

# **Exhibit A**

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## **Settlement Agreement**

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

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

**SETTLEMENT AGREEMENT**

This Settlement Agreement (the “Settlement Agreement”) is made by and among Representative Plaintiffs (defined below), on behalf of themselves and the Settlement Class (defined below), on the one hand, and popchips, inc. (“popchips,” “the Company,” or “Defendant”), on the other hand, subject to and conditioned upon Court (defined below) approval of the terms and conditions hereof.

**RECITALS**

A. On April 30, 2013, Plaintiffs Tonya Kelly and Brian Martens (“Representative Plaintiffs”) commenced a putative class action titled *Tonya Kelly and Brian Martens, on behalf of themselves and all others similarly situated v. Popchips, Inc.*, in the Circuit Court of Jackson County, Missouri at Kansas City, Case No. 1316-CV11037 (the “Action”). Representative Plaintiffs filed their First Amended Class Action Petition (“Amended Petition”) on September 5, 2013.

B. In their Amended Petition, Representative Plaintiffs assert claims against popchips under the Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010 *et seq.*, (the “MMPA”), the California Consumer Legal Remedies Act, Cal. Civ. Code § 1750 *et seq.*, (the “CLRA”), the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.*, (the “UCL”), the California False Advertising Law, Cal. Bus. & Prof. Code § 17500 *et seq.*, (the

False Advertising Law or “FAL”), and for Breach of Express Warranty, Breach of Implied Warranty of Merchantability, and Unjust Enrichment. Representative Plaintiffs seek to represent a nationwide class of consumers who purchased popchips Products (defined below) during the Settlement Class Period (defined below).

C. Representative Plaintiffs allege in the Action, *inter alia*, that popchips misled consumers by labeling and promoting its popchips Products as “natural” or “all natural,” and as “healthier” food products that contain “no preservatives” and “no artificial flavors or colors” when those popchips Products are highly processed, contain numerous artificial and synthetic ingredients, including ingredients containing genetically modified organisms (“GMOs”), and excessive amounts of fat.

D. Popchips denies the material allegations made in the Action, and denies any and all liability with respect to all facts and claims alleged therein, and further denies that any of the Settlement Class Members (defined below) or anyone else has suffered any harm or damage or is entitled to any monetary, injunctive, or other relief whatsoever in connection with the Action.

E. Plaintiffs’ Counsel (defined below) have conducted a thorough examination and investigation into the factual and legal issues presented in this Action, including, but not limited to, researching, surveying and analyzing popchips’ marketing and product labeling practices with respect to the popchips Products as well as its background and financial status, consulting with experts regarding relevant food science, food regulation and food-related litigation matters, reviewing literature and studies on food science, nutrition, and consumer preferences, studying relevant food-related government regulations and other relevant authorities, and conducting detailed legal research on numerous matters at issue in the Action. Representative Plaintiffs, Plaintiffs’ Counsel and their consulting experts have evaluated the merits of the contentions of all Parties (defined below) and have evaluated the settlement terms and conditions memorialized in this Settlement Agreement (the “Settlement”), including an analysis of popchips’ audited financial documents, sales figures, and other financial information, as they affect all Parties and the Settlement Class Members. Representative Plaintiffs and Plaintiffs’ Counsel, after taking

into account the foregoing, along with the risks and costs of further litigation, have concluded that the terms and conditions of the Settlement are fair, reasonable, and adequate, and that this Settlement is in the best interest of the Settlement Class Members. In doing so, Representative Plaintiffs and Plaintiffs' Counsel have considered and evaluated the numerous risks of continued litigation and other factors, including but not limited to the following: (1) the expense and length of time necessary to prosecute the Action through trial and any subsequent appeals; (2) the uncertainty of the outcome at trial and the possibility of an appeal by either side following the trial; (3) the possibility that a contested class might not be certified, and if certified, the possibility that such certification might be reversed on appeal; (4) the possibility that popchips might prevail on a dispositive motion challenging some or all of Representative Plaintiffs' claims prior to trial; (5) the possibility that popchips might be unable to pay a judgment rendered against it if Representative Plaintiffs were to prevail at trial; and (6) the substantial benefits that are being made available to Representative Plaintiffs and the Settlement Class Members under the terms of this Settlement Agreement.

