

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JEWEL RANKINS and DARREN WONG,
individually and on behalf of all others
similarly situated,

Case No.: 20-cv-1756-ENV-TAM

Plaintiffs,

v.

ARCA CONTINENTAL S.A.B. DE C.V.,
(d/b/a/ ARCA CONTINENTAL), and
and OLD LYME GOURMET COMPANY
(d/b/a DEEP RIVER SNACKS),

Defendants.

SETTLEMENT AGREEMENT

Subject to the approval of the Court and pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Class Action Settlement Agreement and Release, including the attached Exhibits, is entered into between Plaintiffs Jewel Rankins and Darren Wong on behalf of themselves and those similarly situated, and Defendant Old Lyme Gourmet Company (d/b/a/ Deep River Snacks)¹.

I. RECITALS

1.1 WHEREAS, on April 9, 2020, Plaintiff **Rankins**² filed a putative **Class Action** complaint in the United States District Court for the Eastern District of New York, *Rankin v. Arca Continental S.A.B. de C.V.. et al*, Case No. 1:20-cv-1176 (E.D.N.Y.) , against **Defendant** alleging: (1) violation of the New York General Business Law §§ 349 and 350; (2) violation of multiple states’ consumer protection statutes; (3) breach of multiple states’ express warranty laws; and (4) unjust enrichment. All claims relate to certain of **Defendant**’s Deep River brand chips, which were labeled with a “Non GMO Ingredients” statement, which **Plaintiffs** contend gave consumers the

¹ Following inception of this lawsuit, Old Lyme Gourmet Company (d/b/a Deep River Snacks) was merged with and into Wise Foods Inc. Additionally, Arca Continental S.A.B. de C.V. a Mexican corporation, was not served in this matter (*see, e.g.*, ECF Nos. 19, 41) and therefore, although it is named in the caption, it is not a defendant in this litigation.

² All bolded and capitalized terms are defined in Section II, *infra*.

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impression that the **Products** were certified by a third-party, such as the Non-GMO Project, as being free from genetically modified ingredients. **Plaintiffs** further contend that the **Products** contained GMO ingredients. **Defendant** denies these allegations.

1.2 WHEREAS, on June 23, 2020, **Defendant** timely filed a Letter Motion for Pretrial Conference in advance of filing a Motion to Dismiss. (ECF No. 8.).

1.3 WHEREAS, on August 24, 2020, the **Court** stayed all discovery on damages and class certification. Over the next year, the parties engaged in limited discovery.

1.4 WHEREAS, on October 12, 2020, Plaintiff **Wong** filed a putative **Class Action** complaint in the United States District Court for the Northern District of California, captioned *Wong v. Old Lyme Gourmet Company*, Case No. 3:20-cv-7095 (N.D. Cal.), against **Defendant** alleging violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200; and (2) the California Consumers Legal Remedies Act, Cal. Civ. Code § 1750 *et seq.* based on the **Product Labeling** on the **Products**.

1.5 WHEREAS, on February 4, 2021, **Defendant** moved to dismiss, transfer, or stay the complaint in the **Wong Action**. (*See Wong Action*, ECF No. 19.)

1.6 WHEREAS, on March 22, 2021, following full briefing on **Defendant**'s Motion to Dismiss, Transfer, or Stay, the *Wong* court stayed the **Wong Action**. (*Wong Action*, ECF No. 28.)

1.7 WHEREAS, on August 13, 2021 **Defendant** filed a second Letter Motion for Pretrial Conference at Judge Merkl's recommendation while the previously filed Letter Motion remained pending. (ECF No. 27.) On December 7, 2021, after receiving approval from the **Court**, **Defendant** moved to dismiss the **Rankins Action**. (ECF No. 32.)

1.8 WHEREAS, on June 9, 2022, the Magistrate Judge in the **Rankins Action** issued a Report and Recommendation granting in part and denying in part **Defendant**'s Motion to Dismiss. Specifically, the Report recommended denying the motion as to the General Business Law claims, but granting the motion as to the express warranty and unjust enrichment claims.

1.9 WHEREAS, on July 14, 2022, **Defendant** objected to the Report and Recommendation.

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1.10 WHEREAS, on August 15, 2023, the **Court** overruled the objections to the Report and Recommendation.

1.11 WHEREAS, on October 3, 2023, the **Court** ordered that discovery proceed in full. The **Parties** have engaged in extensive interrogatory and document discovery directed at both liability and class certification in the **Rankins Action**.

1.12 WHEREAS, the **Parties** strongly disagree on the merits and viability of the claims set forth in the **Rankins Action** and **Wong Action**.

1.13 WHEREAS, **Plaintiffs** have not filed motions for class certification in any **Action**.

1.14 WHEREAS, **Defendant** denies all of the **Allegations** made in the **Actions** and all charges of wrongdoing or liability against it arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged against it by **Plaintiffs** either on an individual basis, or on behalf of the putative classes. **Defendant** also denies that the claims asserted in the **Actions** meet the requirements for certification as a **Class Action**, other than for purposes of settlement. **Defendant** further denies that the evidence supports a finding of liability or monetary or equitable relief to **Plaintiffs**, any additional putative **Class Representative**, or any **Settlement Class Member**, with respect to any of the **Released Claims** or other **Allegations** made by **Plaintiffs**.

1.15 WHEREAS, **Plaintiffs** believe all claims are viable and subject to class certification.

1.16 WHEREAS, the **Parties** have engaged in extensive arm's length, good-faith negotiations in an effort to reach a resolution of the **Actions**. Such negotiations culminated in an all-day, in-person mediation with mediator Jill Sperber on March 28, 2024, with a second and final session on April 18, 2024.

1.17 WHEREAS, at the second mediation session, mediator Sperber made a mediator's recommendation, which was accepted by both sides.

1.18 WHEREAS, the **Parties**, and their respective counsel, taking into account the risks, uncertainties, delay, and expense involved in pursuing the **Actions**, as well as other relevant

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considerations, have concluded that it is in the best interests of **Plaintiffs** and **Defendant** to compromise fully and finally settle all claims relating to the **Products**.

1.19 WHEREAS, **Plaintiffs' Counsel** are experienced in litigating **Class Action** matters that assert claims like the claims asserted by **Plaintiffs** in the **Actions**.

1.20 WHEREAS, **Class Counsel** has analyzed and evaluated the merits of all **Parties'** contentions and this settlement as it affects all **Parties** and the **Settlement Class Members**. Among the risks and uncertainties of the **Actions** is the possibility that **Plaintiffs** will be unable to prove liability or damages (individually or on a class wide basis) at trial. **Plaintiffs** and **Class Counsel**, after taking into account the foregoing, along with the risks, uncertainties and costs of further prosecution of the **Actions**, are satisfied that the terms and conditions of this **Agreement** are fair, reasonable, adequate, and equitable, and that a settlement and the prompt provision of meaningful benefits to the **Settlement Class Members** are in the best interests of the **Settlement Class Members**.

1.21 WHEREAS, **Defendant**, while continuing to deny all **Allegations**, and disclaiming any liability with respect to any and all claims asserted in the **Actions**, has concluded that it is in Defendant's best interest to resolve the **Actions** on the terms stated in this **Agreement**, in order to avoid further expense, inconvenience, and interference with ongoing business operations, and to dispose of burdensome litigation.

1.22 WHEREAS, the undersigned **Parties** agree, subject to approval by the **Court**, that the **Released Claims** asserted by **Plaintiffs** shall be fully and finally compromised, settled and released on the terms and conditions set forth in this **Agreement**. The **Parties** intend that the **Court** conditionally certify a **Class Action** for settlement and that this **Agreement** will encompass and end all pending, threatened, or possible litigation or claims of **Plaintiffs** against **Defendant** based on the subject matter of the **Actions**.

1.23 WHEREAS, for purposes of settlement only, Plaintiff **Rankins** will seek leave of **Court** to amend her complaint in the **Rankins Action** to add Plaintiff **Wong** as a **Class Representative**.

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1.24 WHEREAS, **Plaintiffs** and **Defendant** specifically agree that **Defendant's** execution of this **Agreement**, and consent to the filing of the **Amended Complaint**, is not, and shall not be construed as, an admission by **Defendant**, or deemed to be evidence: (1) of the validity of any of the claims made by **Plaintiffs** or of any liability to **Plaintiffs**, as alleged in the **Actions** or **Amended Complaint**; (2) that **Defendant** violated any state or federal law in any respect; or (3) that class certification of the claims asserted in the **Actions** is appropriate under Fed. R. Civ. P. 23 or any analogous state law. Nothing in this **Agreement** shall constitute an admission of liability or be used as evidence of liability, by or against any **Party** hereto.

1.25 WHEREAS, **Defendant** agrees to submit to personal jurisdiction and venue of the **Court** solely for purposes of this **Settlement**. If the **Agreement** fails to receive **Court** approval or the **Effective Date** does not occur, then **Defendant** retains the right to challenge personal jurisdiction and venue of the **Court** over these claims.

NOW, THEREFORE, without (a) any admission or concession on the part of **Plaintiffs** about the likelihood of success at trial, on appeal, or in other motions practice, or (b) any admission or concession of the merit of the claims asserted in the **Actions** or of liability or wrongdoing or the lack of merit of any defense whatsoever by **Defendant**, it is hereby stipulated and agreed by the undersigned, on behalf of **Plaintiffs**, the **Settlement Class Members**, and **Defendant**, that these **Actions** and all **Released Claims** of the **Settlement Class Members** be settled, compromised, and finally adjudged, subject to **Court** approval as required by Federal Rule of Civil Procedure 23, on the terms and conditions set forth herein.

The recitals stated above are true and accurate and are hereby made a part of this **Agreement**.

II. DEFINITIONS

Capitalized terms in this **Agreement** shall be defined as follows:

2.1 “**Actions**” means, collectively, the lawsuits captioned *Rankin, et al. v. Arca Continental S.A.B. de C.V. and Old Lyme Gourmet Co. (d/b/a Deep River Snacks)*, Case No. 1:20-cv-1756-ENV-TAM (E.D.N.Y.) and *Wong, et al. v. Old Lyme Gourmet Co. (d/b/a Deep River Snacks)*, Case No. 3:20-CV-07095-WHO (N.D. Cal.).

2.2 “**Agreement**” means this Settlement Agreement, including all exhibits hereto.

2.3 “**Allegations**” means the allegations as asserted in the **Rankins Complaint**, the **Wong Complaint**, and the **Amended Complaint**.

2.4 “**Amended Complaint**” means the Amended Complaint for Settlement (attached hereto as Exhibit F), which will be filed with the **Court** pursuant to Section 1.23, and will add Plaintiff **Wong** as a plaintiff in this Action.

2.5 “**Attorneys’ Fees and Costs**” means such funds as may be awarded by the **Court** to **Plaintiffs’ Counsel** for their work, efforts, and expenditures in connection with the respective **Actions** and settlement, including fees, costs, and expenses of experts, consultants, or other individuals retained by, or who assisted **Plaintiffs’ Counsel** in connection with the respective **Actions** and settlement, as described more particularly in Section V of this Agreement.

2.6 “**Claim Administrator**” means, subject to **Court** approval, Epiq Class Action & Claims Solutions, Inc., unless another third-party administrator is later agreed to by the **Parties** in writing and approved by the **Court**.

2.7 “**Claim Filing Deadline**” means ninety (90) days after the initial date set for the **Final Approval** hearing.

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2.8 “**Claim Form(s)**” means a form in substantially the same form as Exhibit B hereto to be used by a **Settlement Class Member** to make a **Settlement Claim** under the **Settlement**.

2.9 “**Claimant**” means a **Settlement Class Member** who submits a **Settlement Claim** for payment as described in Section III of this **Agreement**.

2.10 “**Class Action**” is to be given the meaning in Federal Rule of Civil Procedure 23(a) and 23(b)(3).

2.11 “**Class Notice**” means the notice to the Class to be disseminated by the **Claim Administrator** as forth in the **Notice Plan** described in the declaration of the Claims Administrator filed with the Motion for Preliminary Approval and as anticipated to be approved in accordance with the **Court’s Preliminary Approval**.

2.12 “**Class Period**” means the period of time from February 2, 2017 through the date of the **Preliminary Approval Order**.

2.13 “**Class Representatives**” means **Plaintiffs** Jewel Rankins and Darren Wong, collectively.

2.14 “**Court**” means the United States District Court, Eastern District of New York.

2.15 “**Defendant**” means Old Lyme Gourmet Co. (d/b/a Deep River Snacks), which previously merged with and into Wise Foods, Inc..

2.16 “**Defendant’s Counsel**” means Eversheds Sutherland (US) LLP including, but not limited to, Meghana Shah and Melissa Fox.

2.17 “**Effective Date**” means the date on which the **Final Approval** is final and no longer subject to any further appeal as of right, or by discretionary review.

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2.18 “**Escrow Account**” means the separate, interest-bearing escrow account to be established by the **Claim Administrator** at a bank to hold funds received in connection with the administration of this **Settlement**.

2.19 “**Final Approval**” means the order and judgment entered by the **Court** approving this **Agreement** and, certifying a class for settlement purposes.

2.20 “**Household**” means any number of natural persons who currently or during the **Class Period** occupied the same dwelling unit.

2.21 “**Long Form Notice**” means notice to **Settlement Class Members** in substantially the same form as Exhibit C.

2.22 “**Motion for Preliminary Approval**” means the motion filed by Plaintiffs seeking preliminary approval of the **Settlement**.

2.23 “**Notice Date**” means the day on which the **Claim Administrator** initiates the **Online Notice**.

2.24 “**Notice Plan**” means the **Parties** and **Claim Administrator**’s plan to provide the **Settlement Class Members** with notice of Settlement.

2.25 “**Online Notice**” means notice to **Settlement Class Members** in substantially the same form as Exhibit D.

2.26 “**Opt-Out and Objection Deadline**” means thirty-five (35) days prior to the initially scheduled hearing date on **Final Approval**.

2.27 “**Parties**” means **Plaintiffs** and **Defendant**, collectively.

2.28 “**Parties’ Counsel**” means collectively **Plaintiffs’ Counsel**, **Class Counsel**, and **Defendant’s Counsel**.

2.29 “**Party**” means any one of **Plaintiffs** or **Defendant**.

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2.30 “**Person(s)**” means any natural person.

2.31 “**Plaintiffs,**” means **Rankins** and **Wong**.

2.32 “**Plaintiffs’ Counsel**” or “**Class Counsel**” means collectively Reese LLP and Sheehan & Associates, P.C.

2.33 “**Preliminary Approval**” means issuance of an order, granting preliminary approval to this Agreement as within the range of possible **Final Approval**, approving **Class Notice** to the **Settlement Class Members** as described in Section IV below, and setting a hearing to consider **Final Approval** of the settlement and any objections thereto.

2.34 “**Product Labeling**” means the statement “Non GMO Ingredients” as depicted here or similarly pictured:



2.35 “**Product(s)**” means potato chips sold under the Deep River brand name that had the **Product Labeling**. A complete list of the **Products** is attached hereto in Exhibit A.

2.36 “**Protective Order**” means the October 6, 2020 order of the **Court** (ECF No. 18) so ordering entry of the proposed Confidentiality Order (ECF No. 17-1) that governs the treatment of confidential information produced in discovery.

2.37 “**Rankins**” means plaintiff Jewel Rankins.

2.38 “**Rankins Action**” means *Rankin, et al. v. Arca Continental S.A.B. de C.V. and Old Lyme Gourmet Co. (d/b/a Deep River Snacks)*, Case No. 1:20-cv-1756-ENV-TAM (E.D.N.Y.)

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2.39 “**Rankins Complaint**” means the Complaint filed as ECF No. 1 in the **Rankins Action**.

2.40 “**Released Claims**” means any and all claims, demands, rights, suits, liabilities, and causes of action of every nature and description whatsoever, known or unknown, matured or unmatured, at law or in equity, existing under federal or state law, that any Plaintiff or **Settlement Class Member** has or may have against the **Released Parties** arising out of or related in any way to the transactions, occurrences, events, behaviors, conduct, practices, and policies alleged in, or that could have been alleged in the **Actions**, including but not limited to those claims asserted in the **Actions**, the **Rankins Complaint**, the **Wong Complaint**, and/or the **Amended Complaint**, and in connection with the conduct of the **Actions**, that have been brought, could have been brought, or are currently pending in any forum in the United States. For sake of clarity, **Released Claims** do not cover claims, if any, for bodily injury arising out of a **Settlement Class Member’s** use of the **Products**.

