

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY

TONYA KELLY and BRIAN)	
MARTENS, on behalf of themselves and)	
all others similarly situated,)	
)	
Plaintiffs,)	Case No. 1316-CV11037
)	
v.)	Division No. 16
)	
POPCHIPS, INC.,)	
)	
Defendant.)	

CIRCUIT COURT OF JACKSON COUNTY, MO
BY *[Signature]*

MAR 13 2014

FILED
DIVISION 16

**FINAL JUDGMENT AND ORDER OF
FINAL SETTLEMENT APPROVAL AND DISMISSAL WITH PREJUDICE**

This matter comes before the Court on Plaintiffs’ Unopposed Motion for Final Approval of Class Action Settlement (“Motion for Final Approval”) and Plaintiffs’ and Class Counsel’s Unopposed Application for An Award of Attorneys’ Fees and Expenses and Incentive Awards to Class Representatives (“Application”). The Motion for Final Approval and the Application came before the Court for hearing on March 13, 2014 pursuant to the Court’s Order Granting Preliminary Approval of Proposed Settlement and Directing Dissemination of Notice to Class (“Preliminary Approval Order”), dated November 14, 2013. In the Preliminary Approval Order, the Court preliminarily certified a settlement class (“Settlement Class”) defined as:

All persons residing in the United States of America who, at any time between January 1, 2007, and November 14, 2013, purchased any “popchips” brand snack products in the United States. The “popchips snack products include, without limitation, “original,” “sour cream & onion,” “barbeque,” “sea salt & vinegar,” “sweet potato,” “parmesan & garlic,” “jalapeno,” “cheddar,” “salt & pepper,” “chili lime,” “thai sweet chili,” “brown sugar & spice,” “nacho cheese tortilla chips,” “ranch tortilla chips,” “salsa tortilla chips,” “chili limón tortilla chips,” “katy’s kettle corn,” “salted caramel corn,” “hint of butter corn chips,” “cheddar corn chips,” “sea salt corn chips,” “salsa corn chips,” “sea salt rice chips,” “wasabi rice chips,” “golden cheddar multi grain chips,” “salted multi grain

chips,” “olive oil veggie chips,” “tuscan herb veggie chips,” and “sea salt veggie chips.” Excluded from this definition are the Released Persons, any government entities, and any judicial officers presiding over this action, their judicial staff, and their immediate families. Settlement Class Members who exclude themselves from the Settlement, pursuant to the procedures set forth in Section V below, shall no longer be Settlement Class Members and shall not be bound by this Settlement Agreement and shall not be eligible to make a claim for any benefit under the terms of this Settlement Agreement.

The Court also approved the form, content, and method of disseminating Class Notice, appointed Class Representatives and Class Counsel, and scheduled a fairness hearing on March 13, 2014 at 8:30 a.m.

The Court held the fairness hearing in this matter on March 13, 2014 to consider whether: (1) the Settlement is fair, reasonable, and adequate; (2) whether a judgment should be entered dismissing the action with prejudice; and (3) whether and in what amount to award attorneys’ fees and litigation expenses to Class Counsel and incentive awards to Class Representatives. Having considered all matters submitted to it at the fairness hearing and otherwise, and with due and adequate notice given to the Settlement Class as directed by the Court in its Preliminary Approval Order, the Court finds that the Motion for Final Approval and the Application should be **GRANTED**.

THE COURT HEREBY FINDS, CONCLUDES, AND ORDERS as follows:

1. This Final Judgment and Order incorporates by reference the Preliminary Approval Order and the Settlement Agreement dated November 13, 2013 (“Agreement”), including the definitions contained therein. All terms used in this Final Order and Judgment shall have the same meaning as set forth in the Agreement and Preliminary Approval Order.

2. The Court has jurisdiction over the subject matter of the Action and over all of the Parties, including all Settlement Class Members.