F. Popchips, while continuing to deny all allegations of wrongdoing and disclaiming all liability with respect to all claims asserted in the Action, considers it desirable to resolve the Action on the terms and conditions of the Settlement stated in this Settlement Agreement in order to avoid further expense, inconvenience, risk, uncertainty, and burden resulting from continued litigation and, therefore, has determined that the Settlement is in its best interests.

G. Popchips and Representative Plaintiffs, on behalf of themselves and the other Settlement Class Members, along with Plaintiffs' Counsel and Defendant's Counsel, negotiated and reached this Settlement after extensive review of the underlying facts and law, extensive consultation with experts and industry personnel, numerous exchanges of relevant information, and extensive and vigorous arm's length, good-faith negotiations, including a two-day mediation session conducted with the assistance of mediator John R. Phillips of the Husch Blackwell law firm in Kansas City, Missouri.

H. This Settlement Agreement provides for relief to the proposed Settlement Class by, among other things, requiring popchips to commit to the establishment of a Settlement Fund (defined below), consisting of up to two million one hundred thousand dollars in cash (\$2,100,000.00) and popchips Products vouchers valued at up to three hundred thousand dollars (\$300,000.00). In addition, popchips has agreed to make substantial modifications to its labeling, marketing, and other business practices with regard to popchips Products, which modifications provide significant benefit to the proposed Settlement Class with a value of at least seven hundred fifty thousand dollars (\$750,000.00). The Total Settlement Value (defined below) of the Settlement is at least three million one hundred fifty thousand dollars (\$3,150,000.00).

I. This Settlement Agreement reflects a compromise between the Parties and shall in no event be construed as or be deemed an admission or concession by any Party of the truth of any allegation or the validity of any purported claim or defense asserted in any of the pleadings in the Action, or of any fault on the part of popchips, and all such allegations expressly are denied.

In consideration of the covenants and agreements set forth herein, and of the releases and dismissals of claims as described below, and of other good and valuable consideration, the receipt and sufficiency of which hereby is acknowledged by each of the Parties, each of Representative Plaintiffs, on behalf of themselves and the Settlement Class Members, and popchips agrees to the Settlement described herein, subject to Court approval, under the following terms and conditions:

## **I. DEFINITIONS**

As used in this Settlement Agreement and the annexed exhibits (which are an integral part of this Settlement Agreement and are incorporated in their entirety by reference), the terms and phrases below have the following meanings, unless a section or subsection of this Settlement Agreement or its exhibits provides otherwise. Unless otherwise indicated, all defined terms include the plural as well as the singular.

1.1 “Cash Claim” has the meaning set forth at paragraph 2.5 below.

1.2 “Cash Settlement Fund” has the meaning set forth at paragraph 1.31(a) below.

1.3 “Claim” means either a Cash Claim or Voucher Claim that has been submitted by a Settlement Class Member to the Settlement Administrator pursuant to the terms of this Settlement Agreement and in accordance with the instructions in the Claim Form.

1.4 “Claim Determination Date” means ten (10) calendar days after the Claim Submission Deadline or ten (10) calendar days after the Final Settlement Approval Date, whichever occurs later.

1.5 “Claim Form” means the document to be submitted by Settlement Class Members who want to submit a Cash Claim or Voucher Claim pursuant to this Settlement Agreement. The Claim Form will be available online at the Settlement Website and will be substantially the same as Exhibit A.

1.6 “Claim Payment Deadline” means thirty (30) calendar days after the Claim Determination Date, and is the date by which the Settlement Administrator will pay or fulfill all valid and approved Claims in accordance with the terms of this Settlement Agreement.

1.7 “Claim Submission Deadline” means the final date and time by which a Claim Form must be received by the Settlement Administrator in order for a Settlement Class Member to be eligible for any of the Settlement benefits that are to be paid or provided from the Settlement Fund, as contemplated in this Settlement Agreement. The Claim Submission Deadline shall be set by the Court and shall be at least one hundred eighty days (180) calendar days following the Notice Date. If a Settlement Class Member’s Claim Form is not received by the Settlement Administrator on or before the Claim Submission Deadline, the Claim shall be denied as invalid.

1.8 “Claimant” means a Settlement Class Member who submits a Cash Claim or Voucher Claim, as described in Section II of this Settlement Agreement.

1.9 “Class Notice” means the Court-approved “Notice of Class Action Settlement” to be published and communicated per the Media Plan, attached as Exhibit B.

1.10 “Court” means the Circuit Court of Jackson County, Missouri, at Kansas City.

1.11 “Defendant’s Counsel” means the law firm of Shook, Hardy & Bacon, L.L.P.

