantiate their monitoring efforts and produce such documentation and records as may be requested by the Attorney General within thirty (30) business days of such a request;
- D. Take appropriate disciplinary action against any employee or agent who knowingly engages in any conduct prohibited by this Judgment, up to and including

1	termination of any such employment or agency relationship, within a reasonable period of time						
2	not to exceed thirty (30) business days after the Corporate Defendants know or should know						
3	that such person is or has been engaging in such conduct;						
4	E. Within sixty (60) days after entry of this Order, send an exact copy of						
5	the notice attached hereto as Exhibit D to each jobber, distributor or retailer to whom Airborne						
6	has sold any Airborne Product since June 1, 2005. The notice shall be sent by first class mail,						
7	postage prepaid and return receipt requested. It shall be sufficient for compliance with this						
8	paragraph for such notice to be sent to the principal place of business of each such entity;						
9	F. Institute a reasonable program of surveillance which is adequate to						
10	reveal whether Corporate Defendants or any of their officers, directors, or employees are						
11	disseminating in or from Washington any Advertising or Marketing material that contain any						
12	representation that violates the provisions of this Judgment;						
13	As part of their reasonable program of surveillance, Corporate Defendants shall be						
14	required to receive, collect, and produce to the Attorney General within thirty (30) days after a						
15	request by the Attorney General the following:						
16	1. All Airborne Advertisements and Marketing materials						
17	concerning an Airborne Product disseminated in or from Washington;						
18	2. Airborne sales presentations made in or from Washington;						
19	3. Other written communications with consumers in or from						
20	Washington concerning an Airborne Product; and						
21	4. All communication referenced in 19.G.						
22	G. Promptly and in a reasonable manner investigate any information the						
23	Corporate Defendants receive that any retailer or other third party in Washington is using or						
24	disseminating any Advertisements or Marketing material, or making any oral statement, that						
25	violates the provisions of this Judgment; and send Exhibit E to any retailer or other third party						
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whose Advertisements or Marketing materials of an Airborne Product may violate the terms of this Judgment if made by the Defendants. Attached is a copy of Exhibit E.

IX. CIVIL PENALTIES / PAYMENT TO THE ATTORNEYS GENERAL

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20. As part of their settlement with the Settling Attorneys General, the Defendants are ordered to pay to the Settling Attorneys General a total of \$7,000,000.00 dollars (Seven Million Dollars) for attorneys' fees and investigative costs, for consumer education, litigation or local consumer aid funds, or for public protection or consumer protection purposes, or any other purpose allowed by each State's law at the discretion of each State's Attorney General. Of that \$7,000,000.00, Defendants shall pay \$6,000,000 to the Attorneys General by electronic fund transfer made payable to the Office of the Attorney General of Tennessee on or before execution of this Judgment; Defendants shall pay \$500,000 by electronic fund transfer made payable to the Office of the Attorney General of Tennessee by the close of business on February 1, 2009; and, Defendants shall pay the remaining \$500,000 by electronic fund transfer made payable to the Office of the Attorney General of Tennessee by the close of business on May 1, 2009. The Tennessee Attorney General shall divide and distribute these funds as designated by and in the sole discretion of the Settling Attorneys General. Said payment shall be used by the Settling Attorneys General as and for attorneys' fees and other costs of investigation and litigation, or to be placed in, or applied to, the consumer protection enforcement fund, including future consumer protection enforcement, consumer education, litigation or local consumer aid fund or revolving fund, used to defray the costs of the inquiry leading hereto, and may be used to fund or assist in funding programs directed at combating over-the-counter or prescription drug abuse, addiction and/or diversion, including, but not limited to, education, outreach, prevention or monitoring programs, or for other uses permitted by state law, at the sole discretion of each Attorney General. Defendants shall be jointly and severally liable for all amounts that are due and owed under this paragraph.

X. OTHER SETTLEMENT TERMS AND OBLIGATIONS

- 21. The acceptance of this Judgment by the Attorney General or the non-insistence by the Attorney General on an enforcement action, shall not be deemed approval by the Attorney General of any of the Defendants' Advertising or business practices. Further, neither Defendants nor anyone acting on the Defendants' behalf shall represent, state, or imply or cause to be represented, stated, or implied that the State of Washington, the Attorney General, or any other government unit of the State of Washington has approved, sanctioned, or authorized any practice, act, advertisement or conduct of Defendants, including prospective Advertising.
 - 22. This Judgment may only be enforced by the parties hereto.
- 23. The titles and headers to each section of this Judgment are for convenience purposes only and are not intended by the parties to lend meaning to any actual provision of this Judgment.
- 24. Nothing in this Judgment constitutes an agreement by the Attorney General of Washington concerning the characterization of the amounts paid hereunder for purposes of any proceeding under the Internal Revenue Code or any state tax laws.
- 25. Defendants waive and will not assert any defenses based in whole or in part on the Double Jeopardy or Excessive Fines Clauses of the Constitution or principles set forth in *Hudson v. United States*, 118 S. Ct. 488 (1997) and *Austin v. United States*, 509 U.S. 602 (1993).
- 26. No waiver, modification, or amendment of the terms of this Judgment shall be valid or binding unless made in writing, signed by the party to be charged, approved by this Honorable Court and then only to the extent set forth in such written waiver, modification or amendment.

- 27. Any failure by any party to this Judgment to insist upon the strict performance by any other party of any of the provisions of this Judgment shall not be deemed a waiver of any of the provisions of this Judgment, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Judgment and the imposition of any applicable penalties, including but not limited to contempt, civil penalties and/or payment of the attorneys fees of the Attorney General.
- 28. If any clause, provision or section of this Judgment shall, for any reason, be held illegal, invalid, or unenforceable, such illegality, invalidity or unenforceability shall not affect any other unrelated clause, provision, or section of this Judgment, and this Judgment shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section or other provision had not been contained herein.
- 29. Nothing in this Judgment shall be construed as relieving Defendants of the obligation to comply with all state and federal laws, regulations or rules, nor shall any of the provisions of this Judgment be deemed to be permission to engage in any acts or practices prohibited by such law, regulation, or rule.
- 30. Time shall be of the essence with respect to each provision of this Judgment that requires action to be taken by the Defendants within a stated time period or upon a specified date.
- 31. This Judgment sets forth the entire agreement of the parties, and there are no representations, agreements, or understandings, oral or written, between the parties relating to the subject matter of this Judgment which are not fully expressed herein or attached hereto or set forth in any stipulation filed currently herewith. In any action undertaken by the Parties, no prior versions of this Judgment, no prior versions of any of its terms, that were not entered by the Court in this Judgment, may be introduced for any purpose whatsoever.
- 32. Nothing in this Judgment shall be construed to waive any claims of Sovereign Immunity the Attorney General may have in an action or proceedings.