3. The Court hereby reaffirms its findings and conclusions in the Preliminary Approval Order that, for purposes of the Agreement and the Settlement, the standards for class certification under Rule 52.08 of the Missouri Rules of Civil Procedure and applicable case law have been met for the Settlement Class. Accordingly, the Court grants final certification of the Settlement Class defined as:

All persons residing in the United States of America who, at any time between January 1, 2007, and November 14, 2013, purchased any “popchips” brand snack products in the United States. The “popchips” snack products include, without limitation, “original,” “sour cream & onion,” “barbeque,” “sea salt & vinegar,” “sweet potato,” “parmesan & garlic,” “jalapeno,” “cheddar,” “salt & pepper,” “chili lime,” “thai sweet chili,” “brown sugar & spice,” “nacho cheese tortilla chips,” “ranch tortilla chips,” “salsa tortilla chips,” “chili limón tortilla chips,” “katy’s kettle corn,” “salted caramel corn,” “hint of butter corn chips,” “cheddar corn chips,” “sea salt corn chips,” “salsa corn chips,” “sea salt rice chips,” “wasabi rice chips,” “golden cheddar multi grain chips,” “salted multi grain chips,” “olive oil veggie chips,” “tuscan herb veggie chips,” and “sea salt veggie chips.” Excluded from this definition are the Released Persons, any government entities, and any judicial officers presiding over this action, their judicial staff, and their immediate families.

4. The Court also reaffirms its findings and conclusions in the Preliminary Approval Order that the named Plaintiffs in this Action, Tonya Kelly and Brian Martens, and Plaintiffs’ attorneys, Shank & Hamilton, P.C., are adequate to represent the Settlement Class as Class Representatives and Class Counsel, respectively.

5. The Court appoints Tonya Kelly and Brian Martens as Class Representatives for the Settlement Class and finds that they meet the requirements of Rule 52.08 of the Missouri Rules of Civil Procedure.

6. The Court appoints Shank & Hamilton, P.C. as Class Counsel and finds that Shank & Hamilton, P.C. meets the requirements of Rule 52.08 of the Missouri Rules of Civil Procedure.

7. The Court has conducted a thorough examination of the record and has determined that the Settlement is fair, reasonable, and adequate pursuant to Missouri Rule of Civil Procedure 52.08 and applicable case law. In evaluating the fairness of the Settlement, the Court has considered: “(1) the existence of fraud or collusion behind the Settlement; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the probability of the plaintiffs’ success on the merits; (5) the range of possible recovery; and (6) the submissions of class counsel, class representatives, and absent class members.” *Bachman v. A.G. Edwards, Inc.*, 344 S.W.3d 260, 266 (Mo. App. 2011) (quoting *Ring v. Metro. St. Louis Sewer Dist.*, 41 S.W.3d 487, 492 (Mo. App. 2000)). The Court finds that each of these factors supports granting final approval of the Settlement. With respect to these factors, the Court finds and concludes as follows:

(a) First, the Court finds that the Settlement is the result of arm’s length negotiations between two adverse parties. There is no suggestion or evidence that the Settlement is the product of fraud or collusion. The Settlement was reached after two days of mediation with John R. Phillips, a mediator with substantial experience in resolving complex class actions, and was completed after months of contentious negotiations by counsel experienced in litigating and settling class actions. The Settlement involves significant concessions by both sides and provides substantial relief to members of the Settlement Class, including both monetary relief for past purchases and prospective relief in the form of comprehensive business practice changes.

(b) Second, the factual and legal issues in this case are highly complex and would require expensive and protracted litigation to resolve. Plaintiffs’ allegations present intricate issues regarding the composition and manufacturing process for popchips, including the

scientific function of each ingredient in the product and how each such ingredient is produced. Many of these issues require expert opinions from food and nutrition scientists. The case also is legally complex, involving the marketing and sale of a food item that is subject to extensive regulations by the U.S. Food and Drug Administration (“FDA”). Prosecution of this case would present issues such as whether Defendant complied with FDA regulations and whether certain doctrines, such as the doctrines of federal preemption and primary jurisdiction, would apply.

