

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 OAKLAND DIVISION

4 CASE NO.: 4:11-cv-06119-PJH

5 In re: ALEXIA FOODS, INC. LITIGATION

6 **[PROPOSED] FINAL JUDGMENT AND**
7 **ORDER GRANTING PLAINTIFFS'**
8 **MOTION FOR FINAL APPROVAL OF**
9 **CLASS ACTION SETTLEMENT AND**
10 **FOR AWARD OF ATTORNEYS' FEES,**
11 **COSTS AND EXPENSES, AND**
12 **INCENTIVE AWARDS TO CLASS**
13 **REPRESENTATIVES**

14 Date: December 11, 2013
15 Time: 9:00 A.M.
16 Courtroom: Courtroom 3, 3rd Floor
17 Judge: Hon. Phyllis J. Hamilton

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27 **[PROPOSED] FINAL JUDGMENT AND ORDER GRANTING PLAINTIFFS' MOTION FOR FINAL APPROVAL OF**
28 **CLASS ACTION SETTLEMENT AND FOR AWARD OF ATTORNEYS' FEES, COSTS AND EXPENSES, AND**
INCENTIVE AWARDS TO CLASS REPRESENTATIVES
CASE NO.: 4:11-CV-06119-PJH

1 Pending before the Court is Plaintiffs' Motion for Final Approval of Class Action
2 Settlement, and Certification of Nationwide Settlement Class, and Plaintiffs' Motion For Award
3 Of Attorneys' Fees, Costs and Expenses, and Incentive Fees to Class Representatives.

4 The Court, having reviewed the papers filed in support of the Motions, heard the
5 arguments of counsel, and good cause appearing therefore, Plaintiffs' Motions are hereby
6 GRANTED and it is hereby ORDERED, ADJUDGED and DECREED as follows:

7 1. The parties have agreed to settle this consolidated Action upon the terms and
8 conditions set forth in the Stipulation of Settlement (the "Stipulation of Settlement" or
9 "Settlement Agreement"), which has been filed with the Court.

10 2. The Court has carefully reviewed the Stipulation of Settlement and the
11 amendment thereto, as well as the files, records, and proceedings to date in this matter. The
12 definitions in the Stipulation of Settlement are hereby incorporated as though fully set forth in
13 this Order, and capitalized terms shall have the meanings attributed to them in the Stipulation of
14 Settlement.

15 3. This Court has jurisdiction over the subject matter of this Action and over all
16 Parties to the Action, including all Settlement Class Members.

17 4. On July 30, 2013, this Court granted Preliminary Approval of the Settlement
18 Agreement and preliminarily certified a Settlement Class of: "All residents of the United States
19 of America who, at any time between December 6, 2007, and July 10, 2013, purchased any of
20 the referenced Alexia Products (i.e. "Sauté Reds," "Mashed Potatoes Yukon Gold Potatoes &
21 Sea Salt," "Mashed Potatoes Red Potatoes with Garlic & Parmesan," "Waffle Fries," "Harvest
22 Sauté," "Italian Sauté," "Sauté Sweets," and "Potato Bites")." Excluded from this definition are
23 (a) ConAgra, (b) all of ConAgra's past and present respective parents, subsidiaries, divisions,
24 affiliates, persons and entities directly or indirectly under its or their control in the past or in the
25 present, (c) ConAgra's respective assignors, predecessors, successors and assigns; and the past or
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1 present partners, shareholders, managers, members, directors, officers, employees, agents,
2 attorneys, insurers, accountants, (d) representatives of any and all of the foregoing, and (e) any
3 government entities.

4 5. The Court now affirms certification of the Settlement Class and gives final
5 approval to the settlement and finds that the settlement set forth in the Stipulation of Settlement
6 is fair, reasonable, adequate, and in the best interests of the Settlement Class.

7 6. The complex legal and factual posture of this case, and the fact that the Settlement
8 Agreement is the result of arm's length negotiations support the finding that the settlement is
9 fair, adequate and reasonable.

10 7. The Class Representatives and Class Counsel adequately represented the
11 Settlement Class for purposes of entering into and implementing the Stipulation of Settlement.

12 8. Accordingly, the Stipulation of Settlement is hereby finally approved in all
13 respects, and the Parties are hereby directed to perform its terms.