- 33. Upon reasonable written request, Defendants shall provide books, records, or documents (physical or electronic in native format) or formally under oath provide testimony or other information to the Attorney General relating to compliance with this Judgment. Defendants shall make any requested information available within thirty (30) days of the request at the Office of the Attorney General or at such other location as is mutually agreeable in writing to Defendants and the Attorney General. This Judgment shall in no way limit the Attorney General's right to obtain documents, records, testimony, or other information pursuant to any law, regulation, or rule.
- 34. Within thirty (30) days of entry of this Judgment, Corporate Defendants shall submit a copy of this Judgment to each of their officers, directors, and sales and marketing employees. Further, for a period of ten (10) years, Airborne shall supply a copy of this Judgment to any Advertising or marketing consulting agency that it employs.
- Attorney General has the right to test shop the Corporate Defendants for the purpose of confirming compliance with this Judgment and state law. The test shoppers are not required to disclose that they are representatives of the Attorney General when making contact with the Corporate Defendants. Further, the Attorney General may record any or all aspects of their solicitations or visit(s) with the Corporate Defendant(s) in audio and/or video form without notice to the Corporate Defendant(s). The Corporate Defendants agree to void any sale and return any monies paid by a test shopper upon notification that such purchase was the result of a test shop conducted by the Attorney General.
- 36. Except as may be provided under applicable law, nothing in this Judgment shall be construed to grant, affect, restrict, limit or alter any private right of action that a consumer may have against Defendants.
- 37. This Judgment shall not be construed or used as a waiver or any limitation of any defense otherwise available to the Defendants.

1	38.	Notic	es to be given under this Judgment and Injunction are sufficient if giver
2	by nationally	recogn	nized overnight courier service or certified Mail (return receipt requested)
3	or personal de	elivery	to the named party at the address below:
4		i.	If to Airborne Health or Airborne Holdings:
5			26811 South Bay Drive, Suite 300 Bonita Springs, FL 34134
6			and
7 8			100 Clock Tower, Suite 120 Carmel, CA 93923
9		ii.	If to the Attorney General:
10			Consumer Protection Division
11			Washington State Attorney General's Office 800 Fifth Avenue, Suite 2000 Seattle, WA 98104-3188
12		iii.	If to Victoria Knight- McDowell:
13 14			26811 South Bay Drive, Suite 300 Bonita Springs, FL 34134
15			and
16			100 Clock Tower, Suite 120 Carmel, CA 93923
17		iv.	If to Thomas John McDowell:
18 19			26811 South Bay Drive, Suite 300 Bonita Springs, FL 34134
20			and
21			100 Clock Tower, Suite 120
22	20	3.T .'	Carmel, CA 93923
23			is effective when delivered personally; or three (3) business days after it
24			ail; or on the business day after it is sent by nationally recognized courier
25			delivery. Any party may change its notice address by giving notice in
26	accordance wit	n this p	paragraph.

1	XI. COURT COSTS AND FEES
2	40. Courts costs associated with the filing of this Judgment shall be paid by the
3	Defendant Airborne, Inc. No discretionary costs shall be taxed against the Attorney General.
4	HEREBY ORDERED, ADJUDGED AND DECREED. DONE IN OPEN COURT this day of 2008
5	DONE IN OPEN COURT this day of, 2008.
6	Michael J. Fox
7	
8	COMMISSIONER/JUDGE KING COUNTY SUPERIOR COURT
9	Approved for entry and presented by:
10	ROBERT M. MCKENNA Attorney General
11	Truomey General
12	Du la Duna
13	ROBERT A. LIPSON, WSBA #11889
14	Senior Counsel
15	Attorneys for Plaintiff State of Washington
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Notice of Presentation Waived; Approved as to form: COZEN O'CONNOR NSBA 6912 inthrogal PETER JUMINTZER, WSBA #19995 Attorneys for Defendants

]	FOR DEFENDANTS:
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3	Mand
4	The second countries of the se
5	Individually and on behalf of Airborne Health, Inc., and Airborne Holdings, Inc.
6	Date: \2 - 60 - 68
7	Date. 12 00 08
8	
9	Jele Krybe UChle
10	
11	Victoria Knight-McDowell Individually and as Acting Chief Executive Officer of Airborne Health, Inc.
12	
13	Date: 12-10-08
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Joan Z. Bernstein Dana B. Rosenfeld Bryan Cave LLP 700 13th Street, NW Washington, DC 20005 (202) 508-6000 (202) -6200 (fax) Attorneys for Defendants

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2	COLLECTIVE EXHIBIT
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Supplement Facts OKNE AIRBORNE AILBORNE AIRBOKNE

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	Herbal Extract Proprietary Blend 200 mg	Potassium (Bicarbonate)	Manganese (as Gluconate)	selenium (as Amino Acid Chelate)	fale)	Magnesium (as Sulfate)	Vitamin E (as di-Tocopheryl Acetate)	Vitaniin C (Ascorbic Acid)	Vitamin A (as Retinyl Palmitate)	Total Carbohydrates		ontains	
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unique natural formula contains 17 herbs and nutrients, including ginger for nausea! gainst germs that abound the classroom. Airborne's

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l created Airhorne because, as a seacher i needed help supporting my immune system, especially the classroom. Thank you for using Airborne!

Statuta Kingin.
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Airborne Fressign.

lealthy immune system relps your body fight germs. Take before er immune system, so that could help her body fight A STATE OF THE STA y a school teacher to engot IRBORNE was developed ke schools and airplanes. ntering crowded places our immune system. A ake AIRBORNE to boost



Children's Strength Airborne Formula!

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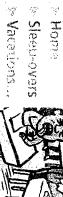


The original immune-boosting tablet that helps your body fight geroes.

- Seven Herbal
 Extracts:
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- Vitamin Ci
- Tastes Great!