2.41 “**Released Parties**” means **Defendant**, and each and all of its respective present or former, direct or indirect parent companies, subsidiaries, shareholders, owners, affiliates, predecessors, successors and assigns, and each and all of their respective present or former members, officers, directors, managers, employees, employers, attorneys, accountants, financial advisors, commercial bank lenders, insurers, investment bankers, representatives, general and limited partners and partnerships, suppliers, co-manufacturers, distributors, any trust of which **Defendant** is a settlor, trustee, or beneficiary, heirs, executors, administrators, successors, affiliates, and assigns of each of them.

2.42 “**Releasing Parties**” means **Plaintiffs** and all **Settlement Class Members** who have not validly and timely opted out of the **Settlement**, and all of their respective spouses,

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children, executors, representatives, guardians, wards, heirs, estates, successors, bankruptcy estates, bankruptcy trustees, predecessors, agents, and assigns, and all those who claim through them or who assert or could assert claims on their behalf.

2.43 “**Service Award**” means any award sought by application to and approval by the **Court** that is payable to the **Class Representatives** to compensate them for their efforts in bringing their respective **Actions** and achieving the benefits of this settlement on behalf of the **Settlement Class Members**.

2.44 “**Settlement**” means the settlement embodied in this **Agreement**.

2.45 “**Settlement Benefit(s)**” means the benefits provided to **Settlement Class Members** as set forth in Section III of this Agreement.

2.46 “**Settlement Claim**” means a claim for **Settlement Benefits** submitted under Section III of this Agreement.

2.47 “**Settlement Class Member(s)**” means all persons in the United States who purchased any of the **Products** during the **Class Period** for personal or household use. Excluded from this definition are (a) the **Released Parties**; (b) all distributors, wholesalers, retailers, and licensors of the Products; (c) judges presiding over the **Actions** and any members of their immediate families and/or staff; (d) **Persons** who made a valid, timely request for exclusion; (e) the mediator Jill Sperber; and (f) any government entity.

2.48 “**Settlement Fund**” means the aggregate value of Four Million Dollars and No Cents (\$4,000,000.00) that may be distributed to **Settlement Class Members** who submit valid and timely **Claim Forms**, pursuant to Section III. The **Settlement Fund** will first be used to pay for **Class Notice** and administration costs or other costs pursuant to the terms of Section III of this

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Agreement, and all **Attorneys' Fees and Costs** and **Service Awards**, prior to any distribution from the payments to **Settlement Class Members**.

2.49 “**Settlement Website**” means an internet website created and maintained by the **Claim Administrator**, the URL of which shall be specified in the **Notice Plan**.

2.50 “**Termination Date**” means the date that the **Agreement** is terminated as set forth in Section 9.3.

2.51 “**Valid Claim**” means a **Settlement Claim** submitted in compliance with Section III of this Agreement and determined to be valid by the **Claim Administrator**, and as further described in that Section.

2.52 “**Wong**” means plaintiff Darren Wong.

2.53 “**Wong Action**” means the matter of *Wong, et al. v. Old Lyme Gourmet Co. (d/b/a Deep River Snacks)*, Case No. 3:20-CV-07095-WHO (N.D. Cal.).

2.54 “**Wong Complaint**” means the Complaint filed as ECF No. 1 in the **Wong Action**.

III. SETTLEMENT BENEFITS AND CLAIMS ADMINISTRATION

Monetary Compensation

3.1 Subject to the rights and limitations set forth in this Agreement, every **Settlement Class Member** shall have the right to submit a **Settlement Claim** for **Settlement Benefits**. A **Settlement Claim** shall be a **Valid Claim** only if submitted on the **Claim Form** pursuant to, and in compliance with, the procedures set forth in this Section III. Submission of a **Settlement Claim**, regardless of whether it is determined to be a **Valid Claim**, shall confer no rights or obligations on any **Party**, any **Settlement Class Member**, or any other **Person**, except as expressly provided herein.

3.2 At the election of the **Settlement Class Member**, **Claim Forms** may be submitted in paper via regular U.S. mail or online at the **Settlement Website**. **Claim Forms** must be postmarked or submitted online no later than the **Claim Filing Deadline**. **Claim Forms** received or submitted online after that date will not be **Valid Claims**. For **Claim Forms** that are submitted online, the **Settlement Class Member** shall have the opportunity to upload Proof of Purchase image files (e.g., .jpg, .tiff, .pdf); to preview and confirm information entered in the **Claim Form** prior to submitting the **Settlement Claim**; and to print a page immediately after the **Claim Form** has been submitted showing the information entered, the names of image files uploaded, and the date and time the **Claim Form** was received.

3.3 On the **Claim Form**, the **Settlement Class Member**, or a **Person** with authority to sign and bind the **Settlement Class Member**, must provide and certify the truth and accuracy of the following information under the penalty of perjury by signing the **Claim Form** physically, or by e-signature, to be considered a **Valid Claim**:

- (a) The **Settlement Class Member**'s name and mailing address;
- (b) The **Settlement Class Member**'s email address (unless the **Settlement Class Member** submits a **Claim Form** by mail, in which case an email address is optional, or the **Settlement Class Member** attests that he or she does not have an e-mail address);

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(c) That the **Settlement Class Member** made the purchase or purchases directly at a retail establishment or online;

(d) That the claimed purchases were not made for purposes of resale, commercial use or for any purpose other than household use; and

(e) For each claimed purchase that is not supported by Proof of Purchase, the number of **Product(s)** purchased.

3.4 Subject to the total dollar value cap in **Settlement Benefits** as provided in Section 3.6, each **Settlement Class Member** who submits at least one (1) **Valid Claim** per **Household**, as determined by the **Claim Administrator**, shall receive a **Settlement Benefit** as follows:

(a) A **Settlement Class Member** who submits a **Valid Claim**, with a Proof of Purchase, shall receive \$5.00 for the first **Product** claimed and \$0.50 for each additional **Product** claimed that is submitted with a Proof of Purchase. There is no limitation to the amount of **Products** a **Claimant** may seek compensation for based upon Proof of Purchase

(b) A **Settlement Class Member** who submits a **Valid Claim**, without a Proof of Purchase, shall receive \$5.00 for the first **Product** claimed and \$0.50 for each additional **Product** claimed up to a maximum of ten (10) additional **Products claimed**, for a total of \$10.00.

(c) Claims with Proof of Purchase and without Proof of Purchase shall be cumulative. For example, a **Settlement Class Member** may make a **Valid Claim** for 6 **Products** with Proof of Purchase (for \$7.50), and 3 **Products** without Proof of Purchase (for \$6.00) for a total of \$13.50.

(d) The total payment due to the **Settlement Class Member** shall be provided electronically or in a single check payable to the **Settlement Class Member**, as elected by the **Settlement Class Member**.

3.5 Each **Household** is limited to and may only submit a single **Claim Form**.

3.6 The total dollar value of **Valid Claims** submitted will be capped at the amount of money remaining in the **Settlement Fund** after the costs of notice and claims administration, **Service Awards**, and **Attorneys' Fees and Costs** have been subtracted.

3.7 **Settlement Fund.**

(a) **Defendant** shall establish a **Settlement Fund** with a cash value of Four Million Dollars and No Cents (\$4,000,000.00).

(b) Within ten (10) business days after the entry of the **Preliminary Approval Order**, **Defendant** shall transfer to the **Escrow Account** established by the **Settlement Claim Administrator** and approved by the **Parties** Five Hundred Thousand Dollars and No Cents (\$500,000.00). **Defendant** shall transfer to the **Escrow Account** the remaining balance of Three Million Five Hundred Thousand Dollars and No Cents (\$3,500,000.00) within forty-five (45) calendar days after entry of the **Preliminary Approval Order**.

(c) The **Settlement Fund** at all times will be deemed a “qualified settlement fund” within the meaning of United States Treasury Reg. § 1.468B-1. All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by the **Settlement Fund** or otherwise, including any taxes or tax detriments that may be imposed upon **Defendant** with respect to income earned by the **Settlement Fund** for any period during which the **Settlement Fund** does not qualify as a “qualified settlement fund” for the purpose of federal or state income taxes or otherwise (collectively “Taxes”), will be paid out of the **Settlement Fund**. **Defendant** and its counsel, and **Plaintiffs** and **Class Counsel**, will have no liability or responsibility for any of the Taxes. The Parties shall cause the **Settlement Fund** to indemnify and hold harmless **Defendant**, **Defendant’s Counsel**, **Plaintiffs**, and **Class Counsel**, for all Taxes (including, without limitation, Taxes payable by reason of any such indemnification).

(d) In no circumstances shall **Defendant’s** total contribution to the **Settlement Fund** exceed Four Million Dollars and No Cents (\$4,000,000.00) in the aggregate. Under this **Agreement**, the **Parties** agree that **Defendant’s** contribution to the **Settlement Fund** will encompass the full extent of the **Released Parties’** monetary payment in full consideration for the Releases and covenants not to sue set forth in Section VII of this Agreement. These payments, pursuant to the terms and conditions of this Agreement, and any other non-monetary obligations

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of and considerations due from **Defendant** set forth in this Agreement, will be in full satisfaction of all **Released Claims**.

(e) **Defendant** is not obligated (and will not be obligated) to compute, estimate, or pay any taxes on behalf of **Plaintiffs, Class Counsel, any Settlement Class Member, or the Claim Administrator**, or otherwise administer or support the implementation of the Settlement except as set forth herein.

(f) In the event the **Effective Date** does not occur, or in the event that a **Termination Date** does occur, all amounts paid into the **Settlement Fund**, less amounts incurred for claims administration and notice up to the date it is determined that the **Effective Date** will not occur, shall be returned to **Defendant**. In no other event shall the amounts paid into the **Settlement Fund** revert to **Defendant**.

3.8 Excess or Insufficient Funds in the **Settlement Fund**.

(a) The **Claim Administrator** shall determine each authorized **Claimant's** payment based upon each **Claimant's Claim Form** and the total number of **Valid Claims** in accordance with this Section.

(b) Excess Funds. If, after calculating the payment amount for all **Valid Claims**, value remains in the **Settlement Fund**, such remaining funds shall increase eligible **Settlement Class Members' claimed relief** on a *pro rata* basis.

(c) Insufficient Funds. If the total amount of the **Valid Claims** awards exceeds the value of the **Settlement Fund**, such claims will be reduced on a *pro rata* basis.

(d) *Cy Pres*. It is the **Parties'** intent to distribute the entirety of the **Settlement Fund** to **Settlement Class Members**. If, after distributing the funds from the **Settlement Fund** in accordance with the **Settlement**, including the payment of notice and administration costs, any cash remains in the **Settlement Fund** from uncashed checks, the remaining funds will be distributed to Hunger Free America as a *cy pres* award. Under no circumstances, except as delineated in Section 3.7(f), *supra*, shall any funds remaining in the **Settlement Fund** revert or otherwise be returned to **Defendant**.

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3.9 The **Claim Administrator** shall be solely responsible for, among other things, providing notice as set forth in the **Notice Plan**, processing **Claim Forms**, administering the **Settlement Website**, administering the exclusion process, administering the **Settlement Benefit** claims process described herein (including receiving and maintaining on behalf of the **Court** and the **Parties** any **Settlement Class Member** correspondence regarding requests for exclusion from the **Settlement**), and such other duties as may be reasonably necessary to administer the terms of this Agreement. The **Claim Administrator** shall not approve duplicate or multiple claims for the same purchase but shall deem valid only one **Claimant** for each purchase. The **Claim Administrator** will use adequate and customary procedures and standards to prevent the payment of fraudulent claims and to pay only **Valid Claims**. The **Claim Administrator** and **Parties** shall have the right to audit claims, and the **Claim Administrator** may request additional information from **Claimants**. If any fraud is detected or reasonably suspected, the **Claim Administrator** can require further information from the **Settlement Class Member** or deny **Settlement Claims**, subject to the supervision of the **Parties** and ultimate oversight by the **Court**.

3.10 The determination of validity of **Settlement Claims** shall occur within a reasonable time. The **Claim Administrator** shall have discretion to reasonably approve or deny each claim. **Class Counsel** and **Defendant's Counsel** shall have the right to audit **Settlement Claims** and to challenge the **Claim Administrator's** decision by motion to the **Court**. **Class Counsel's** or **Defendant's Counsel's** choice not to audit the validity of any one or more **Claim Forms** shall not constitute or be construed as a waiver or relinquishment of any audit or other rights as to any other **Claim Forms**, individually or as a group, and similarly, shall not be construed as a waiver or relinquishment by such **Party** as to any of its audit and other rights under this Agreement. No **Person** shall have any claim against **Plaintiffs, Defendant, Class Counsel, Defendant's Counsel,** or the **Claim Administrator** based on any determination of a **Valid Claim**, distributions or awards made in accordance with this Agreement and the exhibits hereto. Neither **Plaintiffs**, nor **Defendant**, nor their respective counsel, shall have any liability whatsoever for any act or omission of the **Claim Administrator**.

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3.11 Within twenty (20) days after the **Claim Filing Deadline**, the **Claim Administrator** shall notify by email all **Settlement Class Members** whose **Settlement Claims** are denied of the reason(s) for the denial, using the email address (if any) or physical address provided by the **Settlement Class Member** on the **Claim Form**. If no email address or physical address is provided by the **Settlement Class Member** on the **Claim Form**, the Administrator shall not have an obligation to provide the **Settlement Class Member** any notification of the denial of the **Settlement Claim** or the reasons for denial.

3.12 **Valid Claims** shall be paid electronically or by check to the **Settlement Class Member** and mailed to the address provided on the **Claim Form**, as updated in the National Change of Address Database, no more than one hundred and eighty (180) days after the **Effective Date**.

3.13 All settlement payments shall be subject to a ninety (90) days void period, after which the payments shall no longer be negotiable. Notice of the void period shall be printed on the check, if sent by mail, or on any accompanying or confirmatory correspondence, if funds are sent electronically. If a settlement payment is not negotiated, the **Settlement Class Member** shall not be entitled to any further payment under this **Agreement**. If the check is returned as undeliverable, the **Claim Administrator** shall send an email to the **Claimant**, if one was provided with the **Settlement Claim**, to attempt to obtain a better address, and if obtained, shall mail the check to the new address, but shall have no other obligation to skip-trace or obtain an updated address. The return or failure to cash checks shall have no effect on a **Settlement Class Member's** release of claims, obligations, representations, or warranties as provided herein, which shall remain in full effect.

3.14 No deductions for taxes will be taken from any **Settlement Benefit** at the time of distribution. **Settlement Class Members** are responsible for paying all taxes due on such **Settlement Benefits**. All **Settlement Benefit** payments shall be deemed to be paid solely in the year in which such payments are actually issued. The **Parties' Counsel** and/or the **Parties** do not purport to provide legal advice on tax matters to each other or **Settlement Class Members**. To

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the extent this Agreement, or any of its exhibits or related materials, is interpreted to contain or constitute advice regarding any U.S. Federal or any state tax issue, such advice is not intended or written to be used, and cannot be used, by any **Person** for the purpose of avoiding penalties under the Internal Revenue Code or any state's tax laws.

3.15 All fees and expenses incurred by the **Claim Administrator** in administering **Settlement Claims** and performing the other tasks set forth in Section III shall be paid from the **Settlement Fund**. Any interest that accrues on funds held in the **Escrow Account** shall be used to pay settlement administration expenses. The **Claim Administrator** has represented to the **Parties** that its fees for administering this Settlement are estimated to be approximately \$432,592. The **Claims Administrator** has agreed that such sum shall not be exceeded, so long as the volume assumptions in the estimate are not exceeded.

Non-Monetary Benefit

3.16 **Defendant** agrees to refrain from using the **Product Labeling** on the packaging of its **Products**. Nothing in the **Parties'** agreement shall obligate **Defendant** to address third-party historical depictions of the Non-GMO Ingredients text on **Defendant's** packaging including on third-party websites or elsewhere where not controlled by **Defendant**.

IV. NOTICE

4.1 The **Claim Administrator** will facilitate the notice process by assisting the **Parties**, including by providing notice of this settlement to the appropriate federal and state officials in the United States, as provided by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 ("CAFA Notice"). The **Claim Administrator** shall serve notice of the **Agreement** that meets the requirements of 28 U.S.C. § 1715, on the appropriate federal and state officials no later than ten (10) business days after Plaintiff files the Motion for **Preliminary Approval**. The **Claim Administrator** will file a certification with the **Court** stating the date or dates on which the CAFA Notice was sent. **Defendant** will provide **Class Counsel** with any substantive responses received in response to any CAFA Notice.

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4.2 Prior to the **Notice Date**, the **Claim Administrator** shall establish the **Settlement Website**, which shall contain the **Long Form Notice** in a downloadable PDF format; answers to frequently asked questions; a Contact Information page that includes the address for the **Claim Administrator** and addresses and telephone numbers for **Class Counsel** and **Defendant's Counsel**; the **Agreement**; the signed order of **Preliminary Approval**; a downloadable and online version of the **Claim Form**; a downloadable and online version of the form by which **Settlement Class Members** may exclude themselves from the **Settlement**; and (when they become available) the motion for **Final Approval** and **Plaintiffs'** application(s) for **Attorneys' Fees and Costs** and **Service Award**, and any Order on **Final Approval**.