1.12 “Escrow Account” means the interest-bearing escrow account that will be established as set forth in paragraph 2.3 below and into which popchips will make the periodic cash deposits of funds from the Cash Settlement Fund that are required by this Settlement Agreement and from which the Settlement Administrator will make payments required by this Settlement Agreement.

1.13 “Fee and Expense Award” means the amount awarded to Plaintiffs’ Counsel by the Court for attorneys’ fees, costs, and expenses concerning Plaintiffs’ Counsel’s work on behalf of Representative Plaintiffs and the Settlement Class relating to the Action, including but not limited to activities related to the Settlement and Settlement Agreement, which will be paid by popchips and distributed to Plaintiffs’ Counsel as set forth in paragraphs 2.4(b) and 3.1 below. This amount shall not exceed nine hundred ninety-one thousand dollars (\$991,000.00) and does not include Notice and Other Administrative Costs.

1.14 “Final Order and Judgment” means the final order and final judgment entered by the Court approving this Settlement Agreement as binding upon the Parties and the Settlement Class Members, approving any *cy pres* distribution, setting and awarding the amounts for the Fee and Expense Award and Incentive Awards pursuant to Section III, and dismissing the Action with prejudice. The Final Order and Judgment shall constitute a final judgment within the meaning and for purposes of Rule 74.01 of the Missouri Rules of Civil Procedure. The Parties jointly shall request the Court to enter the proposed Final Order and Judgment substantially in the form attached hereto and made a part hereof as Exhibit F, subject to further revisions or modifications as future circumstances may warrant.

1.15 “Final Settlement Approval” or “Final Settlement Approval Date” means the date that is forty (40) calendar days after the Court’s entry of the Final Order and Judgment, without any appeal being taken, or, if an appeal or request for review has been taken, the date on which the Final Order and Judgment has been affirmed by the court of last resort to which an appeal or request for review has been taken and such affirmance is no longer subject to further appeal or

review, or the date of denial of review after exhaustion of all appellate remedies.

1.16 “Incentive Awards” means any incentive awards approved by the Court, as set forth in paragraph 3.2, after application by either or both of the Representative Plaintiffs, that are payable from the Cash Settlement Fund to either or both of the Representative Plaintiffs in recognition of the time and effort each of them expended in pursuing this Action and in fulfilling their respective obligations and responsibilities as class representatives in this Action, and of the risks taken by them on behalf of the Settlement Class, and of the benefits conferred on all Settlement Class Members by the Settlement, as provided by this Settlement Agreement.

1.17 “Media Plan” means the Settlement Administrator’s plan to disseminate Class Notice to Settlement Class Members, attached as Exhibit D.

1.18 “Notice and Other Administrative Costs” means all costs and expenses actually incurred by the Settlement Administrator relating to (i) publication of Class Notice and handling of the notification duties imposed by Mo. R. Civ. P. 52.08(c)(2), in accordance with the Media Plan; (ii) establishment of the Settlement Website; (iii) establishment, handling, and administration of the Escrow Account; (iv) processing, review, payment, and handling of all Claims; and (v) all other activities relating to the administration of the Settlement, as set forth in this Settlement Agreement, which costs and expenses have been estimated by the Settlement Administrator to be one hundred thirty-one thousand and eighty dollars (\$131,080.00).

1.19 “Notice Date” means the first date upon which the Class Notice is published or otherwise disseminated in accordance with the Media Plan.

1.20 “Parties” means Tonya Kelly, Brian Martens and popchips.

1.21 “Plaintiffs’ Counsel” means the law firm of Shank & Hamilton, P.C.

1.22 “Popchips Products” means any and all popchips snack products, including, 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.”

1.23 “Preliminary Approval” means that the Court has entered an order substantially in the form of Exhibit E, preliminarily approving the terms and conditions of the Settlement as set forth in this Settlement Agreement, including the manner of providing the Class Notice to the Settlement Class Members.

1.24 “Preliminary Approval Date” means the date on which the Court enters an order granting Preliminary Approval.

1.25 “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.

1.26 “Representative Plaintiffs” means Plaintiffs Tonya Kelly and Brian Martens.

1.27 “Settlement Administrator” means Rust Consulting, Inc., and its successors, assigns, agents and subcontractors, or any other entity approved by the Court to handle (i) publication of Class Notice and the notification duties imposed by Mo. R. Civ. P. 52.08(c)(2), in accordance with the Media Plan; (ii) establishment of the Settlement Website; (iii) establishment, handling, and administration of the Escrow Account; (iv) processing, review, payment, and handling of all Claims; and (v) all other activities relating to the administration of the Settlement, as set forth in this Settlement Agreement.