(c) Third, the Settlement was reached by parties with sufficient information to effectively evaluate the terms of the Settlement and represent the Settlement Class. Prior to filing the action, Class Representatives and Class Counsel conducted an extensive investigation into popchips, through which they determined the manufacturing process for popchips, the characteristics of each ingredient in popchips, and the methods by which Defendant marketed and sold popchips throughout the country. The parties also exchanged information prior to and during the mediation, including Defendant’s sales figures, profit margin, gross revenues, and total net worth. To ensure that the information provided during the mediation was accurate, Class Counsel engaged in confirmatory discovery, including a personal inspection by Class Counsel and Plaintiffs’ financial expert of Defendant’s audited financial reports, sales data, and labeling materials at its facilities in Los Angeles, California. The information obtained enabled Plaintiffs and Class Counsel to assess the strengths and weaknesses of the claims asserted in the case, which supports the fairness, adequacy, and reasonableness of the Settlement.

(d) Fourth, the Court finds that success on the merits is far from certain. As is not uncommon in litigation of this type, the parties vigorously disagreed about the merits of their claims and defenses. When viewed against the risks of litigation, the benefits of the Settlement

to the Settlement Class are exceptional. Defendant has asserted several potential complete defenses to liability, including federal preemption and the primary jurisdiction doctrine, and has asserted other defenses and arguments that may reduce or eliminate any potential recovery by the Class. There are also significant risks attendant with trying the case. The Settlement eliminates the risk of an adverse outcome and will provide the Class with immediate benefits.

(e) Fifth, the Settlement falls within the range of possible recovery the Class could achieve at trial if Plaintiffs were to succeed on the merits. Defendant is a privately held “startup” with finite assets and no insurance coverage for Plaintiffs’ claims. Defendant’s ability to satisfy a larger judgment after years of expensive litigation is uncertain. Furthermore, it is possible that the Settlement Class would receive no recovery if the case were resolved through continued litigation and a trial. The Settlement provides immediate and certain benefits to the Class that may not be available through continued litigation.

(f) Sixth, the Court finds that the opinions of Class Representatives and Class Counsel and the response of absent Settlement Class members weigh in favor of final approval. Class Representatives and Class Counsel, who have extensive knowledge of the factual and legal issues in the case and actively have been involved in the negotiations and mediation, support the proposed Settlement as fair, reasonable, and adequate. Their assessment of the benefits provided by the Settlement in light of the risks associated with continued litigation is entitled to appropriate weight. In addition, all available evidence indicates that the Settlement enjoys overwhelming support from the Settlement Class, as there has not been a single member of the Settlement Class who has opted out or objected to the Settlement. The lack of any objections or requests for exclusion by members of the Settlement Class strongly suggests that the Settlement

has received favorable approval from the Settlement Class, which weighs heavily in favor of final approval.

8. Based upon its evaluation of the foregoing factors and the record submitted by the Parties, the Court finds that the Agreement and Settlement are fair, reasonable, and adequate. The Court, therefore, **GRANTS** final approval of the Settlement in all respects. The parties are directed to implement the terms of the Settlement as provided in the Agreement. Without further order of the Court, the parties may agree to reasonably necessary extensions of time to carry out any of the provisions of the Agreement.

9. The parties have agreed that if, as of the Claim Payment Deadline, the total of the amounts deposited or to be deposited by Defendant into the Escrow Account pursuant to paragraphs 2.4(a)-2.4(d) of the Settlement Agreement for notice and administration costs, payment of valid and approved cash claims, any attorney's fee and expense award approved by the Court, and incentive awards to class representatives, is less than \$2,100,000, then any such remaining balance of the Cash Settlement Fund after payment of notice and administration costs, all valid and approved cash claims, incentive awards, and attorneys' fees and expenses awarded by the Court will be distributed according to the *cy pres* doctrine, up to a maximum of twenty-five thousand dollars (\$25,000.00), pursuant to paragraph 2.4(e) of the Settlement Agreement. The parties request that the Court select School Food Focus as the recipient of the *cy pres* distribution. School Food Focus is a registered 501(c)(3) not-for-profit organization that leverages the knowledge and procurement power of large school districts nationwide to make school meals more healthful, regionally sourced, and sustainably produced, so that children may perform better in school and be healthier in life.