FOR USF IN School

- * Playgrounds (1)
- Airplanes
- Steep-overs



CONTENTS: 1 TUBE

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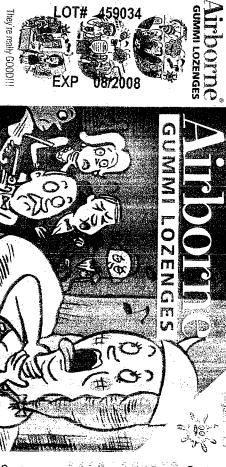
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Makers of the famous Airborne Formula

Soothing Throat Formula



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GUMMI LOZENGES

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GUMMI LOZENGES

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Thorne gunni lozenge

Delicious Airborne⁵ Gummi Lozenges are made exclusively for Airborne⁵² in Switzerland and come in 5 natural flavors that help soothe your throat.

















AIRBORNE Formula was created by a second grade school teacher. Our trademarked Hard Gummi Lozenges offer 100% Guaranteeed Satistaction the effective of the colonial of the foresting to be less than the colonial of the colonia SUPPLEMENT FACTS: विश्वति विक्षा कर के भी त्यार वाहकार का त्या

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AIRBORNE was developed by a school teacher to boost her minute system, so that it could help her body fight against germs that abound in the classroom. Airborne On-the-Go gives you his same immune-boosting formula in convenient, single-serve packets. It's perfect for heappe on the go, Just add to bottled water and take it anywhere you get herbs unique natural formula contains 17 herbs and nutrient.	Moto	ho Fnad and Drug Administration but on prevent any disease. Repyclable Catlon :	est. "Dely Value ed established	50 mg · · ·				2 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0	
	STANCONSTANTANTANTANTANTANTANTANTANTANTANTANTANT			17	neople on the go. Just add to bottled water and take it anywhere you go!!	Airborne On-the-Go gives you this same immune-boosting formula in convenient, single-serve packets. It's perfect for	Immune system, so that it could help her body fight against germs that abound in the classroom.	AIRBORNE was developed by a school teacher to boost her	Airborne

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Herbal Extract Proprietary Bland Maltodexirin, Lonicera (Ilower), Forsythia (Ifult), Schizonepeta (aboveground parts), Amino Acids Biend
50 mg
Glutamine (as L-Glutamine), Lysine (as L-Lysine HCl) olal Carbohydrates Itamin A (as Retinyl Palmitate) Itamin C (Ascorbic Acid) linger (dried rhizome), Chinese Vilex (fruit) lenium (as Chelate) anganese (as Gluconate) lamin E (as dl-Tocopheryl Acetate) agnesium (as Oxide & Sulfate) ic (as Sulfate) (rool), Echinacea (aboveground parts) 350 mg 15 mcg 3 mg 000 mg 75 mg 40 mg 8 mg AIRBORNE was developed by a school teacher to boost her immune system, so that it could help her body fight against

Supplement Facts Serving Size 1 Tablet

Other Ingredients: Serbilot, Sodium Bicarbonate, Citric Acid, Polacsium Bicarbonate, Halural Lemon-Lime Flavor, Polyethylone Glycot, Maneral DN, Sucrabase No Artificial Colous, Flavoro or Precervatives.



Effervescent Health Formula Take AIRBORNE to boost your immune

system. A healthy immune system before entering crowded environments, helps your body fight germs. Take like airplanes, offices and schools.

germs that abound in the classroom. Airborne's unique formula Manufactured in USA
for Airborne, Inc. from domestic
and imported ingredients
P.O. Box 2884 Garmet. GA 93921

contains 17 herbs and nutrients, including ginger for nausea! I These statements have not been evaluated by the Food and trug Administration. This product is not intended to diagnose, treat, curs or prevent any disease.

arcent Daily Values are based on a 2,000 calorie diet. **Daily Value not established.

Comments: (800) 590-9794 Visit us at veny, Airbometlealli, com EPROLG 6||

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To ensure safety, putly and potency, Arrborne is power extract only whole plant material. This product the U.S.A. tran domestic and imported ingredient

of Airborne Formula. -Victoria Knight-McDowell, 2nd grade teacher & developer

"Thank you for using Airborne! I created Airborne because, as a teacher, I needed help supporting my immune system, especially

HAVE YOU TAKEN YOUR AIRBORNES in the classroom."t



Recyclable Carton 🚭



A DIETARY, SUPPLEMENT

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1,000mg of Vitamin C!

A LEMON-LIME

- Seven Herba Extracts!
- Electrolytes!
- Amino Acids
- Antioxidants
- Tastes Great
- FOR USE IN:
- Offices
- Theaters... Health Clubs

LEMON-LIME DIETARY SUPPLEMENT

Airplanes

Restaurants Schools





12 years and older. Simply drop (1) DIRECTIONS: For adults and children

TENTS: 2 TUBES

evident cap for your protection. May be telore taking. Sealed with a lamper conditions should consult a physician medication or with known medical dietary supplements, people on used in hol or cold water. pregnant or breastleeding, unless you more than 3 times per day. Do not take if have consulted a physician. As with air AIRBORNE labiel in 4-5 cz. cf water, let Papeal every 3-4 hours as necessary, no dissoive (about 1 minute) and drink

EFTERVESCENT TECHNOLOGY Offers faster absorption!



Airborne 47865 3000



AIRBORNE GUMMI LOZENGES — 2007

new die line - tuck ends



Makers of the original *Airborne* Formula

Soothing Throat Formula

DIETARY SUPPLEMENT



(Ages 5-105)

Best if NOT chewed. Place in mouth, let dissolve and swallow.

Airborne **GUMMI LOZENGES**





They're really GOOD!!!



Manufactured in Statzerland for Airboane, Inc. P.O. Box 2884 Carmel, CA 93921 Comments, (800) 590-9794 Visit us at www.AirborneHealth.com



"Thank you for using Airborne Gummi Lozenges! I created the original Airborne formula because, as a teacher, I needed help supporting my immune system, especially in the classroom."†

Victoria Knight-McDowell, 2nd grade teacher & developer of the Airborne Formula,

NO PROMO Proof of Purchase Admin To ensure safety, purity and potency, Airhorne is proud of the fact that we extract only whole plant material.

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These statements have and been evaluated by the Ford and Thoug Administration. This grodust is not inhead at the diagnoses.