1.28 “Settlement Agreement” or “Agreement” shall mean this Settlement Agreement, including all exhibits referenced herein.

1.29 “Settlement Class Members” or “Settlement Class” means:

All persons residing in the United States of America who, at any time between January 1, 2007 and the Preliminary Approval Date, purchased any popchips Product in the United States. 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.

1.30 “Settlement Class Period” or “Class Period” means the period of time from and including January 1, 2007, through and including the Preliminary Approval Date.

1.31 “Settlement Fund” means the total value of the two million four hundred thousand dollars (\$2,400,000.00) of monetary benefits that popchips has agreed to commit for the payment of Cash Claims and Voucher Claims to Settlement Class Members as part of the Settlement, as described in Section II of this Settlement Agreement, and is comprised of two distinct parts: the “Cash Settlement Fund” and the “Voucher Settlement Fund,” which are defined below:

a. “Cash Settlement Fund” means the two million one hundred thousand dollars (\$2,100,000.00) of cash that popchips has agreed to commit for the benefit of Settlement Class Members pursuant to the terms of this Settlement Agreement.

b. “Voucher Settlement Fund” means the three hundred thousand dollars (\$300,000.00) of popchips Products voucher value that popchips has agreed to commit for the benefit of Settlement Class Members pursuant to the terms of this Settlement Agreement.

1.32 “Settlement Website” means a website established, operated, and maintained by the Settlement Administrator solely for purposes of making available to the Settlement Class Members the documents, information, and online claims submission process referenced in Section IV below.

1.33 “Short Form Notice” means the Court-approved form of notice for publication to Settlement Class Members, pursuant to the Media Plan, in substantially the same form as Exhibit C.

1.34 “Total Settlement Value” means the amount of at least three million one hundred fifty thousand dollars (\$3,150,000.00), which is the minimum total overall monetary value that

the Parties ascribe to all relief, benefits, fees, costs, expenses, and any and all other expenditures to be paid by popchips for the benefit of the Settlement Class Members, as set forth in this Settlement Agreement.

1.35 “Voucher Claim” has the meaning set forth at paragraph 2.5 below.

1.36 “Voucher Settlement Fund” has the meaning set forth at paragraph 1.31(b), above.

## II. SETTLEMENT CONSIDERATION

2.1 Monetary Benefits to Settlement Class Members from the Settlement Fund. The Settlement Fund will be used to provide monetary benefits to or on behalf of the Settlement Class as follows:

a. *Cash Benefits.* Popchips agrees to pay up to two million one hundred thousand dollars (\$2,100,000.00) in cash from the Cash Settlement Fund for use in paying the following: (i) valid and approved Cash Claims submitted by Settlement Class Members, as described in paragraph 2.5 below; (ii) the Notice and Other Administrative Costs, as defined in paragraph 1.18 above and described in paragraph 4.5 below; (iii) the Fee and Expense Award, as described in paragraph 3.1 below; (iv) the Incentive Awards, as described in paragraph 3.2 below, and (v) any *cy pres* distribution, as described in paragraph 2.10 below. Any balance of the Cash Settlement Fund that remains after complete and final payment of each and all of these items listed in this paragraph 2.1(a)(i)-(v) shall revert to popchips.

b. *Voucher Benefits.* Popchips agrees to provide up to three hundred thousand dollars (\$300,000.00) of popchips Products voucher value from the Voucher Settlement Fund for use in fulfilling valid and approved Voucher Claims submitted by Settlement Class Members, as described in paragraph 2.5 below. Any balance of the voucher value of the Voucher Settlement Fund that remains after complete and final fulfillment of all of the valid and approved Voucher Claims shall revert to popchips.

2.2 Total Financial Commitment. Popchips’ total overall financial commitment under this Settlement Agreement, including but not limited to paragraphs 2.1(a) and 2.1(b) above, shall not exceed two million four hundred thousand dollars (\$2,400,000.00) (consisting of

\$2,100,000.00 in cash and \$300,000.00 in popchips Products voucher value), plus the additional substantial total monetary amount that popchips will spend to modify its business practices as part of the Settlement, as set forth in paragraph 2.11 below.