10. In determining whether remaining funds from a class action settlement should be distributed to a charitable organization, “the unclaimed funds should be distributed for a purpose as near as possible to the legitimate objectives underlying the lawsuit, the interests of the class members, and the interests of those similarly situated.” *Kansas Ass’n of Private Investigators v. Mulvihill*, 159 S.W.3d 857, 861 (Mo. App. 2005). The Court must also consider the location of the parties to the lawsuit. *Id.* at 862. After considering these standards, the Court approves a *cy pres* distribution to School Food Focus. School Food Focus furthers the legitimate objectives underlying the lawsuit, which challenged the “all natural” and “healthier” representations on popchips labeling, by promoting healthy eating and the reduction of unhealthy snacks in school districts. As a nationwide organization, the *cy pres* distribution of funds will benefit members of the Settlement Class throughout the United States, which corresponds to the geographic distribution of the members of the Settlement Class. Accordingly, the Court approves the distribution of up to twenty-five thousand dollars (\$25,000.00) to School Food Focus pursuant to the *cy pres* doctrine pursuant to, and subject to the conditions set forth in, paragraph 2.4(e) of the Settlement Agreement.

11. The notice to the Settlement Class of this action and the proposed Settlement, issued pursuant to the Media Plan and the Court’s Preliminary Approval Order, was adequate and constituted the best notice practicable under the circumstances. The forms of notice to the Settlement Class included: (a) published notice through use of paid print media targeted to the demographic profile for popchips consumers; (b) web-based notice using paid banner ads on targeted websites; (c) a dedicated, informational website (“Settlement Website”) through which Settlement Class Members can obtain more information about the Settlement and access case

documents; (d) a toll-free telephone helpline by which Settlement Class members can obtain additional information about the Settlement and request Class Notices and Claim Forms; and (e) a post office box for mail correspondence with members of the Settlement Class. Notice of the Settlement reached over 3,200,000 direct subscribers to *Ladies' Home Journal* (not including direct sale distribution and the amount of readers per copy) and has appeared on websites more than 5,486,000 times. The notice was reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The Court reaffirms its findings in the Preliminary Approval Order that the notice issued to the Settlement Class satisfies the requirements of Rule 52.08(e), due process, and Missouri law.

12. The Court also has considered Plaintiffs' and Class Counsel's application for reasonable attorneys' fees and litigation expenses. The Court finds that Class Counsel has achieved an excellent Settlement for the Settlement Class, including both monetary relief and prospective relief in the form of comprehensive business practice changes. Given the substantial results obtained for the Settlement Class, the efforts and skill shown by Class Counsel in investigating and bringing this class action to a successful resolution, and the considerable risk Class Counsel incurred in pursuing this matter on a contingency basis, the Court finds that Plaintiffs' and Class Counsel's request for an award of \$991,000, representing approximately \$968,000 in attorneys' fees and \$22,981.47 in taxable litigation costs and expenses, is reasonable and will be awarded. The Court finds and concludes that the requested award is fair and reasonable for numerous reasons, including the following.