4.3 The **Claim Administrator** will terminate the **Settlement Website** two-hundred and forty (240) days after either (1) the **Effective Date**, or (2) the **Termination Date**.

4.4 Notice to the **Settlement Class Members** shall be provided on websites and/or social media platforms chosen by the **Claim Administrator** and approved by the **Parties' Counsel** and accessible to desktop and mobile users, so that overall notice of the Settlement is reasonably calculated to apprise the **Settlement Class Members** of the **Settlement**. Such notice shall begin no later than thirty (30) days after **Preliminary Approval**. No later than fifteen (15) days prior to the hearing on **Final Approval**, the **Claim Administrator** shall submit a declaration to the **Court** under penalty of perjury explaining how the media were chosen and attesting to the number of impressions delivered. The **Claim Administrator** shall retain a record of all notice-related materials and procedures.

4.5 The **Claim Administrator** shall establish and maintain a toll-free telephone helpline, available 24 hours per day, where callers may obtain information about the Settlement.

4.6 The **Parties' Counsel** shall supervise the **Claim Administrator** in the performance of the notice functions set forth in this Section IV.

4.7 At least fifteen (15) days prior to the **Final Approval** hearing referenced in Section VI of this Agreement, the **Claim Administrator** shall certify to the **Court** that it has complied with the notice requirements set forth herein.

V. ATTORNEYS' FEES, EXPENSES AND CLASS REPRESENTATIVE PAYMENT

5.1 Attorneys' Fees, Costs, and Expenses. No later than thirty-five (35) days prior to the **Opt-Out and Objection Deadline**, **Class Counsel** shall apply to the **Court** for an award of its attorneys' fees in a total amount not to exceed one-third (1/3) of the **Settlement Fund** or \$1,333,333.33. **Class Counsel** shall also separately apply for the reimbursement of costs and expenses. **Class Counsel** submits to the jurisdiction of this **Court** for the enforcement of this provision of the **Agreement** and for enforcement of all other provisions of this **Agreement**.

5.2 Class Representative Payment. No later than thirty-five (35) days prior to the **Opt-Out and Objection Deadline**, **Plaintiffs** shall apply to the **Court** for a **Service Award** in an amount not to exceed \$5,000 each (for a total of \$10,000), subject to approval by the **Court**, as compensation for (a) the work they performed to represent the **Settlement Class Members**, and (b) the general release set forth in Section 7.1.

5.3 **Defendant** agrees not to oppose **Class Counsel's** application for **Attorneys' Fees and Costs** or **Plaintiffs'** application for **Service Awards**, made in accordance with the provisions of Sections 5.1 and 5.2.

5.4 Any payment of a **Service Award** as set forth in Section 5.2 shall be, in addition to any amount claimed by **Plaintiffs** subject to Section III above, the total obligation of **Defendant** to pay money to **Plaintiffs**, in connection with the **Actions** and this **Settlement**.

5.5 All **Attorneys' Fees and Costs**, as well as the **Services Awards**, shall be paid by the **Claim Administrator** from the **Settlement Fund**.

5.6 To be clear, **Class Counsel's** fees shall be based only on the **Settlement Fund** amount, and shall in no way be based on nor tied to any non-monetary relief or business practice changes.

5.7 The **Attorneys' Fees and Costs** awarded to **Class Counsel** shall be paid by the **Claim Administrator** from the **Settlement Fund** to **Class Counsel** within five (5) business days after the **Effective Date**.

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5.8 Within five (5) business days after the **Effective Date**, any **Court**-approved **Service Award** shall be wired by the **Claim Administrator** from the **Settlement Fund** to **Class Counsel** to be paid to **Plaintiffs**.

VI. CLASS SETTLEMENT PROCEDURES

6.1 Class Certification. The **Parties** agree that, for settlement purposes only, the **Rankins Action** shall be certified as a **Class Action** pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(3) with **Plaintiffs** as the **Class Representatives** and **Plaintiffs' Counsel** as **Class Counsel**.

6.2 In the event the **Agreement** is terminated for any reason, the certification of the **Class Action** shall be vacated, and the **Actions** shall proceed as if the **Class Action** had not been certified, and the **Parties** will be restored to their respective places in the **Actions** as of the date of this **Agreement**. **Defendant's** conditional consent herein to certification of the **Class Action** shall not be used against **Defendant** by any **Party** or non-party for any purpose in the **Actions** or any other litigation, lawsuit, or proceeding of any kind whatsoever.

6.3 Settlement Approval. Contemporaneously with the filing of this **Agreement**, **Plaintiffs** shall move for an order granting **Preliminary Approval** to this Agreement as within the range of possible **Final Approval**; approving **Class Notice** to the **Settlement Class Members** as described in Section IV above; and setting a hearing to consider **Final Approval** of the **Settlement** and any objections thereto. **Defendant** shall have no obligation to make separate filings in support of the motion but may do so at its election after the motion has been filed. **Defendant's Counsel** shall appear at the hearing on behalf of **Defendant** to confirm their agreement with the terms of the settlement as provided herein. The **Parties** agree to the form and substance of the Proposed Order of **Preliminary Approval**, attached hereto as Exhibit F.

6.4 Amended Complaint for Settlement. Solely for purposes of implementing this Agreement and effectuating the proposed Settlement, the **Parties** agree and stipulate that:

(a) **Plaintiffs** shall seek leave of **Court** to file the **Amended Complaint** without material changes to the version attached hereto as Exhibit E, and **Defendant** shall consent

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to such amendment pursuant to Fed. R. Civ. P. 15(a)(2). The motion for leave to file the **Amended Complaint** shall be filed concurrently with the motion for **Preliminary Approval** of the Settlement so that the **Amended Complaint** may become operative upon the **Court's Preliminary Approval** of the **Settlement**.

(b) If for any reason **Final Approval** of the **Settlement** does not occur, the **Amended Complaint** shall be stricken from the record and the operative complaint in the *Rankins Action* shall be the *Rankins Complaint*.

6.5 Final Approval Order and Judgment. No later than thirty-five (35) days prior to the **Opt-Out and Objection Deadline**, **Class Counsel** shall file their motion for payment of **Attorneys' Fees and Costs** and payment of **Service Awards** to the **Class Representatives**. No later than twenty-eight (28) days prior to the hearing on **Final Approval**, or otherwise in accordance with the **Court's** schedule for the **Final Approval Hearing**, **Plaintiffs** shall file their Motion for **Final Approval** of the **Settlement**. **Plaintiffs** shall move for the entry of an order of **Final Approval**, granting **Final Approval** of this **Settlement** and holding this **Agreement** to be final, fair, reasonable, adequate, and binding on all **Settlement Class Members** who have not excluded themselves as provided below, and ordering that the settlement relief be provided as set forth in this **Agreement**, ordering the releases as set forth in Section VII, below, and entering judgment in this case. **Defendant** shall have no obligation to make separate filings in support of the motion. **Defendant's Counsel** shall appear at the hearing to confirm **Defendant's** agreement with the terms of the Settlement as provided herein.

6.6 Exclusions and Objections. The Notice shall advise prospective **Settlement Class Members** of their rights to forego the benefits of this **Settlement** and pursue an individual claim; to object to this **Settlement** individually or through counsel; and, if they object, to appear at the **Final Approval** hearing.

6.7 If any **Settlement Class Member** wishes to object to the settlement, the **Settlement Class Member** must submit a written objection to the **Claim Administrator**. Objections must be delivered to the **Claims Administrator** either via U.S. Post Office or other

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mail service and be postmarked by the **Opt-Out and Objection Deadline** or they shall not be valid. The **Parties** may respond to any objection to the **Settlement** with appropriate arguments and evidence. The objection must contain the following information:

- The objector's full name, current address, telephone number, and email address;
- A clear and detailed written statement of the specific legal and factual bases for each and every objection, accompanied by any legal support for the objection;
- The identity of any lawyer representing the objector, if any;
- A statement indicating whether the objector intends to appear at the Final Approval Hearing either in person or through the objector's lawyer, and, if through a lawyer, the identity of the lawyer;
- A list of all persons, if any, who will be called to testify at the Final Approval Hearing in support of the objection and any documents to be presented or considered;
- The signature of the objector and the signature of any duly authorized lawyer or other duly authorized representative (if any); and
- A detailed list of any other objections submitted by the objector as an objector to any class action settlement submitted in any court, whether state, federal, or otherwise, in the United States in the previous five years. If the objector has not made any such prior objection, the objector must affirmatively state this in the written materials provided with the objection.

6.8 If any **Settlement Class Member** wishes to be excluded from (in other words, opt out of) this Settlement, the **Settlement Class Member** may do so by completing the exclusion form at the **Settlement Website**; downloading and submitting to the **Claim Administrator** a completed exclusion form; or submitting a valid request to exclude, as described in the **Long Form Notice**, to the **Claim Administrator**. Requests to exclude must be delivered to the **Claims Administrator** (in case of electronic submission) or postmarked (in case of a paper submission via the U.S. Post Office or other mail service) by the **Opt-Out and Objection Deadline** or they shall not be valid. A **Settlement Class Member** who elects to exclude themselves from this

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Settlement shall not be permitted to object to this **Settlement** or to intervene. Any **Settlement Class Member** who does not submit a timely request for exclusion shall be bound by all subsequent proceedings, orders, and the **Final Approval** in the *Rankins Action* relating to this **Settlement** and **Agreement**, even if he or she has pending, or subsequently initiates, litigation, arbitration, or any other proceeding against **Defendant** relating to the **Released Claims**. Mass opt-outs are not allowed.

6.9 The proposed **Preliminary Approval** order and **Long Form Notice** will provide that any **Settlement Class Member** wishing to object or exclude themselves who fails to properly or timely file or serve any of the requested information and/or documents will be precluded from doing so.

6.10 Immediately upon receipt of any objection, the **Claim Administrator** shall forward the objection and all supporting documentation to counsel for the **Parties**. At least twenty-eight (28) days prior to the hearing on **Final Approval**, **Class Counsel** shall file all such objections and supporting documentation with the **Court** along with any response to the objection made by the **Parties**.

6.11 At least fifteen (15) days prior to the hearing on **Final Approval**, the **Claim Administrator** shall prepare a list of the names of the **Persons** who, pursuant to the **Long Form Notice**, have excluded themselves from the **Class Action Settlement** in a valid and timely manner, and **Class Counsel** shall file that list with the **Court**.

6.12 A **Settlement Class Member** who objects to the **Settlement** may also submit a **Claim Form** on or before the **Claim Filing Deadline**, which shall be processed in the same way as all other **Claim Forms**. A **Settlement Class Member** shall not be entitled to an extension to the **Claim Filing Deadline** because the **Settlement Class Member** also submitted an objection.

6.13 If a **Settlement Class Member** submits both an objection and an exclusion request, the exclusion shall take precedence and be considered valid and binding, and the objection shall be deemed to have been sent by mistake and rejected.

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6.14 Effect if Settlement Not Approved or Agreement is Terminated. This **Agreement** was entered into only for purposes of settlement. In the event that **Preliminary Approval** or **Final Approval** of this **Settlement** and this **Agreement** does not occur for any reason (other than a modification of the attorney's fees or costs that **Class Counsel** will seek under Section 5.1 or service awards for the **Class Representatives** sought under Section 5.2), or if **Final Approval** is reversed on appeal (other than a modification of the attorney's fees or costs awarded to **Class Counsel** or the service awards to the **Class Representatives**), then no term or condition of this **Agreement**, or any draft thereof, or discussion, negotiation, documentation, or other part or aspect of the **Parties'** settlement discussions shall have any effect, nor shall any such matter be admissible in evidence for any purpose in the **Actions**, or in any other proceeding, and the **Parties** will be restored to their respective places in the **Actions** as of the May 1, 2024 order from the **Court** in the **Rankins Action** staying the **Rankins Action**.

VII. RELEASES

7.1 Upon the **Effective Date** and by operation of the judgment, the **Releasing Parties** shall have fully, finally, and forever released, relinquished, and discharged against the **Released Parties** all **Released Claims** (including, without limitation, any unknown claims), as well as any claims arising out of, relating to, or in connection with, the defense, settlement or resolution of the **Actions** or the **Released Claims**.

7.2 No Admission of Liability. This **Agreement** reflects, among other things, the compromise and settlement of disputed claims among the **Parties** hereto, and neither this **Agreement** nor the releases given herein, nor any consideration therefor, nor any actions taken to carry out this **Agreement** are intended to be, nor may they be deemed or construed to be, an admission or concession of liability, or the validity of any claim, or defense, or of any point of fact or law (including but not limited to matters respecting class certification) on the part of any **Party**. **Defendant** expressly denies the **Allegations** of the **Actions**, including the **Amended Complaint**. Neither this **Agreement**, nor the fact of **Settlement**, nor the settlement proceedings, nor settlement negotiations, nor any related document, shall be used as an admission of any fault or omission by

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the **Released Parties**, or be offered or received in evidence as an admission, concession, presumption, or inference of any wrongdoing by the **Released Parties**. The **Released Parties** may file the **Agreement** and/or the **Final Approval** order in any action or proceeding that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

7.3 This **Agreement** and all negotiations, correspondence and communications leading up to its execution will be deemed to be within the protection of Federal Rule of Evidence 408 and any analogous state or federal rules or principles.

VIII. DISMISSALS

8.1 **Plaintiff's Counsel** shall file a Notice of Voluntary Dismissal without Prejudice in the **Wong Action** following the filing of the **Amended Complaint**. The Parties agree that the statute of limitations for the claims in the *Wong Action* are tolled pending either a **Termination Date** or the **Effective Date**.

IX. ADDITIONAL PROVISIONS

9.1 Best Efforts. Subject to the limitations expressed herein, the **Parties' Counsel** shall use their best efforts to cause the **Court** to give **Preliminary Approval** to this Agreement and settlement as promptly as practicable, to take all steps contemplated by this **Agreement** to effectuate the **Settlement** on the stated terms and conditions, to cooperate in addressing any objections, and to obtain **Final Approval** of this **Agreement**. The **Parties** and **Parties' Counsel** shall not encourage anyone directly or indirectly to opt out or object. If the **Court** requires changes to the **Agreement** as a prerequisite to **Preliminary Approval** or **Final Approval**, the **Parties** shall negotiate in good faith regarding such changes.

9.2 Changes of Time Periods. The time periods and/or dates described in this Agreement with respect to the giving of notices and hearings are subject to approval and change by the **Court** or by the written agreement of **Class Counsel** and **Defendant's Counsel**, without

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notice to **Settlement Class Members** except that the **Claim Administrator** shall ensure that such dates are posted on the **Settlement Website**.

9.3 Termination Rights. Either **Party** may unilaterally terminate this **Agreement**, declare it null and void, and have no further obligations under this **Agreement**, if any of the following conditions subsequent occurs:

- a. The **Parties** fail to obtain and maintain **Preliminary Approval** of the proposed settlement;
- b. The **Court** refuses to certify the **Class Action**;
- c. The **Court** fails to enter **Final Approval** consistent with the provisions in Section 6.5; or
- d. If any appeal is taken, the **Agreement** is not upheld on appeal.

9.4 Time for Compliance. All time periods set forth herein shall be computed in calendar days unless otherwise specified. If the date for performance of any act required by or under this Agreement falls on a Saturday, Sunday or **Court** holiday, that act may be performed on the next business day with the same effect as if it had been performed on the day or within the period of time specified by or under this Agreement.

9.5 Governing Law. This Agreement is intended to and shall be governed by the laws of the State of New York, without regard to conflicts of law principles that would require the application of the laws of another jurisdiction.

9.6 Entire Agreement. The terms and conditions set forth in this **Agreement** constitute the complete and exclusive statement of the agreement between the **Parties** hereto relating to the subject matter of this **Agreement**, superseding all previous negotiations and understandings, and may not be contradicted by evidence of any prior or contemporaneous agreement. The **Parties** further intend that this **Agreement** constitutes the complete and exclusive statement of its terms as between the **Parties** hereto, and that no extrinsic evidence whatsoever may be introduced in any agency or judicial proceeding, if any, involving this **Agreement**. Any amendment or modification of the **Agreement** must be in writing and signed by each of the **Parties** and the **Parties' Counsel**.

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9.7 Advice of Counsel. The determination of the terms of, and the drafting of, this **Agreement** have been by mutual agreement after negotiation, with consideration by and participation of all **Parties** hereto and the **Parties' Counsel**.

9.8 Binding Agreement. This **Agreement** shall be binding upon and inure to the benefit of the respective heirs, successors and assigns of the **Parties** hereto.