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Hard Gummi Lozenges offer 100% Guaranteed Satisfaction. school teacher. Our trademarked was created by a second grade The original AIRBORNE Formula





สวเหยองหว่าย เกรอู้เกา help soothe your throat. and come in 6 flavors that for Airborne® in Switzerland Lozenges are made exclusively Delicious Airborne" Gummi

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astis (root). Echinacea (aboyeground parts) Maltodextrin, Lonicera (flower), Forsyrhia (fruit), Schizonepeta (aboveground parts), Ginger (dried riszome), Chinese Vitex (fruit), Herbal Extract Proprietary Blend

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Serving Size 1 Lozenge Supplement Facts

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Airborne

GUMMI LOZENGES

DIRECTIONS: Adults and children 5 years of age or older, allow one lozenge to dissolve slowly in mouth and swallow. (For best results do not chev).

May be repeated as needed or as directed by a doctor. Children 5-13 years old: Do not exceed 12 lozenges per day. Adults and children 14 years of age or older: Do not exceed 18 lozenges per day. Children under 5 years, please consult your doctor.

Do not take if pregnant or breastfeeding, unless you have consulted a physician. As with all dielary supplements, people on medication or with known medical conditions should consult a physician before taking.

Airborne ell° **GUMMI LOZENGES**

Gummi_carton_2007_v5

AMRIBORNID AMRIBORIND AMRIBORIND AMRIBORIND

Supplement Facts Serving Size 1 Tablet Each Tablet Contains % Daily Value Calories Total Carbohydrates <1 g <1%* Vitamin A (as Retinyl Palmitate) 500 IŬ 10% Vitamin C (Ascorbic Acid) 500 mg 835% Vitamin E (as dl-Tocopheryl Acetate) 15 IÜ 50% Magnesium (as Sulfate) 20 mg Zinc (as Sulfate) 4 mg 27% Selenium (as Chelate) 8 mcg 11% 75% Manganese (as Gluconate) 1.5 ma 230 mg Sodium 10% Potassium (Bicarbonate) 38 mg 1% Herbal Extract Proprietary Blend 200 mg Mallodextrin, Lonicera (flower), Forsythia (fruit), Schizonepeta (aboveground parts), Ginger (dried rhizome), Chinese Vitex (fruit), Isalis (rool), Echinacea (aboveground parts) 30 mg

Lysine (as L-Lysine HCI) * Percent Daily Values are based on a 2,000 calone diet. ** Only Value not established

25 mg

OTREM INGREDIENTS: Sorbiol, Coro Arid, Sorbon Elcarborate, Grape Flavora, Polyethylane Gydol

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Beet Root

Amino Acids Blend Glutamine (as L-Glutamine),

from domestic and imported ingredients P.O. Box 2884 Carmel, CA 93921

Next time, 'plop' the 圈

ginger for nausea!†

AIRBORNE'Jr.

For Kids!!

Take AIRBORNE to boost

your immune system. A

healthy immune system

helps your body fight germs. Take before

entering crowded places

AIRBORNE® was developed

by a school teacher to boost

her immune system, so that it

could help her body fight

against germs that abound in

the classroom. Airborne's

unique formula contains 17

herbs and nutrients, including

Manufactured in USA for Airborne, Inc.

like schools and airplanes.†



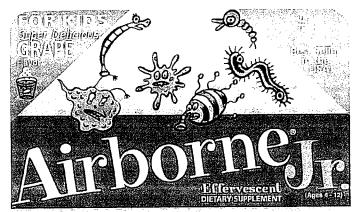


moo. Allea HarnedniA. www is au liziV Comments: (800) 590-9794

McDowell, 2nd grade -Metoria Kinghi-

in the classroom."T my immune system, especially l created Airborne because, as a teacher, I needed help supporting "Thank you for using Airborne!





Children's Strength Airborne Formula!







The original immune-boosting tablet that helps your body fight germs.†

Airborne-Jr

- Vitamin C!
- Seven Herbal Extracts! 9
- ∘ Antioxidants 🗒
- Electrolytes!
- Amino Acids!
- Tastes Great!

FOR USE IN:

School

Playgrounds

Airplanes

Home

> Sleep-overs

➣ Vacations..



CONTENTS: 1 TUBE

DIRECTIONS: For ages 4-12: Simply drop (1) ARBORNE In tablet in 4-6 oz. of water, let diseate (about 1 minute) and drink. Repeat every 3-4 hours as necessary, no more than three times per dry Do not table if pregnent or brastfeeding, unless you have consulted a physician. As with all dietary supplements, people on medication or with known medical conditions should occasal a physician before taking. Sealed with a tamper exident cap for your protection. May be used in bot or cold water.

EFFERVESCENT TECHNOLOGY OFFERS FASTER ABSORPTIONI

50 mg

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Supplement Facts

Serving Size 1 Tablet			Effervescent
Amount Per Tablet	%	Daily Value	Health Formula
Calories	_5		Take AIRBORNE to
Total Carbohydrates	<1 g	<1%*	
Vitamin A (as Retiny! Palmitate)	2000 IU	40%	boost your immune system. A healthy
Vitamin C (Ascorbic Acid)	1000 mg	1667%	
Vitamin E (as di-Tocopheryl Acetate)	30 IU	100%	immune system helps your body fight germs.
Magnesium (as Oxide & Sulfate)	40 mg	10%	Take before entering
Zinc (as Sulfate)	8 mg	53%	crowded environments,
Selenium (as Chelate)	15 mcg	21%	like airplanes offices
Manganese (as Gluconate)	3 mg	150%	and schools.
Sodium	230 mg	10%	
Potassium	75 mg	2%	AIRBORNE was developed by
Herbai Extract Proprietary Blend Maltodextrin, Lonicera (flower), Forsythia (fruit), Schlzonepeta (aboveground parts), Ginger (dned rhizome), Chinese Vitex (fruit), Isatis	350 mg		a school teacher to boost her immune system, so that it could help her body fight against germs that abound in the classroom. Airborne's

Mallodextrin, Lonicera (flower). Forsythia (fruit), Schlzonepeta (aboveground parts), Ginger (dned rhizorne), Chinese Vitex (fruit), Isatis (root), Echinacea (aboveground parts)

Amino Acids Blend

Glulamine (as L-Glutamine) Lysine (as L-Lysine HCi)

Percent Daily Values are based on a 2,000 calcrie diet. Dady Value not established.

Other Ingredients: Serbital, Sodium Bicarbonate, Citric Acid, Polassium Bicarbonate, Natural Leman-Lime Playor, Polyebrykme Glycol, Mineral O.), Sucrelace

These statements have not been evaluated by the Food and Orug Administration.
This product is not intended to diagnose, treat, cure or prevent any disease.