13. In awarding Class Counsel its reasonable attorneys' fees and litigation expenses, the Court has considered the total amount of benefits afforded by the Settlement. *See Berry v. Volkswagen of Am., Inc.*, No. 0515-CV01171-01, at ¶¶ 3, 4 (Mo. Cir. Ct. Jackson Cnty. May 3, 2011), *aff'd*, 397 S.W.3d 425 (Mo. banc 2013) (“[T]he reasonableness of the fees must be measured against the benefit conferred by the settlement rather than the actual amount paid out[.]”). The Court finds that, as measured under Missouri law and stipulated by the parties, the value of the settlement to the Settlement Class is \$3.15 million. As described in the Settlement Agreement, Defendant will provide up to \$2.4 million in monetary benefits, consisting of a fund of up to \$2.1 million cash for payment of valid cash claims, and a fund of up to \$300,000.00 in popchips products voucher value for payment of valid voucher claims. The Court also considers the economic value to the Settlement Class of Defendant's prospective business practice changes, which the parties have valued as providing at least \$750,000.00 in benefits to the Settlement Class. *See Hale v. Wal-Mart Stores, Inc.*, Nos. 01CV218710, 02CV227674, 2009 WL 2206963, ¶ 6 (Mo. Cir. Ct. Jackson Cnty. May 15, 2009) (Midkiff, J.) (“In determining the total value of the Settlement for purposes of calculating the attorneys' fee award, this Court will consider the economic value of such prospective injunctive relief obtained for the Class.”). As set forth in the Settlement Agreement, the prospective relief obtained by Class Counsel provides immediate and ongoing benefits to the Class, including modifications to the popchips labeling and packaging, descriptive and promotional materials, and all websites and social media maintained by Defendant regarding the popchips brand products. These business practice changes eliminate significant future harm to the Settlement Class, which the parties have conservatively valued to provide at least \$750,000.00 in future economic benefits. The value of

these changes is appropriately included in the total value of the Settlement, resulting in a total uncontested Settlement value of \$3.15 million in benefits to the Settlement Class. *See id.*

14. Under the percentage of recovery approach, Class Counsel's total fee and expense request of \$991,000 represents 31.46% of the total value of the Settlement. A fee award of 31.46% easily falls within the range of awards routinely granted by courts in Missouri. *See Bachman*, 344 S.W.3d at 267 (holding that a fee award of approximately one-third of the value of a settlement is "not unreasonable" in class action cases); *Hale*, 2009 WL 2206963, ¶ 30 ("The 38.3% fee requested in this case is customary and well in line with attorneys' fees award in similar cases."); *McLean v. First Horizon Home Loan Corp.*, No. CV228590, 2007 WL 5674689, ¶ 11 (Mo. Cir. Ct. Jackson Cnty. June 7, 2007) (Scoville, J.) ("[33.3% contingency fee is well within the average recovery from recent class action settlements."). Even if this Court were to attribute no value to the business practice changes provided by the Settlement, the requested amount of \$991,000 for attorneys' fees and litigation expenses represents approximately 41.29% of the monetary benefits provided by the Settlement and is within the range deemed reasonable by courts in complex class actions. *See William B. Rubenstein, et al., Newberg on Class Actions* § 14:6 (4th ed. 2002) ("An attorney whose work creates a common fund is entitled to a reasonable fee taken from the fund. . . . Usually 50 percent of the fund is the upper limit on a reasonable fee award from a common fund, . . . though somewhat larger percentages are not unprecedented."); *In re Ampicillin Antitrust Litig.*, 526 F. Supp. 494, 499 (D.D.C. 1981) (awarding 45% of \$7.3 million gross settlement fund as reasonable attorneys' fees).

15. A lodestar cross-check confirms the reasonableness of the award for attorneys' fees and litigation expenses. Class Counsel have expended approximately 2,200 hours of work in connection with their investigation and prosecution of this case and have submitted hourly rates of \$525 for senior partners, \$280 to \$300 for associates, and \$175 per hour for paralegals. The Court finds that the hours incurred by Class Counsel were reasonable and necessary to reach a successful outcome and that the hourly rates submitted by Class Counsel are reasonable and are well within the rates normally charged for similar work by counsel of similar skill and experience. *See Berry v. Volkswagen*, 397 S.W.3d 425, 433 (Mo. banc 2013) (affirming an award of attorneys' fees based on a lodestar calculation with rates as high as \$650 per hour); *Plubell v. Merck & Co. Inc.*, No. 04CV235817-01, at 8-9 (Mo. Cir. Ct. Jackson Cnty., Mar. 15, 2013) (Roldan, J.) (determining that hourly rates of \$675 per hour for partner time and \$450 per hour for associate time "are well within the rates normally charged for similar work by similarly qualified counsel in Missouri.").