9.9 No Waiver. The waiver by any **Party** of any provision or breach of this **Agreement** shall not be deemed a waiver of any other provision or breach of this **Agreement**.

9.10 No Assignment. **Plaintiffs** and **Plaintiffs' Counsel** represent and warrant that none of **Plaintiffs'** claims asserted in the **Actions**, encompassed by the **Released Claims**, or otherwise referred to in this **Agreement** have been assigned, encumbered, or in any manner transferred in whole or in part.

9.11 Execution in Counterparts. This **Agreement** shall become effective upon its execution by all of the undersigned. The **Parties** may execute this Agreement in counterparts and/or by fax or electronic mail, and execution of counterparts shall have the same force and effect as if all **Parties** had signed the same instrument. The **Parties** and their counsel may execute this agreement by electronic signature.

9.12 Captions. Captions and section numbers herein are inserted merely for the reader's convenience, and in no way define, limit, construe, or otherwise describe the scope or intent of the provisions of this **Agreement**.

9.13 Extensions of Time. The **Parties** reserve the right, by agreement and subject to the **Court's** approval, to grant any reasonable extension of time that might be needed to carry out any of the provisions of this **Agreement**.

9.14 Enforcement of this Agreement. The **Court** shall retain jurisdiction to enforce, interpret, and implement this **Agreement**. All **Parties** hereto submit to the jurisdiction of the **Court** for these purposes.

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9.15 Severability. In the event that any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable, or void, this **Agreement** shall continue in full force and effect without said provision.

9.16 No Primary Drafter of Settlement Agreement. The determination of the terms of, and the drafting of, this **Agreement** has been by mutual understanding after negotiation, with consideration by and participation of, the **Parties** hereto and their counsel.

9.17 Variance in Terms. In the event of any variance between the terms of this **Agreement** and any of the Exhibits hereto, the terms of this **Agreement** shall control and supersede the Exhibit(s).

9.18 Authorization to Enter Settlement Agreement. The individual signing this **Agreement** on behalf of **Defendant** represents that he/she is fully authorized by **Defendant** to enter into, and to execute, this **Agreement** on behalf of **Defendant**. **Plaintiffs' Counsel** represent that they are fully authorized to conduct settlement negotiations with **Defendant's Counsel** on behalf of **Plaintiffs**, and to enter into, and to execute, this **Agreement** on behalf of the **Settlement Class Members**, subject to **Court** approval pursuant to Federal Rule of Civil Procedure 23(e). **Plaintiffs** enter into and execute this **Agreement** on behalf of themselves, and as representatives of and on behalf of the **Settlement Class Members**, subject to **Court** approval pursuant to Federal Rule of Civil Procedure 23(e).

9.19 Notices. All notices to the **Parties** or **Parties' Counsel** required by this **Agreement**, shall be made in writing and communicated by mail and fax or email to the following addresses:

If to **Plaintiffs, Plaintiffs' Counsel, or Class Counsel:**

Michael R. Reese
REESE LLP
100 West 93rd Street, 16th Floor
New York, New York 10024
Telephone: (212) 643-0500
Email: *mreese@reesellp.com*

If to **Defendant or Defendant's Counsel:**

Meghana Shah
EVERSHEDS SUTHERLAND (US) LLP
1114 Avenue of the Americas, 40th Floor
New York, New York 10036
Telephone: 212-389-5000
Email: *meghanashah@eversheds-sutherland.com*

9.20 Protective Orders, Document Retention, and Public Communications. All orders and designations regarding the confidentiality of documents and information remain in effect, and all **Parties** and **Parties' Counsel** remain bound to comply with the **Protective Order**, including the provision to certify the destruction of "Confidential" documents. All discovery and settlement materials produced to **Plaintiffs** or **Plaintiffs' Counsel** (including data, documents, and written discovery) will be returned to **Defendant's Counsel** or destroyed within 15 days of the **Effective Date**. This material may not be used in any other actions. Further, **Plaintiffs** and **Plaintiffs' Counsel** agree not to use any discovery (including data) produced in these actions to solicit in any way potential new class representatives. Additionally, the **Parties** (including counsels' law firms) agree not to disparage each other, each other's business practices, products or services, or agents, partners, employees, affiliates, managers, officers, directors, members, attorneys, insurers, parents, subsidiaries, successors, principals, assigns, shareholders and/or representatives, now or at any time in the future, in public or in private for any acts or omissions of the Parties that occurred up to the **Effective Date of this Agreement**. The term "disparage" shall mean any statement which, directly or by reasonable implication, creates a negative impression about the reputation, character, practices, and/or conduct of another in the mind of any reasonable person to whom the statement

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is made, and includes verbal, written and/or electronic statements. In addition, during the **Claims Period**, no party or counsel (including counsels' law firms) is allowed to communicate with the press/media/reporters/journalists, etc., or to publish anything about the **Actions** and their claims to third parties, including about any negotiated resolution of this matter, in verbal, written, or any other form, including, but not limited to, on a website, social media, or other forum other than to say "no comment" or make a statement agreed to by the Parties.

IN WITNESS HEREOF the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below and agree that it shall take effect on the last date it is executed by all of the undersigned.

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APPROVED AND AGREED:


DATED: July 1, 2024

DocuSigned by:

DocuSigned by:

Jewel Rankins
Plaintiff and Class Representative

DATED: July 1, 2024

DocuSigned by:

DocuSigned by:

Darren Wong
Plaintiff and Class Representative

DATED: July 1, 2024


REESE LLP



Michael R. Reese
Class Counsel and Plaintiffs' Counsel

DATED: July 1, 2024

SHEEHAN & ASSOCIATES, P.C.



Spencer Sheehan
Class Counsel and Plaintiffs' Counsel

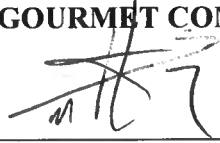
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APPROVED AND AGREED (CONTINUED):

DATED: 7/1/24

WISE FOODS, INC., a successor by merger to
OLD LYME GOURMET COMPANY

By:  _____

Name: Milton Mattus

Its: CEO

DATED: 7/1/2024

EVERSHEDS SUTHERLAND (US) LLP

 _____

Meghana Shah

Defendant's Counsel

LIST OF EXHIBITS

- Exhibit A: Products List
- Exhibit B: Claim Form
- Exhibit C: Long Form Notice
- Exhibit D: Online Notice
- Exhibit E: Amended Complaint for Settlement
- Exhibit F: Proposed Order of Preliminary Approval

EXHIBIT A

Exhibit A
Product List

The Products include the following varieties of Deep River chips bearing the Non GMO Ingredients text sold between February 2, 2017 and the date of preliminary approval:

1. Pink Himalayan Sea Salt
2. Pink Himalayan Salt & Vinegar
3. Apple Cider Vinegar
4. Rosemary & Garlic
5. Fire Roasted Garlic & Onion
6. Mango Habanero
7. All Dressed Up
8. Honey BBQ
9. Sour Cream and Onion
10. Aged Cheddar Horseradish

EXHIBIT B

MAIL ID

0000PLACEHOLDER0000

RANKINS V OLD LYME CLASS ACTION CLAIM FORM

Rankins. v. Old Lyme, Case No. 1:20-cv-1756-ENV-TAM,

United States District Court for Eastern District of New York

This Claim Form must be postmarked no later than MONTH DATE, 2024.

To receive the Settlement Benefits, you must timely submit this Claim Form.. **If you fail to submit your Claim Form by the deadline, your claim will be rejected, and you will be deemed to have waived all rights to receive a class benefit under the settlement.**

CLAIM FORM INSTRUCTIONS

IMPORTANT: Please read the instructions below before completing this Claim Form. In completing the Claim Form, you must provide information on purchases made to receive Settlement Benefits. Products in this matter are Deep River brand potato chips purchased between February 2, 2017, through Month, DD, 20YY that had the Product Labeling, “Non-GMO Ingredients”.

Please note, Valid Claims are limited to ONE Claim Form per Household. Multiple Claim Forms from one Household will result in rejection of those claims.

Only submit claims for purchases made for personal use, and not for commercial purposes or resale.

You may submit a Valid Claim for:

1 – Valid Claim with Proof of Purchase: If you are a Settlement Class Member and submit a Valid Claim with proof of purchase, **you will receive \$5.00 for the first Product and \$0.50 for each additional Product.** There is no limitation to the number of Products you can seek a cash payment for **if a proof of purchase is provided with your Claim Form.**

2 – Valid Claim without Proof of Purchase: If you are a Settlement Class Member and submit a Valid Claim without proof of purchase, you will receive \$5.00 for the first Product and \$0.50 for each additional Product **up to a maximum of 10 additional Products.**

If you are a Settlement Class Member and submit a Valid Claim for Products with both Proof of Purchase *and* without Proof of Purchase, the cash payment benefits will be combined. **Each Household is limited to and may only submit one single Claim Form.**

If you fail to return your Claim Form by the deadline above, your claim will be rejected, and you will be deemed to have waived all rights to receive a class benefit under the settlement.

To be valid, your Claim Form must be completely and accurately filled out, signed and dated, and must include all requested information. If your Claim Form is incomplete, untimely, illegible, not signed, or contains false information, it may be rejected by the Settlement Administrator.

A. ADDRESS INFORMATION

Please provide your name and contact information below.

First Name	MI	Last Name
<input type="text"/>	<input type="text"/>	<input type="text"/>

Address

City	State	ZIP Code
<input type="text"/>	<input type="text"/>	<input type="text"/>

Current Phone Number

 - -

Email Address

MAIL ID

0000PLACEHOLDER0000

B. CLAIM INFORMATION

Please provide below the number of potato chip products purchased:

Number of Products Claimed Without Proof of Purchase	Number of Products Claimed With Proof of Purchase

If you submit an otherwise valid and timely Claim Form, but (1) claim more products than are supported by your Proof of Purchase documentation, or (2) submit insufficient documentation, or (3) submit two or more Claim Forms from the same household, you will receive a cash payment consistent with a claim submitted without Proof of Purchase.

Please include a proof of purchase in the form of a receipt, proof of online order, email from a retailer, or credit card statement for each transaction identified in **Section B**. The proof of purchase must show: the amount of the purchase, the seller, the purchase date (month/year), and, where feasible, the product purchased. You may redact balance information and any transaction information regarding transactions not related to the potato chip product purchase from your credit card statement(s). You may attach your documents to this Claim Form.

C. MANNER OF TRANSMISSION OF CLASS BENEFIT

If your Claim Form is valid, signed, and has been timely submitted, you can receive your payment digitally using the email listed in **Section C**, unless you request to have the payment mailed to you. You acknowledge that if you do not choose to receive your payment digitally, you may not receive it as quickly and that the Settlement Administrator will not be responsible for payments that do not arrive by U.S. mail.

Please select your payment option below:

- Amazon
- Venmo
- Zelle
- Virtual Mastercard
- ACH
- Check

Please be patient. The administrator will not be able to send you your benefit until after your Claim Form has been processed and Court proceedings are completed.

D. SIGNATURE UNDER PENALTY OF PERJURY

By signing below and submitting this Claim Form, I hereby declare under penalty of perjury that I am the person identified above, and that all of the information I have provided on this Claim Form is true and accurate. I certify that the purchase(s) were made directly at a retail establishment, or online, and that the claimed purchases were not made for the purposes of resale, commercial use, or for any purpose other than household use. I understand that the Settlement Administrator has the right to verify the accuracy of any purchase information I provide, and that the Court may ultimately determine I am not entitled to receive a benefit.

Date: __/__/____

Signature

Printing your name constitutes your legal signature, in the same manner as if you signed by hand.

MAIL
ID

0000PLACEHOLDER0000

THIS CLAIM FORM MUST BE COMPLETED, SIGNED, AND MAILED TO THE ADDRESS BELOW:

Settlement Administrator

P.O. Box XXX

Portland, OR XXXXX-XXX

All information submitted in support of your claim is subject to investigation and verification by the Settlement Administrator.

If you have any questions about this lawsuit, your rights, or completing the Claim Form, you may contact the Settlement Administrator:

Settlement Administrator

ADDRESS

EMAIL ADDRESS

WEBSITE

1-877-759-1882

DO NOT ADDRESS ANY QUESTIONS ABOUT THIS LAWSUIT TO THE CLERK OF THE COURT, THE JUDGE, COUNSEL FOR OLD LYME GOURMET COMPANY (d/b/a DEEP RIVER SNACKS), OR TO ANY AGENT OR EMPLOYEE OF THESE ORGANIZATIONS. THEY ARE NOT PERMITTED TO ANSWER YOUR QUESTIONS.

EXHIBIT C

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

If you purchased Deep River brand potato chips labeled “Non-GMO Ingredients” from February 2, 2017 through Month, DD, 20YY, you may be eligible for a monetary payment from a class action Settlement.

A federal court authorized this Notice. This is not a solicitation from a lawyer.

A \$4 million settlement has been reached in a class action lawsuit filed against Old Lyme Gourmet Co. (Deep River Snacks) which previously merged into Wise Foods, Inc. (“Defendant”). Plaintiffs allege the Defendant labeled certain Deep River brand chips with a “Non-GMO Ingredients” statement, which gave consumers the impression the Products were certified by a third-party, such as the Non-GMO Project, as being free from genetically modified ingredients. Plaintiffs allege that the Products contained GMO ingredients. The Defendant denies these allegations. The Court has not decided who is right.

You are a “Settlement Class Member” if you are a person in the United States who purchased any of the Products (potato chips sold under the Deep River brand name, labeled “Non-GMO Ingredients” from February 2, 2017 through Month DD, 20YY for personal or household use.

Monetary Benefits Available to Settlement Class Members: Settlement Class Members who submit a valid and timely Claim Form by the deadline are eligible for the following monetary payment:

1 – Valid Claim with Proof of Purchase: If you are a Settlement Class Member and submit a Valid Claim with proof of purchase, you will receive \$5.00 for the first Product and \$0.50 for each additional Product. There is no limitation to the number of Products you can seek a monetary payment for if a proof of purchase is provided with your Claim Form.

2 – Valid Claim without Proof of Purchase: If you are a Settlement Class Member and submit a Valid Claim without proof of purchase, you will receive \$5.00 for the first Product and \$0.50 for each additional Product **up to a maximum of 10 additional Products.**

If you are a Settlement Class Member and submit a Valid Claim for Products with both Proof of Purchase *and* without Proof of Purchase, the monetary payment benefits will be combined. **Each Household is limited to and may only submit one single Claim Form.**

Non-Monetary Benefit: The Defendant agrees to stop using the Product Labeling “Non-GMO Ingredients” on the packaging of its Products.

This Notice may affect your rights. Please read it carefully.

YOUR LEGAL RIGHTS AND OPTIONS		DEADLINE
SUBMIT A CLAIM FORM	The only way to get a monetary payment is to submit a valid and timely Claim Form.	Month DD, 20YY
EXCLUDE YOURSELF	Get no monetary payment and keep any right to file your own lawsuit against the Released Parties about the legal claims in this lawsuit that are released by the Agreement (“Settlement Agreement”).	Month DD, 20YY
OBJECT	Tell the Court why you do not like the Settlement. You will still be bound by the Settlement if the Court approves it, and you may still file a Claim Form and receive a monetary payment.	Month DD, 20YY
DO NOTHING	Get no monetary payment. Give up your legal rights.	

Questions? Call 1-xxx-xxx-xxxx or visit www.xxxxxxxxxx.com

These rights and options—**and the deadlines to exercise them**—are explained in this Notice.

If you have any questions about this Notice, the Settlement, or your eligibility to participate in the Settlement, please visit www.xxxxxxxxxx.com or call toll-free at 1-xxx-xxx-xxxx.

BASIC INFORMATION

1. Why is this Notice being provided?

A federal court authorized this Notice because you have the right to know about the proposed Settlement of this class action lawsuit and about all of your rights and options before the Court decides whether to grant final approval to the Settlement. This Notice explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for the benefits, and how to get them.

The Honorable Judge Eric N. Vitaliano of the United States District Court for the Eastern District of New York is overseeing this class action. The lawsuits are known as *Rankins, et al. v. Old Lyme Gourmet Co. (d/b/a Deep River Snacks)*, Case No. 1:20-cv-1756-ENV-TAM (E.D.N.Y.) and *Wong, et al. v. Old Lyme Gourmet Co. (d/b/a Deep River Snacks)*, Case No. 3:20-CV-07095-WHO (N.D. Cal.). The persons who filed the lawsuits are called the “Plaintiffs” and the company sued, Old Lyme Gourmet Co. (d/b/a Deep River Snacks), is called the “Defendant.”

2. What is this lawsuit about?

Plaintiffs filed this lawsuit against the Defendant alleging the Defendant labeled certain Deep River brand potato chips with a “Non-GMO Ingredients” statement, which gave consumers the impression that the Products were certified by a third-party, such as the Non-GMO Project, as being free from genetically modified ingredients. Plaintiffs allege that the Products contained GMO ingredients. The Defendant denies the allegations in the lawsuit. The Court has not decided who is right.