Its Artificial Colors, Flavors or Precervatives.

Retyrist's Carter 3 Ho Artificial Colors, Flavors or Precervatives.

unique formula contains 17 herbs and nutrients,

including ginger for nausea!†

Next time, 'plop' the **園AIRBORNE!**

Manufactured in USA for Airborne, Inc. from demestic and imported ingredients PO. Box 2864 Carmel, CA 93921

AIRBORNE

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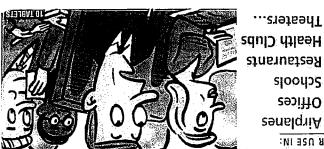
Airborne Formula to radolavah & radanat -Mennin Kathaha McDonell, 2nd grade

in the classroom."+ my immune system, especially teacher, I needed help supporting "Thank you for using Airborne! I created Airborne!



Comments: (600) 590-9794 mos.dleeltsmodifA.www ts zu fiziV **VIKBOKNES** HAVE YOU TAKEN YOUR





OFFERS FASTER ABSORPTION! ELLEUNEZCENT TECHNOLOGY

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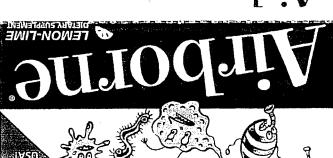
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Supplement Facts Serving Size 1 Tablet			Windporme.
Amount Per Tablet		6 Daily Value	ENTITUDE MONTHINE
Calories	5	a natty value	Effervescent
Total Carbohydrates	<1 g	<1%*	Health Formula
Vitamin A (as Retiny) Palmitate)	2000 10	40%	i iouitii i oi iiiaia
Vitamin C (Ascorbic Acid)	1000 mg	1667%	AIRBORNE was developed
Vitamin E (as dl-Tocopheryl Acetate)	30 IU	100%	
Magnesium (as Oxide & Sulfate)	40 mg	10%	
Zinc (as Sulfate)	8 mg	53%	it could help her body fight
Selenium (as Chelate)	15 mca	21%	against germs that abound
Manganese (as Gluconate)	3 mg	150%	in the classroom.
Sodium	230 mg	10%	
Polassium	75 mg	2%	Airborne Nighttime contains
Herbal Extract Proprietary Blend	350 mg	••	immune-boosting ingredients
Maltodextrin, Lonicera (flower).			plus natural herbs to help
Forsythia (fruit), Schizonepeta			soothe and relax for a better
(aboveground parts), Ginger (dried rhizome),			night's sleep.†
Chinese Vitex (fruit), Isatis (root),			•
Echinacea (aboveground parts)			Airborne Nighttime's unique
Vighttime Herbal Blend	60 ma	•••	formula contains 19 herbs

60 mg Chamomile (flower), Lemon Balm (aboveground parts), Passionflower (aboveground parts), Valerian (root)

Percent Daily Values are based on a 2,000 cabrie diet. ** Daily Value not established.**
Other Ingredients: Sorbidi, Citric Acid, Sodium Bicarbonate, Natural and Artificial Rayors, Polissium Bicarbonate, Cammel Color, Marrel OJ, Asseullame Pulsashim, Bourdose. These statements have not been avaluated by the Food and Drug Administration. This product is not inlended to diagnose, treat, cure or prevent any disease. **GA Artificial Colors of Procervatives.**
Becyclable Cartis. **G.**

Effervescent Health Formula

Airborne Nighttime's unique formula contains 19 herbs and nutrients!



Manufactured in USA for Airborne, Inc. from domestic and imported ingredients PO Box 2884 Carmel, CA 93921

itali bat ja prong si ambany. Apastag bas yunga senara si wa tanasi anta i ambang alah. Tahahan i abaha yun tahaha si Ma S.A. Iran danasika ana lapanda linasihasa kuan A.E.U sali

Airborne Formula. Alctowell, 2nd grade
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Joneher & developer of

"Thank you for using Alrbomet as a lereated Airbome because, as a leaded help supporting my immune system, especially my imme system, especially in the classroom."!

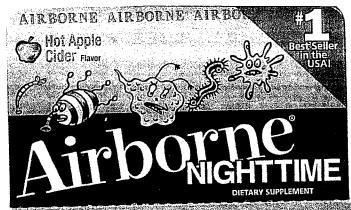


Comments: (800) 590-9794 mos.dllseHeanoditA.warv is to fiziV

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Proceedings of the Art by A





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HOT APPLE CIDER

EFFERVESCENT HEALTH FORMULA
A DIETARY SUPPLEMENT

Airpolie

Hot Apple Cider

Contains Airborne's immune-boosting ingredients plus natural herbs to soothe and relax for a better night's sleep.

irborne®

- HOT APPLE CIDER • 1,000mg of
- Vitamin C! • Eleven Herbal Extracts
- Antioxidants!
- Electrolytes!
- Tastes Great!

CHERI

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CONTENTS: 1 TUBE

DIRECTIONS: For adults and children 12 years and older. Take I takes believe bentime. Dogs I while the day of his water and bit closed fabout 00 seconds) and direk. Do not take in pressure of mensistencing, unless yea have consulted a physician. As with all destry supplement, people on medical continuous should contain a physician medical containers whould have consulted up to make the property of you are bidly transpallers without his containty of you are bidly transpallers without his containty of your physician. Avoid alcohol and do not drive or operate metabeary while taking this product. If supplements persons considerably for more than 2 metals, consult your physician. Stalled with takens to be supplementation.

FFFERVESCENT TECHNOLOGY OFFERS FASTER ABSORPTION

Take anywhere you go just add to bottled water!



Best Seller in the USA!