16. The hours submitted by Class Counsel multiplied by their reasonable hourly rate results in a fee lodestar of \$939,766. The request for attorneys' fees and litigation expenses of \$991,000 represents a multiplier of 1.06, which is on the low end of multipliers used in cases prosecuted solely on a contingency basis. *See Berry*, 397 S.W.2d at 432-33 (affirming attorney's fee award based on lodestar multiplier of 2.0); *Hale*, 2009 WL 2206963, at ¶ 15 (a 2.3 multiplier is "well within the range of multipliers found reasonable for cross-check purposes by courts in similar complex class actions[.]"); *Mitchell v. Residential Funding Corp.*, No. 03-CV-220489 (Mo. Cir. Ct. Jackson Cnty. June 24, 2008) (Del Muro, J.) (awarding nearly \$37 million in attorney's fees as a percentage of the settlement, representing an approximate 10.9 multiplier of

the lodestar); *McLean*, 2007 WL 5674689, at ¶ 11 (approving 2.75 multiplier to account “for the significant risk of non-recovery” and other considerations). The record in this case establishes that the risk of non-payment for the time and expenses incurred by Class Counsel was substantial. Furthermore, application of a multiplier in this case helps ensure that qualified counsel are willing to incur significant risks of non-payment in future cases and, therefore, will promote the underlying remedial and deterrent purposes of the underlying cause of action. *See Zweig v. Metro St. Louis Sewer Dist.*, 412 S.W.3d 223, 250 (Mo. banc 2013) (finding a multiplier justified in the case to ensure adequate representation for similar claims in the future).

17. Based on the foregoing, the Court **GRANTS** Plaintiffs’ and Class Counsel’s application for an award of attorneys’ fees and expenses in the amount of \$991,000. In addition to compensating Class Counsel for its reasonable attorneys’ fees incurred in prosecuting this Action to a successful resolution, this award will reimburse Class Counsel for the \$22,981.47 in litigation costs and expenses reasonably incurred in this litigation, including expert consultation fees; airline travel; lodging and meals; mediator fees; legal research expenses; printing and copying; telephone fees; postal fees; filing fees; and other expenses that are typically awarded to class counsel. *See* 2 Joseph M. McLaughlin, *McLaughlin on Class Actions* § 6:24 (8th ed. 2011) (noting that “class counsel also is entitled to reimbursement from the class recovery (without interest) for the costs and reasonable out-of-pocket expenses incurred in prosecuting the litigation”); *Hale*, 2009 WL 2206963, ¶ 30 (“computer-assisted research, photocopying, telephone, facsimile charges, postal messenger, express mail, deposition fees, transcripts, expert witnesses, travel and meals, and subpoena services are reasonably incurred in connection with the prosecution of a [modern], complex litigation.”).

18. The Court has also considered Class Counsel's application for incentive awards to Class Representatives in the amount of \$3,000.00 for Plaintiff Tonya Kelly and \$2,500.00 for Plaintiff Brian Martens. The Court finds that Class Counsel's request for incentive awards, which differ based on each plaintiff's level of involvement in the lawsuit, is fair and reasonable. *See McLaughlin on Class Actions, supra*, § 6:28 (“[I]t is fair and reasonable to compensate class representatives, ordinarily within the range of \$1,000-\$20,000, for the efforts they make in obtaining a recovery on behalf of the class.”); *Bachman*, 2010 WL 5648344, ¶ 4 (awarding \$10,000 each to the two representative plaintiffs).

19. In determining the reasonableness of an incentive award, the Court considers: “(1) the actions the named class representatives have taken to protect the interests of the class; (2) the degree to which the class has benefited from those actions; and (3) the amount of time and effort the named class representatives expended in pursuing the litigation.” *Hale*, 2009 WL 2206963, ¶ 43. The Court finds that the time and effort these individuals devoted to this matter contributed to the overall result and benefitted the Settlement Class. Here, the successful outcome in this case would not have been possible without the efforts of Ms. Kelly and Mr. Martens, and their initiative and efforts on behalf of the Settlement Class should be rewarded. *See id.* at ¶ 43 (“The purpose of incentive awards, or supplemental compensation, for class representatives is to encourage people with significant claims to pursue actions on behalf of others similarly situated.”). The Court hereby approves incentive awards of \$3,000.00 to Plaintiff Tonya Kelly and \$2,500.00 to Plaintiff Brian Martens.