3. What is a class action?

In a class action lawsuit, one or more persons called plaintiffs sue on behalf of other persons that have similar legal claims. The people are a “class” or “settlement class members.” In this lawsuit, the people who sued are called the “Plaintiffs.” The company and people they are suing, Old Lyme Gourmet Co. (doing business as Deep River Snacks), is called the “Defendant.” One court resolves the issues for everyone in the class, except for those people who choose to exclude themselves (opt out) from the class.

4. Why is there a Settlement?

The Court has not decided in favor of the Plaintiffs or the Defendant. Instead, both sides agreed to a Settlement to avoid the cost and risk of a trial. Settlement Class Members may submit a Claim Form for a monetary payment. The Plaintiffs and Class Counsel believe the Settlement is best for the Class and represents a fair, reasonable and adequate resolution of the lawsuit.

The Defendant denies the legal claims in the lawsuit; denies all allegations of wrongdoing, fault, liability or damage to the Plaintiffs and the Class; and denies they acted improperly or wrongfully in any way. The Defendant nevertheless recognizes the expense and time that would be required to defend the lawsuit through trial and has taken this into account in agreeing to the Settlement.

Questions? Call 1-xxx-xxx-xxxx or visit www.xxxxxxxxxx.com

WHO IS IN THE SETTLEMENT?

To see if you are eligible for a monetary payment, you first have to determine if you are a Settlement Class Member.

5. Am I part of the Settlement?

You are a Settlement Class Member if you are a person in the United States who purchased any of the Products from February 2, 2017 through **Month DD, 20YY** for personal or household use.

“Product” means potato chips sold under the Deep River brand name that had the Product Labeling of “Non GMO Ingredients.” A complete list of the Products can be found at www.xxxxxxxx.com.

The Product Labeling “Non GMO Ingredients” that appeared on Products looked like or was similarly to the below images printed on packages. These images are different from what is currently on packages today.



You are excluded from being a Settlement Class Member if you are (a) the Released Parties; (b) all distributors, wholesalers, retailers, and licensors of the Products; (c) judges presiding over the Actions and any members of their immediate families and/or staff; (d) Persons who made a valid, timely request for exclusion; (e) the mediator Jill Sperber; and (f) any government entity.

6. What if I am still not sure whether I am part of the Settlement?

If you are still not sure whether you are a Settlement Class Member, you may go to the Settlement Website at www.xxxxxxxx.com or call 1-xxx-xxx-xxxx.

THE SETTLEMENT BENEFITS – WHAT YOU CAN GET

7. What does the Settlement provide?

As a result of the Settlement, the Defendant has agreed to create a Settlement Fund of \$4,000,000. Monetary payments from the Settlement Fund will be paid to each Settlement Class Member who submits a valid and timely Claim Form.

Monetary Benefits Available to Settlement Class Members: Settlement Class Members who submit a valid and timely Claim Form by the deadline are eligible for the following monetary payment (“Monetary Benefits”):

1 – Valid Claim with Proof of Purchase: If you are a Settlement Class Member and submit a Valid Claim with proof of purchase, you will receive \$5.00 for the first Product and \$0.50 for each additional Product. There is no limitation to the number of Products you can seek a monetary payment for if a proof of purchase is provided with your Claim Form.

Questions? Call 1-xxx-xxx-xxxx or visit www.xxxxxxxx.com

2 – Valid Claim without Proof of Purchase: If you are a Settlement Class Member and submit a Valid Claim without proof of purchase, you will receive \$5.00 for the first Product and \$0.50 for each additional Product **up to a maximum of 10 additional Products.**

If you are a Settlement Class Member and submit a Valid Claim for Products with both Proof of Purchase *and* without Proof of Purchase, the monetary payment benefits will be combined. For example, a Settlement Class Member may make a Valid Claim for 6 Products with Proof of Purchase (for \$7.50), and 3 Products without Proof of Purchase (for \$6.00) for a total of \$13.50.

Each Household is limited to and may only submit one single Claim Form. For purposes of the Settlement Household is defined as an any number of natural persons who currently or during the Class Period occupied the same dwelling unit number of natural persons who currently or during the Class Period (from February 2, 2017 through Month DD, 20YY) occupied the same dwelling unit.

Non-Monetary Benefit: The Defendant agrees to stop using the Product Labeling “Non-GMO Ingredients” on the packaging of its Products. The Defendant is not required to address third-party historical depictions of the Non-GMO Ingredients text on the Defendant’s packaging including on third-party websites or elsewhere where not controlled by the Defendant.

HOW TO GET BENEFITS FROM THE SETTLEMENT

8. How can I get a monetary payment?

To be eligible for a monetary payment, you must be a Settlement Class Member and you must submit a valid and timely Claim Form online at www.xxxxxxxxxx.com by **Month DD, 20YY**, or sign and return a valid and timely Claim Form by U.S. mail at the address below **postmarked** by **Month DD, 20YY**.

Rankins v. Old Lyme Gourmet Co.
Claim Administrator
P.O. Box xxxx
Portland, OR 97xxx-xxxx

A Claim Form may be obtained from the Settlement Website, or you may request a Claim Form by contacting the Claim Administrator at the address below or by calling 1-xxx-xxx-xxxx. You will not receive a monetary payment from the Settlement if you file a request to be excluded as a Settlement Class Member, or if you do not submit a valid and timely Claim Form by the deadline.

9. When will I receive my monetary payment?

The Court will hold a hearing on **Month, DD, 20YY** (which is subject to change), to decide whether to finally approve the Settlement. Even if the Court finally approves the Settlement, there may be appeals. The appeal process can take time, perhaps more than a year. If you file a valid and timely Claim Form, you will not receive a monetary payment until any appeals are resolved. Please be patient.

10. What am I giving up to receive a monetary payment from the Settlement?

Unless you exclude yourself (“opt out”) from being a Settlement Class Member by timely submitting a request for exclusion, you will remain a Settlement Class Member. This means you cannot sue, continue to sue or be part of any other lawsuit against the Released Parties about the legal issues in

Questions? Call 1-xxx-xxx-xxxx or visit www.xxxxxxxxxx.com

this lawsuit. It also means that all of the Court’s orders will apply to you and legally bind you and that you will release the legal claims detailed in the Settlement Agreement. The Release is provided in the Settlement Agreement in Section VII in necessary legal terminology. The Settlement Agreement is available at www.xxxxxxxxxx.com.

THE LAWYERS REPRESENTING YOU

11. Do I have lawyers in this case?

Yes, the Court has appointed lawyers from the law firms Reese LLP and Sheehan & Associates, P.C. to represent you and the other Settlement Class Members. The lawyers are called Class Counsel. They are experienced in handling class action cases. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense, but you do not need to.

Michael R. Reese Reese LLP 100 West 93rd Street, 16 th Floor New York, New York 10025	Spencer Sheehan Sheehan & Associates, P.C. 60 Cutter Mill Rd #412 Great Neck, New York 11021
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12. How will the lawyers be paid?

Class Counsel will request Attorneys’ Fees of \$1,333,333.33 (one-third of the Settlement Fund). Class Counsel shall also separately apply for the reimbursement of costs and expenses. In addition, Class Counsel will request the Court approve a Service Award to each of the Class Representatives (Jewel Rankins and Darren Wong) in the amount of \$5,000 each (for a total of \$10,000) for their efforts in pursuing this lawsuit. If awarded by the Court, these Attorneys’ Fees and Costs and the Service Awards will be paid from the Settlement Fund. The Court may award less than these amounts for the Attorneys’ Fees and Costs and Service Awards.

YOUR RIGHTS – EXCLUDING YOURSELF FROM THE SETTLEMENT

If you want to keep the right to sue or continue to sue the Released Parties the legal claims in this lawsuit, and you do not want to receive a monetary payment from this Settlement, you must take steps to exclude yourself from the Settlement. This is called “excluding yourself”—or is sometimes referred to as “opting out” of the class.

13. How do I exclude myself from the Class?

To exclude yourself from the Settlement, you must fill out the Exclusion Form found on the Settlement Website at www.xxxxxxxxxx.com or submit a personally signed letter that includes your name and address and providing a clear statement communicating that you elect to be excluded from the Settlement Class. Your request for exclusion must be emailed to xxxxxxx@xxxx.com by **Month DD, 20YY** or mailed via U.S. Mail or other mail service, **postmarked** by **Month DD, 20YY**, to:

Rankins v. Old Lyme Gourmet Co.
Claim Administrator
P.O. Box xxxx
Portland, OR 97xxx-xxxx

Questions? Call 1-xxx-xxx-xxxx or visit www.xxxxxxxxxx.com

“Mass” or “class” requests for exclusion filed by third parties on behalf of a “mass” or “class” of Settlement Class Members or multiple Settlement Class Members where no Exclusion Form has been signed by each and every individual Settlement Class Member will not be allowed.

14. If I exclude myself, can I get anything from this Settlement?

If you choose to exclude yourself from the Settlement, you are telling the Court that you do not want to be a Settlement Class Member and you will not be bound by the Settlement or any judgment in this lawsuit.

You can only get a monetary payment if you remain a Settlement Class Member and submit a valid and timely Claim Form as described above. If you remain a Settlement Class Member, you will be bound by the Settlement or any judgment in this lawsuit.

If you choose to exclude yourself from the Settlement, you are not giving up the right to sue the Released Parties for the legal claims this Settlement resolves and releases. You must exclude yourself as a Settlement Class Member to start or continue with your own lawsuit about the legal claims involved in this Settlement.

You cannot exclude yourself from the Non-Monetary Benefit.

YOUR RIGHTS – OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the Settlement or some part of it.

15. How do I object to the Settlement?

Any Settlement Class Member who does not submit a request for exclusion from the Class may object to the proposed Settlement, or Class Counsel’s Attorneys’ Fees and Expenses, or the Service Awards.

Your objection must contain the following:

- Your full name, current address, telephone number, and email address;
- A clear and detailed written statement of the specific legal and factual bases for each and every objection, accompanied by any legal support for the objection you believe is applicable;
- The identity of any lawyer representing you as an objector, if any;
- A statement indicating whether you intend to appear at the Final Approval Hearing and, either in person or through your lawyer, and, if through your lawyer, identifying your lawyer;
- A list of all persons, if any who will be called to testify at the Final Approval Hearing in support of the objections and any documents to be presented or considered;
- Your signature as the objector and the signature of your duly authorized lawyer or other duly authorized representative (if any); and
- A detailed list of any other objections submitted by you as an objector or your lawyer, to any class action settlement submitted in any court, whether state, federal, or otherwise, in the United States in the previous five years. If you or your lawyer have not made any such prior objection, you must affirmatively state this in the written materials provided with your objection.

Settlement Class Members who fail to make objections in the manner specified in this Section will be deemed to have waived any objections and will be prevented from making any objection to the Settlement (whether by appeal, or otherwise).

Questions? Call 1-xxx-xxx-xxxx or visit www.xxxxxxxxxx.com

Your written objection must be delivered via email to xxxxxxx@xxxx.com by **Month DD, 20YY**, or mailed via U.S. Mail, **postmarked** by **Month DD, 20YY**, to:

Rankins v. Old Lyme Gourmet Co.
Claim Administrator
P.O. Box xxxx
Portland, OR 97xxx-xxxx

Any objection to the Settlement must be in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own lawyer. If you appear through your own lawyer, you are responsible for hiring and paying your lawyer.

16. What is the difference between objecting and asking to be excluded?

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you remain a Settlement Class Member (meaning you do not exclude yourself). Excluding yourself is telling the Court that you do not want to be a Settlement Class Member. If you exclude yourself, you cannot object because the Settlement no longer affects you.

YOUR RIGHTS – APPEARING AT THE FINAL APPROVAL HEARING

The Court will hold a “Final Approval Hearing” to decide whether to approve the Settlement. You may attend and you may ask to speak if you submit an objection by the deadline, but you do not have to.

17. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing to decide whether to approve the Settlement. You may attend this hearing and you or your lawyer may speak at the hearing if you submitted an objection, but you or your lawyer do not have to do so. The Court will hold the Final Approval Hearing at **X:XX am/pm on Month DD, 20YY**, at the United States District Court, [insert court address here]. If you or your lawyer would like to speak at the hearing, you must file a Notice of Intention to Appear at the Final Fairness Hearing by no later than [15 days before the Fairness Hearing].

Note: The date and time of the Final Approval Hearing are subject to change without further notice to the Settlement Class. The Court may also decide to hold the hearing via Zoom or telephonically. You should check the Settlement Website www.xxxxxxxx.com to confirm the date of the Final Approval Hearing has not changed.

At the hearing, the Court will consider whether the Settlement is final, fair, reasonable, adequate. If there are objections that were postmarked by the deadline, the Court will consider them. If you submit a timely objection, and you would like to speak at the hearing, the Court will also listen to you or your lawyer speak at the hearing, if you so request.

If the Court approves the Settlement, the Settlement Benefits, including monetary payments to Settlement Class Members who submit a timely, valid, and approved Claim Form will be provided after any appeals are resolved and after completion of all Claim Form processing. This could take time to complete fully. Please be patient. The Settlement Website, www.xxxxxxxxxxxx.com, will be updated on a regular basis to provide Settlement Class Members with updated information.

If you are a Settlement Class Member, you are subject to the Settlement unless you take the steps described in this Notice to exclude yourself. You cannot exclude yourself from the Non-Monetary Benefit.

Questions? Call 1-xxx-xxx-xxxx or visit www.xxxxxxxxxxxx.com

18. Am I required to attend the Final Approval Hearing?

You may to attend the Final Approval Hearing, but you are not required to do so. If you submit an objection, you may, but are not required to attend the Court at the Final Approval Hearing. You may also pay your own lawyer to attend or discuss your objection, but that is not necessary.

19. May I speak at the Final Approval Hearing?

Yes, as long as you do not exclude yourself, and you submit an objection, you or your lawyer can (but do not have to) participate and speak in this litigation and Settlement. This is called making an appearance. You also may have your own lawyer speak for you at the hearing, but you will have to pay for the lawyer yourself. If you or your lawyer would like to speak at the hearing, you must file a Notice of Intention to Appear at the Final Fairness Hearing by no later than [15 days before the Fairness Hearing].

IF YOU DO NOTHING

20. What happens if I do nothing at all?

If you are a Settlement Class Member and you do nothing, you will not receive a monetary payment. You will give up your rights as explained in the “Excluding Yourself from the Settlement” section of this Notice, including your right to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against the Released Parties about the legal claims that are released by the Settlement Agreement.

21. How do I get more information about the Settlement?

This Notice summarizes the Settlement. More details are provided in the Settlement Agreement. The Settlement Agreement and other related documents are available at www.xxxxxxxxxx.com, by calling 1-xxx-xxx-xxxx, or by writing to:

Rankins v. Old Lyme Gourmet Co.
Claim Administrator
P.O. Box xxxx
Portland, OR 97xxx-xxxx

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK’S OFFICE REGARDING THIS NOTICE, THE SETTLEMENT OR THE CLAIM PROCESS.

Questions? Call 1-xxx-xxx-xxxx or visit www.xxxxxxxxxx.com

EXHIBIT D

Old Lyme (Deep River)

Banner Advertisement

Option 1

300x250 Online Display Banner

Frame 1 (Visible 8 seconds):



Frame 2 (Visible 5 seconds):



Old Lyme (Deep River)

Facebook Newsfeed (Static)



The image shows a static screenshot of a Facebook newsfeed post. At the top left is the Epiq logo with the text "Epiq Sponsored". To the right are icons for close and more options. The main text of the post reads: "Buy Deep River potato chips labeled 'Non-GMO Ingredients' from XX/XX/XX to XX/XX/XX? You may be eligible for a cash payment." Below the text is a large image of a person's hands holding a large pile of golden potato chips. At the bottom of the post, there is a URL "www.websiteurl.com", the text "Deep River Snacks Settlement", and a "Learn more" button. Below the post are icons for "Like", "Comment", and "Share".