14 9. The Court-approved Notice Program to the Settlement Class was the best notice
15 practicable under the circumstances and included publication in three nationwide publications,
16 *People Magazine*, *USA Weekend*, and *Parade*, as well as on Facebook.com and websites
17 represented by 24/7 Real Media. The Notice Program has been successfully implemented and
18 satisfies the requirements of Fed. R. Civ. P. 23 and due process.

19 10. The Court finds that, in accordance with the Class Action Fairness Act of 2005
20 ("CAFA"), 28 U.S.C. § 1715, notice of the Settlement was sent to all State Attorney Generals
21 including the United States Attorney General. The Court has reviewed the substance of the
22 Notice of Settlement sent pursuant to CAFA, and finds that the parties have complied with all
23 applicable requirements of CAFA.

24 11. Subject to the terms and conditions of the Settlement Agreement, this Court
25 hereby dismisses the Action on the merits and with prejudice.

1 12. Upon the Effective Date of this settlement, Plaintiffs and each and every
2 Settlement Class Member, fully, finally, completely and forever, release, acquit and discharge
3 each Released Person from any and all Released Claims.

4 13. Upon the Effective Date, the above release of claims and the Settlement
5 Agreement will be binding on, and have *res judicata* and preclusive effect in all pending and
6 future lawsuits or other proceedings maintained by or on behalf of all Plaintiffs and all other
7 Settlement Class Members, Releasing Parties, and their predecessors, successors, assigns, heirs
8 or executors. All Settlement Class Members who have not been properly excluded from the
9 Settlement Class are hereby permanently barred and enjoined from filing, commencing,
10 prosecuting, intervening in, or participating (as class members or otherwise) in any lawsuit or
11 other action in any jurisdiction based on or arising out of the Released Claims.

12 14. The Court awards to Settlement Class Counsel the sum of \$ 800,000.00 as
13 attorney's fees and costs.

14 15. The Court awards to each of the Class Representatives the sum of
15 \$ 5,000.00 as an Incentive Award for their roles in this case.

16 16. Defendant shall pay the Fee Award and Incentive Fees pursuant to and in the
17 manner provided by the terms of the Settlement Agreement.

18 17. This Court hereby directs entry of this Final Judgment based upon the Court's
19 finding that there is no just reason for delay of enforcement or appeal of this Final Judgment
20 notwithstanding the Court's retention of jurisdiction to oversee the implementation and
21 enforcement of the Settlement Agreement.

22 18. This Final Judgment and order of dismissal with prejudice, the Settlement
23 Agreement, the settlement that it reflects, and any and all acts, documents, or proceedings
24 relating to the Settlement Agreement are not, and shall not be construed as, or used as an
25 admission or concession by or against the Parties with respect to any fault, wrongdoing, or
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1 liability or of the validity of any claim or defense, or of the existence of amount of damages, or
2 that the consideration to be given under the Settlement Agreement represents an amount equal to,
3 less than or greater than the amount that could have or would have been recovered after trial.

4 19. The Parties, without further approval from the Court, are hereby permitted to
5 agree and to adopt such amendments, modifications, and expansions of the Settlement
6 Agreement and its implementing documents (including all exhibits to the Settlement Agreement)
7 so long as they are consistent in all material respects with the Final Judgment and do not limit the
8 rights of the Settlement Class Members.

9 20. Without affecting the finality of this Final Judgment in any way, this Court hereby
10 retains continuing jurisdiction over, (a) implementation, enforcement, administration of the
11 Settlement Agreement, including any releases in connection therewith; (b) resolution of any
12 disputes concerning class membership or entitlement to benefits under the terms of the
13 Settlement Agreement; and (c) all Parties hereto, for the purpose of enforcing and administering
14 the Settlement Agreement and the Action until each and every act agreed to be performed by the
15 Parties has been performed pursuant to the Settlement Agreement.

16 21. In the event that the Final Settlement Approval Date does not occur, this
17 Settlement Order and Judgment shall automatically be rendered null and void and shall be
18 vacated and, in such event, all orders entered and releases delivered in connection herewith shall
19 be null and void.

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21 **IT IS SO ORDERED.**

22 Dated: 12/12/13 _____

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24 United States Judge
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