20. The Court orders and directs Defendant to make the deposits into the Escrow Account required by the Settlement Agreement according to the schedule and pursuant to the terms set forth in paragraphs 2.4(a)-2.4(e) of the Settlement Agreement.

21. The Court hereby dismisses this action against Defendant with prejudice as to all members of the Settlement Class, as outlined in the Agreement. On completion of the terms of the Settlement, the Class Representatives and each member of the Settlement Class shall be deemed to have released and forever discharged, and shall be forever barred from asserting, instituting, or maintaining against any or all of the Released Persons, any and all claims, demands, actions, causes of action, lawsuits, arbitrations, damages, or liabilities of any nature, whether legal, equitable or otherwise, arising from or relating to the labeling, marketing, or advertising of popchips. "Released Persons" means popchips, all of popchips' past and present respective parents, subsidiaries, divisions, affiliates, persons and entities directly or indirectly under its or their control in the past or in the present; popchips' respective assignors, predecessors, successors and assigns; and the past or present partners, shareholders, managers, members, directors, officers, employees, agents, attorneys, insurers, accountants, and representatives of any and all of the foregoing.

22. No persons submitted any request for exclusion from the Settlement Class in compliance with the procedures set forth in the Notice. Therefore, all persons who meet the Settlement Class definition shall be bound by the Settlement Agreement and this Final Judgment and Order.

23. Neither this Final Judgment and Order, nor any terms or provisions of the Agreement, shall be admissible as evidence for any purpose against the Parties in any pending or

future litigation involving any of the parties. This Final Judgment and Order shall not be construed as an admission, concession, or declaration by or against Defendant of any fault, wrongdoing, breach, or liability in any civil, criminal, or administrative proceeding in any court, administrative agency or other tribunal, and Defendant specifically denies any such fault, wrongdoing, breach, or liability. Nor shall this Final Judgment and Order be construed or used as an admission, concession, or declaration by or against Plaintiffs or the Class that their claims lack merit or that the relief requested in the action is inappropriate, improper, or unavailable. Neither the fact of, nor any provision contained in the Agreement or the documents submitted in connection with the Settlement, nor any actions taken thereunder shall be deemed evidence of a concession or admission of any kind as to the truth of any fact alleged or validity of any legal argument that has been, could have been, or in the future might be asserted. Nothing in this Final Judgment and Order shall be relied upon, cited as, constitute evidence of, or constitute an admission that class or collective action certification is or may be appropriate in any other action.

24. Without affecting the finality of the Judgment entered herein in any way, the Court hereby retains continuing jurisdiction to implement the Settlement through enforcement of this Judgment and to construe, enforce, and administer the Agreement pursuant to its terms. Specifically, the Court retains continuing jurisdiction over the Action to enforce Defendant's obligations under the Agreement to provide compensation to the Settlement Class as provided in the Agreement, pay Class Representatives incentive awards as provided in this Judgment and the Agreement, and pay Class Counsel any award of attorneys' fees and expenses made by the Court, subject to the terms of the Agreement. If Defendant fails to fulfill its obligations, the Court has the power to vacate the provision of this Judgment releasing, relinquishing, and

discharging, and barring and enjoining the prosecution against the Released Persons arising from or relating to the labeling, marketing, or advertising of popchips.

IT IS SO ORDERED.

Date: March 13, 2014

Marco A. Roldan
Hon. Marco A. Roldan
Circuit Judge

CERTIFIED COPY
I certify that the foregoing document is a full, true
and complete copy of the original on file in my
office and of which I am legal custodian.
Jeffrey A. Eisenbeis
Court Administrator
Circuit Court of Jackson County, Missouri
By Natasha Hundley
Deputy