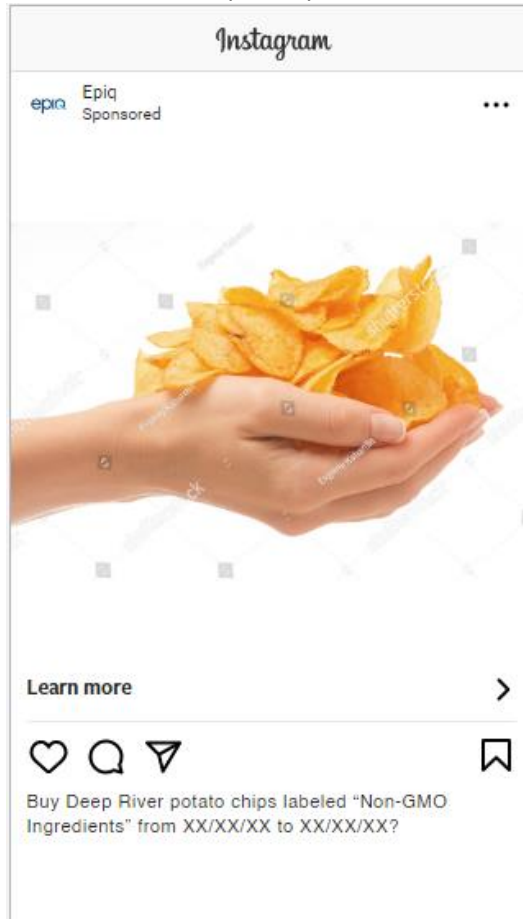
Facebook Right Hand Column (Static)



The image shows a static screenshot of a Facebook right-hand column advertisement. On the left is a small image of hands holding potato chips. To the right of the image, the text reads "Deep River Snacks Settlement" followed by the URL "www.websiteurl.com".

Old Lyme (Deep River)

Instagram Newsfeed (Static)



Option 2

300x250 Online Display Banner

Frame 1 (Visible 8 seconds):



Old Lyme (Deep River)

Frame 2 (Visible 5 seconds):



Facebook Newsfeed (Static)

 **Epiq**
Sponsored ·   

Buy Deep River potato chips labeled "Non-GMO Ingredients" from XX/XX/XX to XX/XX/XX? You may be eligible for a cash payment.



www.websiteurl.com
Deep River Snacks Settlement [Learn more](#)

 Like  Comment  Share

Old Lyme (Deep River)

Facebook Right Hand Column (Static)



Instagram Newsfeed (Static)

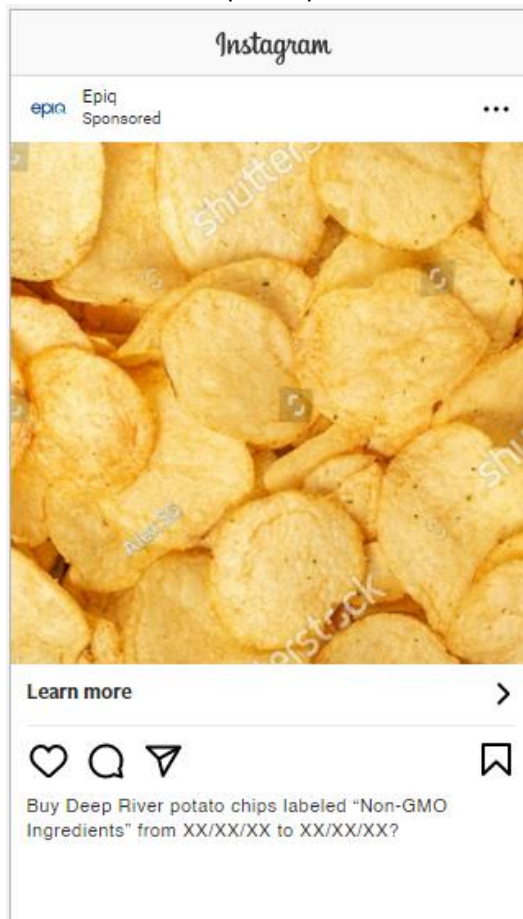


EXHIBIT E

REESE LLP

Michael R. Reese
mreese@reesellp.com

Sue J. Nam
snam@reesellp.com

100 West 93rd Street, 16th Floor
New York, New York 10025
Telephone: (212) 643-0500
Facsimile: (212) 253-4272

- and -

SHEEHAN & ASSOCIATES, P.C.

Spencer Sheehan
spencer@spencersheehan.com
505 Northern Boulevard, Suite 311
Great Neck, New York 11021
Telephone: (516) 303-0552
Facsimile: (516) 234-6456

Counsel for Plaintiffs and the Proposed Classes

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

JEWEL RANKINS and DARREN WONG,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

OLD LYME GOURMET COMPANY (d/b/a
DEEP RIVER SNACKS),

Defendant.

Case No. 1:20-cv-1756-ENV-TAM

**AMENDED
CLASS ACTION COMPLAINT**

JURY TRIAL DEMANDED

Plaintiffs Jewel Rankins (“Rankins”) and Darren Wong (“Wong”) (collectively “Plaintiffs”), individually and on behalf of all others similarly situated (the “Class,” as defined below), bring this Class Action Complaint against Old Lyme Gourmet Company, doing business as Deep River Snacks (“Defendant”), and allege the following based upon Plaintiffs’ own personal knowledge and the investigation of Plaintiffs’ counsel. Plaintiffs believe substantial evidentiary support exists for the allegations set forth herein and seek a reasonable opportunity for discovery.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to the Class Action Fairness Act of 2005, Pub. L. No. 109-2, 119 Stat. 4 (codified in scattered sections of Title 28 of the *United States Code*), under 28 U.S.C. § 1332(d) because the aggregated claims of the individual Class members exceed the sum or value of \$5,000,000, exclusive of interest and costs, and both Plaintiffs and other members of the putative Class are citizens of States different from Defendant. Furthermore, Plaintiffs allege “the number of members of all proposed plaintiffs classes in the aggregate” is greater than 100. *See* 28 U.S.C. § 1332(d)(5)(B).

2. This Court has personal jurisdiction over Defendant for reasons including but not limited to the following: Plaintiffs’ claims arise out of Defendant’s conduct within this jurisdiction, including Defendant’s placement of deceptive “Non GMO Ingredients” seal of approval representations on the labels of the products at issue, upon which Plaintiffs relied when they purchased the products.

3. Venue is proper in this District under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Plaintiffs’ claims occurred in this District, including Plaintiffs’ purchase of Defendant’s products in this District based on Defendant’s deceptive “Non GMO Ingredients” representations.

SUBSTANTIVE ALLEGATIONS

4. This is a proposed class action against Defendant Old Lyme Gourmet Company, doing business as Deep River Snacks, for misleading consumers about Defendant's products that bear the following "Non GMO Ingredients" certificate of approval ("Seal") on the packaging (collectively, the "Products") that appears to be that of an independent third party, when it in fact is not:



5. This false and misleading Seal currently appears on the following of Defendant's Products:







6. In recent years, consumers have become significantly more aware of, and sensitive to, products that have been approved by independent third parties, and they buy those products based upon the seals of the independent third parties.

7. Additionally, consumers have become significantly more aware of, and sensitive to, genetically modified organisms (“GMOs”) in their food. Many consumers want to avoid GMOs for a variety of reasons, including, but not limited to, GMOs’ possible negative impact on the environment. As a result, many consumers try to buy products that are not derived from GMOs, and a movement has developed demanding consumer products that have non-GMO ingredients.

8. In an attempt to meet consumers’ demand for non-GMO products, an industry of independent, third-party validation companies has developed. These independent companies review the ingredients in products and assure consumers with their seal that the products do not contain GMOs and do not come from animals fed GMO food. Thus, obtaining the approval from an independent third party allows companies to obtain an advantage in the marketplace over their

competitors, in order to sell more products and charge higher prices.

9. Recognizing the value of independent certification in the marketplace, the Federal Trade Commission (“FTC”) has warned companies against making representations involving independent certification because they are misleading to consumers and has issued guidelines for companies to follow in order not to deceive consumers. *See* 16 C.F.R. § 260.1. As stated in the FTC guidelines against deceptive marketing regarding “Certifications and Seals of Approval”:

It is deceptive to misrepresent, directly or by implication, that a product, package, or service has been endorsed or certified by an independent third party.

16 C.F.R. § 260.6(a) (emphasis added).

10. In violation of these principles, Defendant has represented to consumers that several of the products it sells have been verified by an independent third party as not containing GMO ingredients, by affixing a Non GMO Ingredients Seal on the Products.

11. Unfortunately for consumers, the Non GMO Ingredients representations by Defendant are false and misleading. Based upon counsel’s investigation, the truth is that the Non GMO Ingredients Seal is not a designation bestowed by a non-profit group, or even a neutral third party, ***but instead is the work of Defendant itself.*** In other words, the Non GMO Ingredients Seal of approval is nothing more than Defendant touting its own Products.

12. In developing the Non GMO Ingredients seal, Defendant intentionally mimicked the appearance of an independent verifier’s seal, such as the seal of the Non-GMO Project.

13. The Non-GMO Project, headquartered in Bellingham, Washington, is a not-for-profit organization founded in 2007 that bases its work upon a “rigorous scientific foundation and world-class technical support.” *See History*, WWW.NONGMOPROJECT.ORG (2016), <https://www.nongmoproject.org/about/history/>. The Non-GMO Project works with the Global ID Group, which are “the world leaders in non-GMO testing, certification, and consulting.” *Id.*

14. The Non-GMO Project runs the Product Verification Program, which verifies that products are not derived from GMO crops and verifies that milk and meat are not derived from animals that were fed GMO crops. The Non-GMO Project’s Product Verification Program is

widely recognized and has more than 3,000 verified brands, representing over 43,000 products and more than \$19.2 billion in sales. *Id.*

15. If a company's product meets the Non-GMO Project standard, the product receives a seal of approval that it may place on the front of the product packaging. *See* Image 1.

16. Looking to profit off consumer desire for independently validated products, Defendant has created a deceptive Non GMO Ingredients Seal of approval label that mimics the Non-GMO Project seal. *See* Image 2.



Image 1



Image 2

17. As seen below, both of these seals are used prominently to market food, indicating to consumers that the products have been validated by independent parties as being free of GMOs:





18. Moreover, ingredients that constitute many of the Products are derived from GMOs. For example, Defendant's Products that contain dairy come from cows fed GMO grains. This violates the Non-GMO Project standard, which *does not allow for its seal of approval to be placed on dairy-based products that could be from animals fed GMO feed*. See *Animal-Derived Ingredients*, www.nongmoproject.org (2016), <https://www.nongmoproject.org/high-risk/animal-derived-ingredients/>.

19. Defendant avoids the Non-GMO Project's feed standard by using their own, self-created Non GMO Ingredients Seal, thereby creating confusion and deceiving consumers. Defendant's own "standard" allows for the use of GMO feed for dairy animals. The Non-GMO Project's independent standard does not.

20. As a result of this deceptive label, consumers paid a significant premium to

purchase non-GMO Products to avoid the well-known health and environmental risks associated with GMO products. Consequently, for the reasons given above, consumers did not receive the benefit of the bargain when they purchased the Products.

21. Plaintiffs brings this suit to now end Defendant's deceptive practice and to recover the ill-gotten gains obtained by Defendant through this deception.

PARTIES

Plaintiff Rankins

22. Plaintiff Jewel Rankins is an adult resident of Brooklyn, New York.

23. Plaintiff Rankins purchased Defendant's Aged Cheddar Horseradish Product containing the Non GMO Ingredients Seal in the Winter of 2018 from a Stop and Shop store on Atlantic Avenue in Brooklyn, New York.

24. When given a choice between comparable products, Plaintiff Rankins purposefully chooses non-GMO products when making purchasing decisions and relies on packaging representations to determine if products are certified as non-GMO by an independent, third-party verifier.

25. The packing of the Product that Plaintiff Rankins purchased contained the Non GMO Ingredients Seal.

26. Plaintiff Rankins saw and read the Non GMO Ingredients Seal prior to purchasing the Product.

27. Plaintiff Rankins believed the Product Plaintiff Rankins bought was verified to be non-GMO by an independent third-party verifier. Plaintiff Rankins relied on the Non GMO Ingredients Seal in making Plaintiffs' purchase decisions and would not have purchased the Product had Plaintiff Rankins known the Non GMO Ingredients representation was deceptive because the Product were not in fact verified by an independent third party.

28. The Product that Plaintiff Rankins received was not in fact verified by an independent third party and did not meet the standards of independent third-party verification companies such as the Non-GMO Project.

29. Had Defendant not labeled the Products using the false and misleading Non GMO Ingredients representation, Plaintiff Rankins would not have been willing to buy the Products at all, or pay the same amount for the Products, and, consequently, would not have been willing to purchase the Products.

30. Plaintiff Rankins purchased more of, or paid more for, the Products than Plaintiff Rankins would have had Plaintiff Rankins known the truth about the Products.

31. The Products Plaintiff Rankins received were worth less than the Products for which Plaintiff Rankins paid. Plaintiff Rankins was injured in fact and lost money as a result of Defendant's improper conduct.

32. Plaintiff Rankins is likely to encounter the Products, including the Non GMO Ingredients Fake Seal, again on routine trips to the local grocery store, since Defendant continue to market and sell the Products.

33. If Plaintiff Rankins knew the Product labels, including the Non GMO Ingredients Seal, were truthful and non-misleading, Plaintiff Rankins would continue to purchase the Products in the future. At present, however, Plaintiff Rankins cannot be confident that the labeling of the Products is, and will be, truthful and non-misleading.

Plaintiff Wong

34. Plaintiff Darren Wong is an adult resident of San Francisco, California.

35. Plaintiff Wong purchased Defendant's Cheddar Horseradish and Sour Cream and Onion Products containing the Non GMO Ingredients Seal from approximately October 2019 to March 2020 in San Francisco.

36. When given a choice between comparable products, Plaintiff Wong purposefully chooses non-GMO products when making purchasing decisions and relies on packaging representations to determine if products are certified as non-GMO by an independent, third-party verifier.

37. The packing of the Product that Plaintiff Wong purchased contained the Non GMO Ingredients Seal.

38. Plaintiff Wong saw and read the Non GMO Ingredients Seal prior to purchasing the Product.

39. Plaintiff Wong believed the Product Plaintiff Wong bought was verified to be non-GMO by an independent third-party verifier. Plaintiff Wong relied on the Non GMO Ingredients Seal in making Plaintiff Wong's purchase decisions and would not have purchased the Product had Plaintiff Wong known the Non GMO Ingredients representation was deceptive because the Product were not in fact verified by an independent third party.

40. The Product that Plaintiff Wong received was not in fact verified by an independent third party and did not meet the standards of independent third-party verification companies such as the Non-GMO Project.

41. Had Defendant not labeled the Products using the false and misleading Non GMO Ingredients representation, Plaintiff Wong would not have been willing to buy the Products at all, or pay the same amount for the Products, and, consequently, would not have been willing to purchase the Products.

42. Plaintiff Wong purchased more of, or paid more for, the Products than Plaintiff Wong would have had Plaintiff Wong known the truth about the Products.

43. The Products Plaintiff Wong received were worth less than the Products for which Plaintiff Wong paid. Plaintiff Wong was injured in fact and lost money as a result of Defendant's improper conduct.

44. Plaintiff Wong is likely to encounter the Products, including the Non GMO Ingredients Fake Seal, again on routine trips to the local grocery store, since Defendant continue to market and sell the Products.

45. If Plaintiff Wong knew the Product labels, including the Non GMO Ingredients Seal, were truthful and non-misleading, Plaintiff Wong would continue to purchase the Products in the future. At present, however, Plaintiff Wong cannot be confident that the labeling of the Products is, and will be, truthful and non-misleading.

Defendant Old Lyme Gourmet Company

46. Defendant Old Lyme Gourmet Company, doing business as Deep River Snacks, is a corporation organized under the laws of Connecticut.

47. Old Lyme Gourmet Company's headquarters are located at 16 Grove Street, Deep River, Connecticut 06417.

48. Old Lyme Gourmet Company is a wholly-owned subsidiary of Arca Continental S.A.B. de C.V., a Mexican corporation. Following the inception of this lawsuit, Old Lyme was merged with and into Wise Foods, a subsidiary of Arca.

RULE 9(b) ALLEGATIONS

49. Federal Rule of Civil Procedure 9(b) provides that “[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake.” FED. R. CIV. P. 9(b). To the extent necessary, as detailed in the paragraphs above and below, Plaintiffs has satisfied the requirements of Rule 9(b) by establishing the following elements with sufficient particularity:

50. WHO: Defendant made material misrepresentations and omissions of fact in the labeling, packaging, and marketing of the Products.

51. WHAT: Defendant made material misrepresentations and omissions by affixing the Non GMO Ingredients Seal of approval to lead consumers to believe the Products have been certified as not having GMO ingredients by a third party rather than Defendant themselves. However, the Non GMO Ingredients Seal in question is not a designation bestowed by a neutral third party, but instead is the creation of Defendant. Defendant intentionally mimicked the seal of a neutral third-party verifier to tout their own Products.

52. WHEN: Defendant made the material misrepresentations and omissions detailed herein continuously throughout the applicable limitations period.

53. WHERE: Defendant's material misrepresentations and omissions were made, *inter alia*, on the labeling and packaging of the Products.