2.3 Establishment of the Escrow Account. Within five (5) business days after the Preliminary Approval Date, the Escrow Account will be established by the Settlement Administrator, into which popchips will make the periodic cash deposits of funds from the Cash Settlement Fund that are required by this Settlement Agreement, as set forth in paragraph 2.4 below, and from which the Settlement Administrator will make payments required by this Settlement Agreement, as set forth in paragraphs 2.5, 2.10, 3.1, and 3.2 below. Popchips shall make all such deposits into the Escrow Account by wire transfer, and Plaintiffs' Counsel or the Settlement Administrator shall provide all necessary Escrow Account information and wire transfer instructions to popchips within two (2) business days prior to each date on which popchips is scheduled to make deposits into the Escrow Account in accordance with this Settlement Agreement. The Escrow Account will be held in trust, and maintained and administered at all times by the Settlement Administrator, pursuant to an escrow account agreement entered between the Parties and the Settlement Administrator, but the Escrow Account shall at all times remain under the ultimate jurisdiction and control of the Court.

2.4 Schedule of Deposits into the Escrow Account. Popchips will make periodic cash deposits into the Escrow Account, with the cumulative total of such periodic cash deposits not to exceed the total two million one hundred thousand dollars (\$2,100,000.00) of cash that popchips has agreed to commit for the benefit of the Settlement Class Members pursuant to this Settlement Agreement, in accordance with the following schedule:

a. *Deposit(s) for Notice and Other Administrative Costs.* Within ten (10) calendar days after the Preliminary Approval Date, popchips will deposit into the Escrow Account the sum of seventy-five thousand dollars (\$75,000.00) for use in paying Notice and Other Administrative Costs. In the event this initial sum is exhausted, popchips will also deposit into the Escrow Account such subsequent additional amounts as are necessary for the payment of

additional Notice and Other Administrative Costs, as invoiced by the Settlement Administrator. Popchips will make such additional subsequent deposits within thirty (30) calendar days after such amounts are invoiced to popchips, up to a total of fifty-six thousand and eighty dollars (\$56,080.00), such that popchips shall be obligated to pay for all Notice and Other Administrative Costs up to the Settlement Administrator's estimate of one hundred thirty-one thousand and eighty dollars (\$131,080.00). The Parties agree that any obligation to pay Notice and Other Administrative Costs exceeding \$131,080.00 shall be shared equally by Plaintiffs' Counsel and popchips. The total obligation of Plaintiffs' Counsel to share equally in the payment of Notice and Administrative Costs exceeding \$131,080.00, however, shall not exceed twenty-five thousand dollars (\$25,000.00). In the event the Settlement Agreement is terminated, any balance remaining in the Escrow Account will be returned to the party (or parties) who deposited the funds.

b. *Deposits for Fee and Expense Award.* By no later than ten (10) calendar days after the Final Settlement Approval Date, or June 2, 2014, whichever occurs later, popchips will deposit into the Escrow Account amounts equal to one-half of the Fee and Expense Award, as ordered by the Court pursuant to paragraph 3.1 below, and subject to the limits set forth in that paragraph. Popchips will deposit the remainder of the Fee and Expense Award into the Escrow Account within six months of the deposit for the first half of the Fee and Expense Award, or by January 2, 2015, whichever occurs later.

c. *Deposit for Incentive Awards.* By no later than ten (10) calendar days after the Claim Determination Date, popchips will deposit into the Escrow Account amounts equal to the Incentive Awards, as ordered by the Court pursuant to paragraph 3.2 below.

d. *Deposit for Payment of Valid and Approved Cash Claims.* By no later than ten (10) calendar days after the Claim Determination Date, popchips will deposit into the Escrow Account an amount equal to the lesser of: (i) the total value of all valid and approved Cash Claims that have been submitted by Settlement Class Members; or (ii) two million one hundred thousand dollars (\$2,100,000.00) less the total Notice and Other Administrative Costs

paid or invoiced as of the Claim Determination Date, the Fee and Expense Award, and the Incentive Awards, with such deposited funds to be distributed to Claimants who submitted valid and approved Cash Claims, pursuant to paragraphs 2.5-2.8 below. If, pursuant to the foregoing, the amount of such cash to be deposited by popchips into the Escrow Account for use in paying valid and approved Cash Claims is insufficient to pay all such Cash Claims, the individual payment amounts for such Cash Claims shall be adjusted on a pro-rata basis as described in paragraph 2.8(a) below.