GRIMATIED BY A SCHOOL TEACHER Airborge

Convenient emywhare you go

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no energy Propriet Character Energy

Comments: (600) 590-9794 • Visit us at warv. Airbs melleatth com

Emply packet into bottle vaten 4-6 oz. of water remain. Let drink DO NOT SHAKE. Repeat every 3-4 hours as necessary, dissolve (about 1 minule) and **DIRECTIONS:** For adults and children 12 years and older.

no more than 3 times per day. ments, people on medication have consulted a physician. **Do not take if preg**nant or breastfeeding, unless you As with all dietary supple-

conditions should consult a physician before taking. or with known medical

EFFERVESCENT TECHNOLOGY OFFERS FASTER ABSORPTION

EFFERVESCENT

<u>ÁIRBORNE® AIRBORNE® AIRBORNE®</u>

4-6 oz. of Bottled Water

Airborne		Med Willeman	CONTROL WAS TOO	<1%* Albeonnes	Ť	1	100% it could halp her body fight	10% against corner that abarrad	53% in the classroom t	21% III tille cidasi bullit.	150% Airborne On-the-Go gives	10% you this same immune-	2% boosting formula in	Convenient, single-serve	packers. It's perfect for	people on the go. Just	add to bottled water and	take it anywhere you go!t	Airhorne's unique formula	· contains 17 herbs and	
		% Daily Value	0	700		16	30 (U 10	40 mg 1						350 та			jej.	Î.		50 ma	
Supplement Facts	Serving Size 1 Packet	Each Packet Contains	Calories	Total Carbohydrates	Vitamin A (as Retinyl Palmitate)	Vitamin C (Ascorbic Acid)	Vitamin E (as dl-Tocopheryl Acetate)	Magnesium (as Oxide & Sulfate)	Zinc (as Sulfate)	Selenium (as Amino Acid Chelate)	Manganese (as Gluconate)	Sodium	Potassium	Herbal Extract Proprietary Blend	Maltodextrin, Lonicera (flower).	Forsythia (fruil), Schlzoneneta	(aboveground parts), Ginger (dried rhizome)	Chinese Vitex (fruit), Isalis (root).	Echinacea (aboveground parts)	Amino Acids Blend	

Percen Ucily Values ere based on a 2.000 calone delt. "Daly Value not established.
 Other Ingredien is: Caric Acid, Sodium Bicatomate, Natura Lemon-Lime Flavors,

On-the-Go Convenience

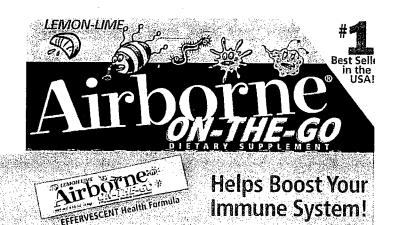
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Three statements have not been evaluated by the Food and Drug Administration.
This product is not intended to dispense, treat, case on present any disease.
Ho Anthonic Colors, Finoris or Preservatives.
"Thank you for using Alithomet

A I R BORNE?

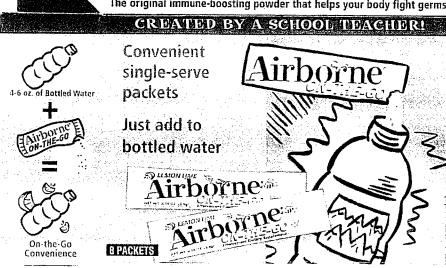
Manufactured in Germany for Antome, Inc., P.O. Box 2884 Carmel, CA 93921

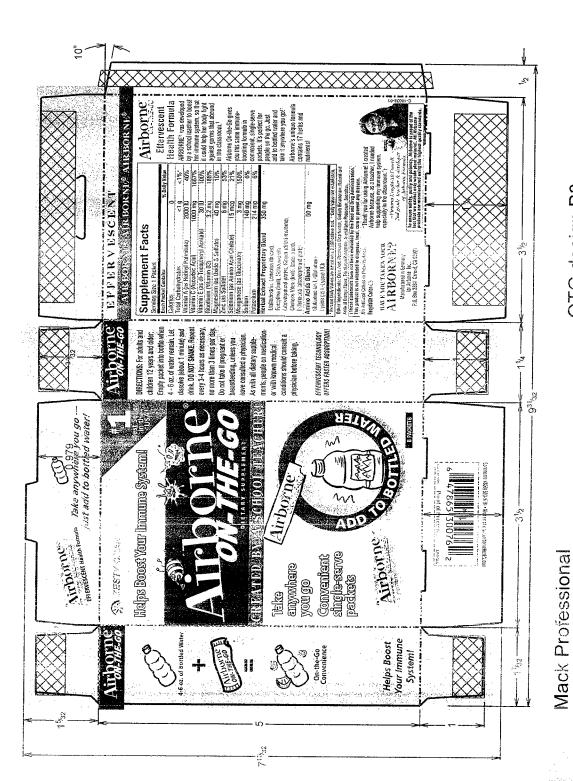
Helps Boost Your Immune System!

-Victoria Kuicht-McDovell
2nd grade teacher & developer
Of Airborne Formula.
To expure astily tuily and politicity Aliadrah & grid products are manufaquing usin the kindlich M. M. "Thank you for using Airbornel I created Airborne becausa, as a leachier, I needed help supporting my immune system, especially in the classroom."



The original immune-boosting powder that helps your body fight germs.





OTG design B3 8count = version 7 - Original D5147F - die line

> Airborne 8 Count D5147F SBS.015 Nov 8, 2007



EFFERVESCENT

AIRBORNE® AIRBORNE® AIRBORNE® AIRBORNE

75 mg

350 mg

50 mg

Supplement Facts

Serving Size 1 Packet		
Each Packet Contains		% Dally Value
Calories	0	
Total Carbohydrates	<1 g	<1%*
Vilamin A (as Relinyl Palmitate)	2000 IU	40%
Vitamin C (Ascorbic Acid)	1000 mg	1667%
Vitamin E (as di-Tocopheryl Acetate)	30 IU	100%
Magnesium (as Oxide & Sulfate)	40 mg	10%
Zinc (as Sulfate)	8 mg	53%
Selenjum (as Amino Acid Chelate)	15 mcg	21%
Manganese (as Gluconate)	3 mg	150%
Sodium	230 mg	10%

Herbal Extract Proprietary Blend

Maltodextrin, Lonicera (flower),

Forsythia (fruit), Schizonepeta (aboveground parts), Ginger (dned rhizome),

Chinese Vitex (fruit), Isatis (root),

Echinacea (aboveground parts)

Amino Acids Blend

Potassium

Glutamine (as L-Glutamine) Lysine (as L-Lysine HCI)

* Percent Daily Values are based on a 2,000 calorie diet. ** Daily Value not established.

Other Ingredients: Citric Acid. Sodium Bicarbonate. Natural Lemon-Lime Flavors.

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| These statements have not been evaluated by the Food and Brug Administration.
| This product is not intended to diagnose, treat, cure or prevent any disease. Recyclable Carton 🖒

No Artificial Colors, Flavors or Preservatives.