54. HOW: Defendant made written misrepresentations and failed to disclose material

facts on the labeling and packaging of the Products, as detailed herein.

55. WHY: Defendant engaged in the material misrepresentations and omissions detailed herein for the express purpose of inducing Plaintiffs and other reasonable consumers to purchase and/or pay a premium for the Products. Defendant profited by selling the Products to millions of unsuspecting consumers nationwide, capitalizing on the growing demand for certified non-GMO products.

CLASS ALLEGATIONS

56. Plaintiffs bring this action on behalf of the following Nationwide Class pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure:

The Nationwide Class. All persons in the United States who purchased any of Defendant's Products bearing the Non GMO Ingredients seal on the label within the applicable limitations period.

Excluded from the Class are: (a) Defendant, Defendant's board members, executive-level officers, and attorneys, and immediately family members of any of the foregoing persons; (b) governmental entities; (c) the Court, the Court's immediate family, and the Court staff; and (d) any person that timely and properly excludes himself or herself from the Class in accordance with Court-approved procedures

57. Plaintiffs reserve the right to alter the Class definitions as Plaintiffs deem necessary at any time to the full extent that the Federal Rules of Civil Procedure, the Local Rules of this District, and applicable precedent allow.

58. Certification of Plaintiffs' claims for class-wide treatment is appropriate because Plaintiffs can prove the elements of Plaintiffs' claims on a class-wide basis using the same evidence as individual Class members would use to prove those elements in individual actions alleging the same claims.

Numerosity—Rule 23(a)(1)

59. Based on the annual sales of the Products and the popularity of the Products, it is readily apparent that the number of consumers in the Class is so numerous that the individual joinder of all of its members is impracticable, if not impossible. Due to the nature of the trade and commerce involved, Plaintiffs believe the total number of Class members is in the thousands and

that members of the Class are geographically dispersed across the United States. While the exact number and identities of the Class members are unknown at this time, such information can be ascertained through appropriate investigation and discovery.

Commonality and Predominance—Rule 23(a)(2) and (b)(3)

60. Common questions of law and fact exist as to all members of the Class, and these common questions predominate over any questions affecting only individual members of the Class.

61. The common legal and factual questions, which do not vary from Class member to Class member, and which may be determined without reference to the individual circumstances of any Class member include, but are not limited to, the following:

- (a) whether Defendant labeled, marketed, advertised, and/or sold the Products to Plaintiffs and those similarly situated using false, misleading, and/or deceptive statements or representations;
- (b) whether Defendant misrepresented material facts in connection with the sales of the Products;
- (c) whether Defendant participated in and pursued the common course of conduct complained of herein;
- (d) whether Defendant's labeling, marketing, advertising, and/or selling of the Products with a Non GMO Ingredients Seal on the label constitute an unfair or deceptive consumer sales practice; and
- (e) whether Defendant were unjustly enriched.

Typicality—Rule 23(a)(3)

62. Plaintiffs' claims are typical of those of the Class because Plaintiffs, like all members of the Class, purchased a Product bearing the Non GMO Ingredients Seal in a typical consumer setting and sustained damages from Defendant's wrongful conduct. The claims of the members of the class arise from the same course of conduct by Defendant, and the relief sought is common to Plaintiffs and the Class members.

63. Furthermore, there are no defenses available to Defendant that are unique to Plaintiffs.

Adequacy of Representation—Rule 23(a)(4)

64. Plaintiffs will fairly and adequately protect the interests of the members of the Class. Plaintiffs have no interests that conflict with those of the Class.

65. Plaintiffs have retained counsel competent and experienced in litigating complex class actions. Undersigned counsel have represented consumers in a wide variety of actions where they have sought to protect consumers from fraudulent and deceptive business practices.

Superiority—Rule 23(b)(3)

66. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Individual joinder of all members of the Class is impracticable. Even if individual members of the Class had the resources to pursue individual litigation, it would be unduly burdensome to the courts in which the individual litigation would proceed. Individual litigation magnifies the delay and expense to all parties in the court system of resolving the controversies engendered by Defendant's common course of conduct. The class action device allows a single court to provide the benefits of unitary adjudication, judicial economy, and the fair and efficient handling of all Class members' claims in a single forum. The conduct of this action as a class action conserves the resources of the parties and of the judicial system and protects the rights of the Class. Furthermore, for many, if not most, a class action is the only feasible mechanism that allows an opportunity for legal redress and justice. Furthermore, given the large number of consumers of the Products, allowing individual actions to proceed in lieu of a class action would run the risk of yielding inconsistent and conflicting adjudications.

Declaratory and Injunctive Relief—Rule 23(b)(2)

67. This action is maintainable as a class action under Rule 23(b)(2) because Defendant have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief respecting the Class as a whole.

Notice

68. Plaintiffs and Plaintiffs' counsel anticipate that notice to the proposed Class will be effectuated through recognized, Court-approved notice dissemination methods, which may include United States mail, electronic mail, Internet postings, and/or published notice.

CLAIMS

FIRST CAUSE OF ACTION VIOLATION OF STATE CONSUMER PROTECTION STATUTES (On Behalf of Plaintiffs and All Class Members)

69. Plaintiffs repeat and reallege each and every allegation contained in all the foregoing paragraphs as if fully set forth herein.

70. Plaintiffs and Nationwide Class Members have been injured as a result of Defendant's violations of the following state consumer protection statutes, which also provide a basis for redress to Plaintiffs and Nationwide Class Members based on Defendant's fraudulent, deceptive, unfair and unconscionable acts, practices and conduct.

71. Defendant's conduct as alleged herein violates the consumer protection, unfair trade practices and deceptive acts laws of each of the following jurisdictions:

a. **Alaska:** Defendant's practices were and are in violation of Alaska's Unfair Trade Practices and Consumer Protection Act, Alaska Stat. § 45.50.471, *et seq.*

b. **Arizona:** Defendant's practices were and are in violation of Arizona's Consumer Fraud Act, Ariz. Rev. Stat. Ann. §§ 44-1521, *et seq.*

c. **Arkansas:** Defendant's practices were and are in violation of Arkansas Code Ann. § 4-88-101, *et seq.*

d. **California:** Defendant's practices were and are in violation of California Consumer Legal Remedies Act, Civil Code § 1750, *et seq.*, and California's Unfair Competition Law, California Business and Professions Code § 17200, *et seq.*, and California's False Advertising Law, California Business and Professions Code § 17500, *et seq.*

e. **Colorado:** Defendant's practices were and are in violation of Colorado's Consumer Protection Act, Colo. Rev. Stat. §§ 61-1-101, *et seq.*

f. **Connecticut:** Defendant's practices were and are in violation of Connecticut's Gen. Stat. § 42-110a, *et seq.*

g. **Delaware:** Defendant's practices were and are in violation of Delaware's Consumer Fraud Act, Del. Code Ann. tit. 6, § 2511, *et seq.* and the Deceptive Trade Practices Act, Del. Code Ann. tit. 6, § 2531, *et seq.*

h. **District of Columbia:** Defendant's practices were and are in violation of the District of Columbia's Consumer Protection Act, D.C. Code § 28-3901, *et seq.*

i. **Florida:** Defendant's practices were and are in violation of the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. § 501.201, *et seq.*

j. **Hawaii:** Defendant's practices were and are in violation of the Hawaii's Uniform Deceptive Trade Practices Act, Haw. Rev. Stat. § 481A-1, *et seq.* and Haw. Rev. Stat. § 480-2.

k. **Idaho:** Defendant's practices were and are in violation of Idaho's Consumer Protection Act, Idaho Code Ann. § 48-601, *et seq.*

l. **Illinois:** Defendant's acts and practices were and are in violation of Illinois' Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. 505/2; and Uniform Deceptive Trade Practices Act, 815 Ill. Comp. Stat. 510/2.

m. **Indiana:** Defendant's practices were and are in violation of Indiana's Deceptive Consumer Sales Act, Ind. Code Ann. § 24-5-0.5-1, *et seq.*

n. **Kansas:** Defendant's practices were and are in violation of Kansas's Consumer Protection Act, Kat. Stat. Ann. § 50-623, *et seq.*

o. **Kentucky:** Defendant's practices were and are in violation of Kentucky's Consumer Protection Act, Ky. Rev. Stat. Ann. § 367.110, *et seq.*

p. **Maine:** Defendant's practices were and are in violation of the Maine Unfair Trade Practices Act, 5 Me. Rev. Stat. Ann. Tit. 5, § 205-A, *et seq.* and 10 Me. Rev. Stat. Ann. § 1101, *et seq.*

q. **Maryland:** Defendant's practices were and are in violation of Maryland's Consumer Protection Act, Md. Code Ann. Com. Law § 13-101, *et seq.*

r. **Massachusetts:** Defendant's practices were unfair and deceptive acts and practices in violation of Massachusetts' Consumer Protection Act, Mass. Gen. Laws ch. 93A, § 2.

s. **Michigan:** Defendant's practices were and are in violation of Michigan's Consumer Protection Act, Mich. Comp. Laws Ann. § 445.901, *et seq.*

t. **Minnesota:** Defendant's practices were and are in violation of Minnesota's Prevention of Consumer Fraud Act, Minn. Stat. § 325F.68, *et seq.* and the Unlawful Trade Practices law, Minn. Stat. § 325D.09, *et seq.*

u. **Missouri:** Defendant's practices were and are in violation of Missouri's Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et seq.*

v. **Nebraska:** Defendant's practices were and are in violation of Nebraska's Consumer Protection Act, Neb. Rev. Stat. § 59-1601, *et seq.* and the Uniform Deceptive Trade Practices Act, § 87-302, *et seq.*

w. **Nevada:** Defendant's practices were and are in violation of Nevada's Deceptive Trade Practices Act, Nev. Rev. Stat. Ann. §§ 598.0903 and 41.600.

x. **New Hampshire:** Defendant's practices were and are in violation of New Hampshire's Regulation of Business Practices for Consumer Protection, N.H. Rev. Stat. Ann. § 358-A:1, *et seq.*

y. **New Jersey:** Defendant's practices were and are in violation of New Jersey's Consumer Fraud Act, N.J. Stat. Ann. § 56:8-1, *et seq.*

z. **New Mexico:** Defendant's practices were and are in violation of New Mexico's Unfair Practices Act, N.M. Stat. Ann. § 57-12-1, *et seq.*

aa. **New York:** Defendant's practices were and are in violation of New York General Business Law § 349 and § 350

bb. **North Carolina:** Defendant's practices were and are in violation of North Carolina's Unfair Deceptive Trade Practices Act, N.C. Gen. Stat. Ann. § 75-1, *et seq.*

cc. **North Dakota:** Defendant's practices were and are in violation of North Dakota's Unlawful Sales or Advertising Practices law, N.D. Cent. Code § 51-15-01, *et seq.*

dd. **Ohio:** Defendant's practices were and are in violation of Ohio's Consumer Sales Practices Act, Ohio Rev. Code Ann. § 1345.01, *et seq.* and Ohio's Deceptive Trade Practices Act. Ohio Rev. Code Ann. § 4165.01, *et seq.*

ee. **Oklahoma:** Defendant's practices were and are in violation of Oklahoma's Consumer Protection Act, Okla. Stat. Ann. tit. 15 § 751, *et seq.*,

and Oklahoma's Deceptive Trade Practices Act, Okla. Stat. Ann. tit. 78 § 51, *et seq.*

ff. **Oregon:** Defendant's practices were and are in violation of Oregon's Unlawful Trade Practices law, Or. Rev. Stat. § 646.605, *et seq.*

gg. **Pennsylvania:** Defendant's practices were and are in violation of Pennsylvania's Unfair Trade Practice and Consumer Protection Law, 73 Pa. Stat. Ann. § 201-1, *et seq.*

hh. **Rhode Island:** Defendant's practices were and are in violation of Rhode Island's Deceptive Trade Practices Act, R.I. Gen. Laws § 6-13.1-1, *et seq.*

ii. **South Dakota:** Defendant's practices were and are in violation of South Dakota's Deceptive Trade Practices and Consumer Protection Act, S.D. Codified Laws § 37-24-1, *et seq.*

jj. **Texas:** Defendant's practices were and are in violation of Texas' Deceptive Trade Practices Consumer Protection Act, Tex. Bus. & Com. Code Ann. § 17.41, *et seq.*

kk. **Utah:** Defendant's practices were and are in violation of Utah's Consumer Sales Practices Act, Utah Code Ann. § 13-11-1, *et seq.*, and Utah's Truth in Advertising Law, Utah Code Ann. § 13-11a-1, *et seq.*

ll. **Vermont:** Defendant's practices were and are in violation of Vermont's Consumer Fraud Act, Vt. Stat. Ann. tit. 9 § 2451, *et seq.*

mm. **Washington:** Defendant's practices were and are in violation of Washington Consumer Protection Act, Wash. Rev. Code Ann. § 19.86, *et seq.*

nn. **West Virginia:** Defendant's practices were and are in violation of West Virginia's Consumer Credit and Protection Act, W. Va. Code § 46A-6-101, *et seq.*

oo. **Wisconsin:** Defendant's practices were and are in violation of Wisconsin's Consumer Act, Wis. Stat. §421.101, *et seq.*

pp. **Wyoming:** Defendant's practices were and are in violation of Wyoming's Consumer Protection Act, Wyo. Stat. Ann. §40-12-101, *et seq.*

72. Defendant violated the aforementioned states' unfair and deceptive acts and practices laws by representing that the Products were verified by an independent third-party.

73. Contrary to Defendant's representations, the Products were not verified by an

independent third-party.

74. Defendant's misrepresentations were material to Plaintiffs' and Nationwide Class Members' decision to pay a premium for the Products.

75. Defendant made the untrue and misleading statements and representations willfully, wantonly, and with reckless disregard for the truth.

76. As a result of Defendant's violations of the aforementioned states' unfair and deceptive practices laws, Plaintiffs and the Nationwide Class Members paid a premium for the Products.

77. As a result of Defendant's violations, Defendant has been unjustly enriched.

SECOND CAUSE OF ACTION
FRAUD UNDER CONNECTICUT COMMON LAW
(On Behalf of Plaintiffs and All Class Members)

78. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

79. As discussed above, Defendant provides Plaintiffs and the Nationwide Class members with false or misleading material information and fails to disclose material facts about the Products, including, but not limited to the Fake Seal. These misrepresentations and omissions are made with knowledge of their falsehood.

80. The misrepresentations and omissions made by Defendant, upon which Plaintiffs and the Nationwide Class members reasonably and justifiably relied, are intended to induce and actually induce Plaintiffs and the Nationwide Class members to purchase the Products.

81. The gravamen, focus, and center of activity of Defendant's fraudulent actions occurred in Connecticut.

82. The fraudulent actions of Defendant caused damage to Plaintiffs and the Nationwide Class members, who are entitled to damages and other legal and equitable relief as a result.

83. As a result of Defendant's wrongful conduct, Plaintiffs and the Nationwide Class members have suffered and continue to suffer economic losses and other general and specific damages, including amounts paid for the Products and any interest that would have been accrued on these monies, all in the amount to be determined at trial.

84. Therefore, Plaintiffs pray for relief as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of the members of the Class, respectfully requests the Court to enter an Order:

- A. certifying the proposed Class under Federal Rule of Civil Procedure 23(a), (b)(2), and (b)(3), as set forth above;
- B. declaring that Defendant is financially responsible for notifying the Class members of the pendency of this suit;
- C. declaring that Defendant has committed the violations of law alleged herein;
- D. awarding monetary damages, including but not limited to any compensatory, incidental, or consequential damages in an amount that the Court or jury will determine, in accordance with applicable law;
- E. providing for any and all equitable monetary relief the Court deems appropriate;
- F. awarding punitive or exemplary damages in accordance with proof and in an amount consistent with applicable precedent;
- G. awarding Plaintiffs their reasonable costs and expenses of suit, including attorneys' fees;
- H. awarding pre- and post-judgment interest to the extent the law allows; and
- I. providing such further relief as this Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury of all claims and causes of action so triable in this lawsuit.

Dated: July 1, 2024

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Counsel for Plaintiffs and the Classes

EXHIBIT F

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

JEWEL RANKINS, individually and
on behalf of all others similarly situated,

Plaintiff,

-against-

ARCA CONTINENTAL S.A.B. DE C.V.,
(d/b/a ARCA CONTINENTAL) and OLD
LYME GOURMET COMPANY (d/b/a
DEEP RIVER SNACKS),

Defendants.

Case No.: 1:20-cv-1756-ENV-TAM

**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF SETTLEMENT,
APPROVAL OF FORM NOTICE, SCHEDULING OF FINAL APPROVAL HEARING,
AND GRANTING LEAVE TO FILE AMENDED COMPLAINT**

Upon consideration of Plaintiffs Jewel Rankins (“Rankins”) and Darren Wong (“Wong”) (collectively “Plaintiffs”) Unopposed Motion for Preliminary Approval of Class Action Settlement, Preliminary Certification of Settlement Class, and Approval of Notice Plan, and the entire record herein, the Court grants preliminary approval of the Settlement contained in the Parties’ Settlement Agreement (“Settlement Agreement”), upon the terms and conditions set forth in this Order. Capitalized terms and phrases in this Order shall have the same meaning ascribed to them in the Settlement Agreement. The Court makes the following findings:

FINDINGS OF FACT

1. Plaintiffs bring this Unopposed Motion for Preliminary Approval of Class Action Settlement, Preliminary Certification of Settlement Class, and Approval of Notice Plan before the Court, with the consent of Defendant Old Lyme Gourmet Company (d/b/a/ Deep River Snacks).¹

2. Plaintiff Rankins filed a Complaint against Defendant on April 9, 2020 (the “Action”) in the United States District Court for the Eastern District of New York alleging that Defendant’s Deep River brand potato chips (“the Products”)² labels contained a “Non GMO Ingredient” symbol that mimicked the symbol of the Non-GMO Product which mislead consumers into believing the Products were certified by a third-party certifier when they were not. Defendant has denied these allegations.

¹ Following inception of this lawsuit, Old Lyme Gourmet Company (d/b/a Deep River Snacks) was merged with and into Wise Foods Inc. Additionally, Arca Continental S.A.B. de C.V. a Mexican corporation, was not served in this matter (*see, e.g.*, ECF Nos. 19, 41) and therefore, although it is named in the caption, it is not a defendant in this litigation.

² Specifically, the Products include the following varieties: (a) Pink Himalayan Sea Salt; (b) Pink Himalayan Salt & Vinegar; (c) Apple Cider Vinegar; (d) Rosemary & Garlic; (e) Fire Roasted Garlic & Onion; (f) Mango Habanero; (g) All Dressed Up; (h) Honey BBQ; (i) Sour Cream and Onion; and (j) Aged Cheddar Horseradish.

3. The Parties conducted an extensive and thorough examination, investigation, and evaluation of the relevant law, facts, and allegations to assess the merits of the potential claims to determine the strength of both defenses and liability sought in the Action.

4. The Parties engaged in motion practice and discovery, where Defendant provided Plaintiffs with extensive information and documents.

5. In addition, Class Counsel evaluated the various state consumer protection laws, as well as the legal landscape, to determine the strength of the claims, the likelihood of success, and the parameters within which courts have assessed settlements similar to the proposed Settlement.

6. The Parties entered into a Settlement Agreement pursuant to which they agreed to settle the Action, subject to the approval and determination by the Court as to the fairness, reasonableness, and adequacy of the Settlement, which, if approved, will result in dismissal of the Action with prejudice.

7. The Court has reviewed the Settlement Agreement, including the exhibits attached thereto and all prior proceedings herein, and having found good cause based on the record,

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED as follows:

1. **Stay of the Action.** All non-settlement-related proceedings in the Action are hereby stayed and suspended until further order of the Court.

2. **Granting Leave to File the Amended Complaint.** The Court GRANTS Plaintiffs leave to file the proposed Amended Complaint for settlement purposes attached as Exhibit E to the Settlement Agreement. No answer is required for the duration of the stay of the Action.

3. **Preliminary Class Certification for Settlement Purposes Only.** Having made the findings set forth above, the Court hereby preliminarily certifies a plaintiff class for settlement purposes only, pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3), in accordance with the terms of the Settlement Agreement (the “Settlement Class”). The Court preliminarily finds, based on the terms of the Settlement described in the Settlement Agreement and for settlement purposes only, that: (a) the Settlement Class is so numerous that joinder of all members is impracticable; (b) there are issues of law and fact that are typical and common to the Class, and that those issues predominate over individual questions; (c) a class action on behalf of the certified Class is superior to other available means of adjudicating this dispute; and (d) as set forth below, Plaintiffs and Class Counsel are adequate representatives of the Class. If the Court does not grant final approval of the Settlement set forth in the Settlement Agreement, or if the Settlement set forth in the Settlement Agreement is terminated in accordance with its terms, then the Settlement Agreement, and the certification of the Settlement Class provided for herein, will be vacated, the Amended Complaint shall be stricken from the record, the operative complaint in the Action shall be the complaint in effect as of June 30, 2024, and the Action shall proceed as though the Settlement Class had never been certified, without prejudice to any party’s position on the issue of class certification or any other issue. Defendant retains all rights to assert that the Action may not be certified as a class action, other than for purposes of this Settlement.

4. **Class Definition.** The Settlement Class is defined as all persons who, from February 2, 2017 to the date of this Order, purchased one or more of the Products in the United States for personal or household use. Excluded from the Settlement Class and Settlement Class Members are: (a) the Released Parties; (b) all distributors, wholesalers, retailers, and licensors of the Products; (c) judges presiding over the Actions and any members of their immediate families

and/or staff; (d) Persons who made a valid, timely request for exclusion; (e) the mediator Jill Sperber; and (f) any government entity.

5. **Class Representatives and Class Counsel.** The Court appoints Michael R. Reese and Charles D. Moore from Reese LLP, and Spencer Sheehan from Sheehan and Associates, P.C. as counsel for the Settlement Class. Jewel Rankins and Darren Wong are hereby appointed as Class Representatives.

6. **Preliminary Settlement Approval.** The Court preliminarily approves the Settlement set forth in the Settlement Agreement as being within the range of possible approval as fair, reasonable, and adequate, within the meaning of Rule 23 and the Class Action Fairness Act of 2005, subject to final consideration at the Fairness Hearing provided for below. Accordingly, the Settlement Agreement is sufficient to warrant sending notice to the Class.

7. **Jurisdiction.** The Court has subject-matter jurisdiction over the Action pursuant to 28 U.S.C. §§ 1332 and 1367 and personal jurisdiction over the Parties before it. Additionally, venue is proper in this District pursuant to 28 U.S.C. § 1391.

8. **Fairness Hearing.** A Fairness Hearing (also referred to as a “Final Approval Hearing”) shall be held on [REDACTED], 2024 at [REDACTED]:[REDACTED].m. at the United States District Court for the Eastern District Court of New York at at 225 Cadman Plaza East, Brooklyn, New York 11201, Courtroom [REDACTED], to determine, among other things: (a) whether the Action should be finally certified as a class action for settlement purposes pursuant to Rule 23(a) and (b)(3); (b) whether the Settlement of the Action should be finally approved as fair, reasonable, and adequate pursuant to Rule 23(e); (c) whether the Action should be dismissed with prejudice pursuant to the terms of the Settlement Agreement; (d) whether Settlement Class Members should be bound by the releases set forth in the Settlement Agreement; (e) whether Settlement Class Members and

related persons should be permanently enjoined from pursuing lawsuits based on the transactions and occurrences at issue in the Action; (f) whether the Class Counsel's application for an award of Attorneys' Fees and Expenses should be approved pursuant to Rule 23(h); and (g) whether the application of the named Plaintiffs for a Service Award should be approved. The submissions of the Parties in support of the Settlement, including Plaintiffs' Counsel's application for Attorneys' Fees and Expenses and Service Awards, shall be filed with the Court no later than seventy (70) days prior to the Fairness Hearing and may be supplemented up to fifteen (15) days prior to the Fairness Hearing§.

9. **Administration and Class Notice.**

a. The Court accepts the recommendations of Class Counsel and Defendant, and hereby appoints Epiq Class Action & Claims Solutions, Inc. to serve as Settlement Administrator in accordance with the terms of the Settlement Agreement, and to help implement the terms of the Settlement Agreement.

b. The proposed Class Notice, Summary Settlement Notice, the notice methodology described in the Settlement Agreement and in the Declaration of Cameron R. Azari, Esq. of Epiq Class Action & Claims Solutions, Inc. (the "Azari Declaration") are hereby approved.

c. No later than thirty (30) calendar days after the entry of the Preliminary Approval Order, the Settlement Administrator shall cause the Notice Plan to commence as described in the Azari Declaration. Specifically, the Settlement Administrator shall establish a website that will inform Settlement Class Members of the terms of the Settlement Agreement, their rights, dates and deadlines, and related information. The website shall include materials agreed upon by the Parties and as further ordered by this Court.

d. Not later than thirty (30) days after the entry of the Preliminary Approval Order, the Settlement Administrator shall establish a toll-free telephone number that will provide Settlement-related information to Settlement Class Members.

e. The Settlement Administrator shall disseminate any remaining notice, as stated in the Settlement Agreement and the Azari Declaration.

f. Not later than fifteen (15) calendar days before the date of the Fairness Hearing, the Settlement Administrator shall file a declaration or affidavit with the Court that: (i) includes a list of those persons who have opted out or excluded themselves from the Settlement; and (ii) attests to the proper implementation of the Notice Plan.

10. **Findings Concerning Notice.** The Court finds that the form, content, and method of giving notice to the Class as described in paragraph 9 of this Order: (a) will constitute the best practicable notice; (b) are reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action, the terms of the proposed Settlement, and their rights under the proposed Settlement, including but not limited to their rights to object to or exclude themselves from the proposed Settlement and other rights under the terms of the Settlement Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members and other persons entitled to receive notice; and (d) meet all applicable requirements of law, including but not limited to 28 U.S.C. § 1715, Rule 23(c) and (e), and the Due Process Clause(s) of the United States Constitution. The Court further finds that all of the notices are written in plain language, are readily understandable by Settlement Class Members, and are materially consistent with the Federal Judicial Center's illustrative class action notices.

11. **Exclusion from Settlement Class.** Any Settlement Class Member who wishes to be excluded from the Class may elect to opt out of the Settlement under this Agreement. Settlement Class Members who opt out of the Settlement will not release their claims for damages that accrued during the Class Period. Settlement Class Members wishing to opt out of the Settlement must submit a form through the settlement website or send to the Class Action Settlement Administrator by U.S. Mail or other paper mail service a personally signed letter including their name and address and providing a clear statement communicating that they elect to be excluded from the Settlement Class. Any request for exclusion must be postmarked on or before the Opt-Out Date specified in this Preliminary Approval Order. Any potential Settlement Class Member who does not file a timely written request for exclusion shall be bound by all subsequent proceedings, orders, and judgments, including, but not limited to, the release in the Settlement Agreement, even if he or she has litigation pending or subsequently initiates litigation against Defendant or other Released Parties (as defined in the Settlement Agreement) relating to the claims and transactions released in this Action.

12. **Objections and Appearances.** Any Settlement Class Member who intends to object to the fairness of the Settlement must do so in writing no later than the Opt-Out and Objection Deadline. Any objection must be in writing, signed by the Settlement Class Member (and his or her attorney, if individually represented), and postmarked to the Claims Administrator no later than the Opt-Out and Objection Deadline.

Any Settlement Class Member who sends a written objection, as described in the preceding Section, may appear at the Final Approval Hearing, either in person or through counsel hired at the Settlement Class Member's expense, to object to any aspect of the fairness, reasonableness, or adequacy of this Agreement, including Attorneys' Fees and Expenses and Service Awards.

Settlement Class Members or their attorneys who intend to make an appearance at the Final Approval Hearing must serve a notice of intention to appear on the Class Counsel identified in the Class Notice, and to Defendant's Counsel, and file the notice of appearance with the Court, no later than fifteen (15) days before the Final Approval Hearing, or as the Court may otherwise direct.

Any Settlement Class Member who fails to comply with Section VI of the Settlement Agreement shall waive and forfeit any and all rights he or she may have to appear separately and/or to object, and shall be bound by all the terms of this Agreement and by all proceedings, orders and judgments in the Action, including, but not limited to, the Released Claims and the releases in Section VII of the Agreement.

Class Counsel shall have the right, and Defendant shall reserve its right, to respond to any objection no later than twenty-eight (28) days before the Final Approval Hearing.

13. **Disclosures.** The Settlement Administrator, Defendant's Counsel, and Class Counsel shall promptly furnish to each other copies of any and all objections or written requests for exclusion that might come into their possession.

14. **Termination of Settlement.** This Order shall become null and void and shall not prejudice the rights of the Parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if: (a) the Settlement is not finally approved by the Court or does not become final, pursuant to the terms of the Settlement Agreement; (b) the Settlement is terminated in accordance with the Settlement Agreement; or (c) the Settlement does not become effective as required by the terms of the Settlement Agreement for any other reason. In such event, the Settlement and Settlement Agreement shall become null and void and be of no further force and effect, and neither the Settlement Agreement nor the

Court's orders, including this Order, relating to the Settlement shall be used or referred to for any purpose.

15. **Nationwide Stay and Preliminary Injunction.** Effective immediately, any consumer actions or proceedings pending in any state or federal court in the United States involving the labeling or marketing of the Products, except any matters necessary to implement, advance, or further approval of the Settlement Agreement or settlement process, are stayed pending the final Fairness Hearing and the issuance of a final order and judgment in this Action.

In addition, pending the final Fairness Hearing and the issuance of a final order and judgment in this Action, all members of the Settlement Class and their legally authorized representatives are hereby preliminarily enjoined from demanding, threatening, filing, commencing, prosecuting, maintaining, intervening in, participating in (as class members or otherwise), or receiving any benefits from any other lawsuit, arbitration, or administrative, regulatory, or other proceeding or order in any jurisdiction in the United States (defined to include both states and territories of the United States) arising out of or relating to the Products or the facts and circumstances at issue in the Action.

Also, pending the final Fairness Hearing and issuance of a final order and judgment in this Action, all members of the Settlement Class and their legally authorized representatives are hereby preliminarily enjoined from demanding, threatening, filing, commencing, prosecuting, or maintaining any other lawsuit on behalf of members of the Settlement Class, if such other action is based on or relates to Defendant's Products.

Under the All Writs Act, the Court finds that issuance of this nationwide stay and injunction is necessary and appropriate in aid of the Court's jurisdiction over this Action. The Court finds no bond is necessary for the issuance of this injunction.

16. **Effect of Settlement Agreement and Order.** Plaintiffs' Counsel, on behalf of the Settlement Class, and Defendant entered into the Agreement solely for the purpose of compromising and settling disputed claims. This Order shall be of no force or effect if the Settlement does not become final and shall not be construed or used as an admission, concession, or declaration by or against Defendant of any fault, wrongdoing, breach, or liability. The Settlement Agreement, the documents relating to the Settlement Agreement, and this Order are not, and shall not in any event be (a) construed, deemed, offered, or received as evidence of a presumption, concession, or admission on the part of Plaintiffs, Defendant, any member of the Settlement Class or any other person; or (b) offered or received as evidence of a presumption, concession, or admission by any person of any fault, wrongdoing, breach, or liability, or that the claims in the Action lack merit or that the relief requested is inappropriate, improper, or unavailable for any purpose in any judicial or administrative proceeding, whether in law or in equity.

17. **Retaining Jurisdiction.** This Court shall maintain continuing jurisdiction over these settlement proceedings to assure the effectuation thereof for the benefit of the Class. If the Settlement receives final approval, this Court shall retain jurisdiction over any action to enforce the release provisions in the Settlement Agreement.

18. **Continuance of Hearing.** The Court reserves the right to adjourn or continue the Fairness Hearing without further written notice.

The Court sets the following schedule for the Fairness Hearing and the actions which must precede it:

- a. Plaintiffs shall file their Motion for Final Approval of the Settlement by no later than [28 days before the Fairness Hearing] .

- b. Plaintiffs shall file their Motion for Attorneys' Fees, Costs, and Expenses, and Motion for Service Award by no later than [70 days before the Fairness Hearing] .
- c. Settlement Class Members must send to the Claims Administrator any objections to the Settlement and the Motion for Attorneys' Fees, Costs, and Expenses, and the Motion for Service Award by no later than [35 days before the Fairness Hearing] .
- d. Settlement Class Members must exclude themselves, or opt-out, from the Settlement by no later than [35 days before the Fairness Hearing] .
- e. Settlement Class Members who intend to appear at the Final Fairness Hearing must file a Notice of Intention to Appear at the Final Fairness Hearing by no later than [15 days before the Fairness Hearing] .
- f. The Settlement Administrator shall file a declaration or affidavit with the Court that confirms the implementation of the Notice Plan pursuant to the Preliminary Approval Order [15 days before the Fairness Hearing] .
- g. Class Counsel and Defendant's Counsel shall have the right to respond to any objection no later than [28 days before the Fairness Hearing] .

- h. The Fairness Hearing will take place on _____, 2024 at ____:____.m.
[proposed 145 days after Preliminary Approval Order] at the United States
District Court for the Eastern District Court of New York at 225 Cadman
Plaza East, Brooklyn, New York 11201, Courtroom _____.

SO ORDERED this ____ day of _____, 2024:

Hon. Eric N. Vitaliano
United States District Judge