Gorida Polymera

AIRBORNE® was developed by a school teacher to boost her immune system, so that it could help her body fight against germs that abound in the classroom.†

Airborne On-the-Go gives you this same immune-boosting formula in convenient, singleserve packets. It's perfect for people on the go. Just add to bottled water and take it anywhere you go!1

Airborne's unique formula contains 17 herbs and nutrients!



Manufactured in Germany ♀C

for Airborne, Inc., Lu P O. Box 2884 Carmel, CA 93921

To ensure safely, punity and potency. Aliboine is proud of the last that we extract paly whole plant material.

"Howard Anghi-McDovelon" -2nd grade teacher & developer bulling I strodick to

nale system in the classromore system; I". mooreselb aft in ylisioagea Airborne because, as a teacher, I needed "Thank you for using Airborne! I created



Commette. (608) 599-9794 • Visit of Army Aitbornellesilb com

C-10019-04

PAYIOTASEZ STATOTESTÜ

DIRECTIONS: Adults and children 12 years and older: Dissolve tablet in 4-6 oz. of water and drink. Take 3 times a day the first week and 2 times a day thereafter. Do not take if pregnant or breastfeeding, unless you have consulted a physician. As with all dietary supplements, people on medication or with known medical conditions should consult a physician before taking.

EFFERVESCENT TECHNOLOGY OFFERS FASTER ABSORPTION!

क्षित्रमुक्षाम्/दूराताः स्वतिस्तरान्ताः स्वतिस्तरा

Airborne is the founder of the Airborne Teachers Trust Fund. A vision of Victoria Knight-McDowell - former second-grade teacher and creator of Airborne — the Airborne Teachers Trust Fund awards monetary grants to fund art and music programs in elementary and middle schools. Often, these programs are in jeopardy of being lost due to budgetary limitations. Airborne proudly supports the Trust financially with the monies generated through the sale of Airborne products.

For additional information and grant application visit www.airbornetrust.com.

AIRBORNE[†] AIRBORNE[®] AIRBORNE[®] AIRBORNE[®] AIRBORNE[®]

EFFERVESCENT HEALTH FORMULA

Supplement Facts

Serving Size 1 Tablet

Amount Per Tablet	%	Dally Value
Calories	8	
Total Carbohydrates	<1 g	<1%*
Vitamin C (Ascorbic Acid)	500 mg	833%
Vitamin 86 (Pyridoxine Hydrochloride)	2 mg	100%
Pantothenic Acid (as Calcium d-Pantothe	nate) 10 mg	100%
Sodium	250 mg	10%
Herbal Extracts Proprietary Blend	420 mg	**

Herbal Extracts Proprietary Blend Quercetin, Chinese Skullcap (root),

Apple (fruit), Eleuthero (root and rhizome), Perilla (leaf), Peppermint (leaf)

* Percent Daily Values are based on a 2,000 calorie diet. **Daily Value not established.

Ubler Ingredients: Cliric Acid, Sodium Gicertonate, Scrbitol, Crospovideno, Natural Citrus Flavor, Malic Acid, Sodium Carbonate, L-leucine, Polyethylene Glycol, Silicon Dioxide. Sucralose, Sterch.

†These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, core or prevent any disease.

Ne Artificial Colors, Flavors or Propervatives.

HAVE YOU TAKEN YOUR ATRORNER

Airborne® Seasonal is a non-drowsy formula containing a nutritional blend that promotes normal histamine levels.†

Airborne Seasonal's great-tasting formula comes in an effervescent tablet that you drop into water and iet dissolve before drinking.

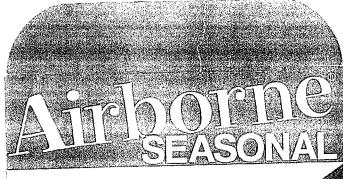
> Manufactured in USA for Airbame, Inc., from domestic and imported ingredients. P.O Box 2884 Carmet, CA 93921

Comments: (800) 590-9794 Visit us at www.AirborneHealth.com



NOPROMO Proof of Purchase ERROLT

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🍠 Contains Vitamins & Nutrients

Non-Drowsy!

A proprietary formula that promotes normal histamine levels.†

CITRUS BLEND 🦃



🚁 500mg of Vitamin C!

Herbal Extracts!

Non-Drowsy!

Tastes Great!



A DIETARY SUPPLEMENT

EFFERVESCENT HEALTH FORMULA

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您 Promotes Normal Histamine Levels[†]

_ഗ്രൂ Contains Vitamins & **Nutrients**

Matural Herbal Formula



"I created the original Airborne formula because, as a teacher, I needed help supporting my immune system, especially in the classroom."†

-Victoria Knight-McDowell, 2nd grade teacher & developer of Airborne Formula.

To ensure safely, purity and potency, Airborne is proud of the fact that we extract only whole glant meterial. This product is manufactured in the U.S.A. from domestic and imported ingradients.

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A DIETARY, SUPPLEMENT



FOR USE IN:

1,000mg of Vitamin C!

A LEMON-LIME

Seven Herbal

Extracts!

Airplanes

Offices

Schools

 Amino Acids! Electrolytes! Antioxidants!

Tastes Great!

Health Clubs Restaurants

Theaters...

The original immune-boosting tablet that helps your body fight germs.+

LEMON-LIME DIETARY SUPPLEMENT

Repeat every 3-4 hours as necessary, no necessary to move than 3 times per day. Do not take if pregnant or terastleading, unless you

dissoive (about 1 minute) and drink 12 years and older: Simply drop (1)

AIREORNE Leb'cl in 4-6 cz. cd wzter, let DIRECTIONS: For adults and children

ITS: 2 TUBES

medication or with known medical conditions street consult a physician before taking. Sealed with a tamper

dietary supplements, people on

have consulted a physician. As with all

used in hol or cold water, endent cap for your protection. May be

EFFERVESCENT TECHNOLOGY

Mallodextrin, Loniceia (flower), Forsythia (fruit), Schizonepeta (aboveground parts), Singer (dried Inizome), Chinese Vitex (fruit), Isalis (rool), Echinacea (aboveground parts) Supplement Facts Serving Size 1 Tablet Herbal Extract Proprietary Blend Amino Acids Blend Glutamine (as L-Glutamine), Lysine (as L-Lysine HC) itamin A (as Retinyl Palmitate)
itamin C (Ascorbic Acid) elenium (as Chelate) langanese (as Gluconate) ılal Carbohydrates amin E (as di-Tocopheryl Acetate) agriesium (as Oxide & Sulfate) nc (as Sulfate) tassium 350 mg 8 mg 15 mcg 3 mg 230 mg 75 mg 40 mg <1%* 40% 1667% 100%

AIRBORNE $^{\circ}$ was developed by a school teacher to boost her immune system, so that it could help her body fight against

1

Other Ingredients: Sorbilot, Sodbum Bicarbonate, Clinic Acid, Potacsium Bicarbonate, Italural Leman-Lime Flavor, Petylethylane Glycot, Mineral Dil, Sucralose, tio Artificial Colors, Flavors or Preservatives.

helps your body fight germs. Take before entering crowded environments, like airplanes, offices and schools. system. A healthy immune system Take AIRBORNE to boost your immune Effervescent Health Formula

germs that abound in the classroom. Airborne's unique formula t Manufactured in USA for Airborne, Inc. from domestic a and imported ingredients P.O. Box 2884 Carmet. CA 93921

contains 17 herbs and nutrients, including ginger for nauseal t These statements have not been evaluated by the Food and Brug Administration. This product is not intended to diagnose, treat, cure or prevent any disease. ราบยบร

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To ensure safely, putily and polentsy. Althome is proud of the fact that we extract only whole plant material. This product is manufactured in the U.S.A. from demostle and lenperded Ingredients.

of Airborne Formula. -Victoria Knight-McDowell, 2nd grade teacher & developer

"Thank you for using Airborne! I created Airborne because, as a teacher, I needed help supporting my immune system, especially in the classroom."

AIRBORNE?

Comments. (BCO) 590-9794 Visit us at vera. Airbornel featth, com

Percent Daily Values are based on a 2,000 calorie diet. **Daily Value not established.



Recyclable Carlon 🖒

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EXHIBIT D

1	GOVERNMENT-ORDERED DISCLOSURE [on Airborne Health, Inc., letterhead]
2	[Insert Date]
3	[Addressee]
4	Dear Airborne Health, Inc., Distributor, Reseller, or Retailer:
5	Airborne Health, Inc., recently reached a settlement with the Attorneys General
6	of twenty-seven states and the District of Columbia (the "State AGs") resolving an investigation into what the State AGs believed to be unsubstantiated and/or deceptive claims
7	for Airborne Effervescent Health Formula and other Airborne branded products. The State AGs also contended that Airborne made unlawful claims for a dietary supplement. According
8	to the State AGs, Airborne lacked scientific evidence to support alleged claims that, among things, our products prevent colds, protect against germs, reduce the severity or duration of
9	colds, or protect against colds, sickness or infection in crowded places. Although we dispute the views of the State AGs and deny any wrongdoing, we have agreed to resolve the State
10	AGs' investigation.
11	To comply with the agreement reached with the State AGs, Airborne has agreed, and hereby instructs you to immediately refrain from and/or stop using advertising or
12	promotional materials that claim that Airborne Effervescent Health Formula (all flavors), Airborne, Jr., Airborne On-the-Go, Airborne Power Pixies, Airborne Nighttime, Airborne
13	Seasonal, Airborne Gummi lozenges, or other similar Airborne products:
14	 reduce the risk of or prevent colds, sickness, or infection; protect against or helps fight germs;
15	- reduce the severity or duration of colds;
16	- protect against colds, sickness, or infection in crowded places like airplanes, offices, or schools; or
17	- prevent, treat, cure, or mitigate diseases (or allergies).
18	Such claims may only be made if they are true, adequately substantiated and otherwise permitted by law.
19	A copy of the settlement with the State AGs is attached. If you have any
20	questions, please call [insert name and telephone numbers of the responsible Airborne Health, Inc. Attorney or Officer].
21	Sincerely,
22	Shiotory,
23	Airborne Health, Inc.
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EXHIBIT E

1	
2	GOVERNMENT-ORDERED DISCLOSURE [on Airborne Health, Inc., letterhead]
3	[Insert Date]
4	[Addressee]
5	Dear Airborne Health, Inc., Distributor, Reseller, or Retailer:
6	
7	Airborne Health, Inc., recently reached a settlement with the Attorneys General of twenty-seven states and the District of Columbia (the "State AGs") resolving an investigation into what the State AGs believed to be unsubstantiated and/or deceptive claims
8	for Airborne Effervescent Health Formula and other Airborne branded products. The State AGs also contended that Airborne made unlawful claims for a dietary supplement. According
9	to the State AGs, Airborne lacked scientific evidence to support alleged claims that, among things, our products prevent colds, protect against germs, reduce the severity or duration of
10	colds, or protect against colds, sickness or infection in crowded places. Although we dispute the views of the State AGs and deny any wrongdoing, we have agreed to resolve the State
11	AGs' investigation.
12	It has been brought to our attention that advertisements you have distributed may violate the terms of our Settlement if made by Airborne. To comply with the agreement
13	reached with the State AGs, Airborne has agreed, and hereby instructs you to immediately refrain and/or stop using advertising or promotional materials that may violate the terms of the
14 15	Settlement including claims that Airborne Effervescent Health Formula (all flavors), Airborne, Jr., Airborne On-the-Go, Airborne Power Pixies, Airborne Nighttime, Airborne Seasonal, Airborne Gummi lozenges, or other similar Airborne products:
16	- reduce the risk of or prevent colds, sickness, or infection;
17	- protect against or help fight germs;
18	 reduce the severity or duration of colds; protect against colds, sickness, or infection in crowded places
	like airplanes, offices, or schools; or - prevent, treat, cure, or mitigate diseases (or allergies).
9	
20	Such claims may only be made if they are true, adequately substantiated and otherwise permitted by law.
21	A copy of the settlement with the State AGs is attached. If you have any
22	questions, please call [insert name and telephone numbers of the responsible Airborne Health, Inc. Attorney or Officer].
23	Sincerely,
24	
5	Airborne Health, Inc.
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1	PROOF OF SERVICE
2	
3	I certify that I served a copy of this document on all parties or their counsel of record
4	on the date below as follows:
5	US Mail Postage Prepaid via Consolidated Mail Service
6	ABC/Legal Messenger
7	Peter J. Mintzer Cozen & O'Connor
8	1201 Third Avenue, Suite 5200 Seattle, WA 98101
9	
10	State Campus Delivery
11	Hand delivered by
12	I certify under penalty of perjury under the laws of the State of Washington that the
13	foregoing is true and correct.
14	DATED this day of December, 2008, at Seattle, Washington.
15	Chyl Warten
16	Joseph Carrey
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