e. *Deposit for Payment of Cy Pres Distribution.* If, as of the Claim Payment Deadline, the total of the amounts deposited by popchips into the Escrow Account pursuant to paragraphs 2.4(a)-2.4(d) above is less than two million one hundred thousand dollars (\$2,100,000.00), then popchips will, within thirty (30) days after the Claim Payment Deadline, make an additional deposit into the Escrow Account to provide for *cy pres* distribution as provided in paragraph 2.10 below. The amount of this additional deposit shall be the *lesser* of: (a) twenty-five thousand dollars (\$25,000.00); or (b) the difference between two million one hundred thousand dollars (\$2,100,000.00) and the total of the amounts deposited by popchips into the Escrow Account pursuant to paragraphs 2.4(a)-2.4(d) above.

2.5 Claims Process. Each Settlement Class Member shall be eligible to file a Claim that will, if valid, entitle him or her to either: (i) a cash payment equal to \$1.00 for each bag of popchips Products purchased during the Settlement Class Period, not to exceed a maximum of \$10.00 per household; or (ii) two (2) \$1.00 vouchers for each bag of popchips Products purchased during the Settlement Class Period, good towards the purchase of any popchips Products, not to exceed a maximum of 20 vouchers per household, at the Settlement Class Member's election. If the Settlement Class Member elects the cash payment option, the claim shall be considered a "Cash Claim." Cash Claims will be paid from the Escrow Account on or before the Claim Payment Deadline, but only after payment of all Notice and Other Administrative Costs, the Fee and Expense Award, and the Incentive Awards. The sum of \$1.00 shall be deducted from the respective balances of the Escrow Account and the Cash Settlement

Fund for each \$1.00 of cash benefits that are paid to a Claimant in satisfying a valid and approved Cash Claim. Checks shall be valid for one hundred twenty (120) calendar days from their issue date. If the Settlement Class Member elects the voucher payment option, the claim shall be considered a "Voucher Claim." Voucher Claims will be fulfilled on or before the Claim Payment Deadline from the Voucher Settlement Fund. The sum of \$1.00 shall be deducted from the balance of the Voucher Settlement Fund for each popchips Products voucher that is issued to a Claimant in fulfilling a valid and approved Voucher Claim. Vouchers shall be digital and shall be valid for one hundred twenty (120) calendar days from their issue date.

2.6 Proof of Claim. A maximum of one Claim, submitted on a single Claim Form, may be submitted by each Settlement Class Member and his or her household. A Settlement Class Member making a Claim must provide the following information in the Claim Form, under penalty of perjury: (1) the specific popchips Product(s) purchased and the quantity purchased; (2) the name of the store or stores, including city and state, where the purchase or purchases occurred; and (3) a declaration that the popchips Product(s) were purchased during the Settlement Class Period.

2.7 Review of Claims. The Settlement Administrator shall be responsible for reviewing all Claims to determine their validity. The Settlement Administrator shall reject any Claim that does not comply in any material respect with the instructions on the Claim Form or the terms of this Settlement Agreement, or that is submitted after the Claim Submission Deadline.

2.8 Pro-Rata Reduction of Benefits. If the respective total dollar value of valid and approved Cash Claims and valid and approved Voucher Claims, determined in accordance with paragraphs 2.5 and 2.6 above, exceeds the respective total amounts of the Cash Settlement Fund and the Voucher Settlement Fund, the total monetary value of the payments to be made to the Claimants for Cash Claims and Voucher Claims from the Cash Settlement Fund and the Voucher Settlement Fund, respectively, as the case may be, will be reduced proportionately as follows:

a. *Reduction of Cash Claims Benefits.* If, as of the Claim Determination Date, the total monetary value of all valid and approved Cash Claims exceeds two million one hundred thousand dollars (\$2,100,000.00) less the total Notice and Other Administrative Costs, the Fee and Expense Award, and the Incentive Awards, then the individual cash payments to be made with respect to each such Cash Claim will be reduced on a pro-rata basis, such that the Cash Settlement Fund will satisfy all such Cash Claims.

b. *Reduction of Voucher Claims Benefits.* If, as of the Claim Determination Date, the total monetary value of all valid and approved Voucher Claims exceeds three hundred thousand dollars (\$300,000.00) of popchips Products voucher value, then the \$1.00 face value of the individual popchips Products voucher that is to be used in fulfilling each such Voucher Claim will be reduced on a pro-rata basis, such that the total available voucher value of the Voucher Settlement Fund will satisfy all such Voucher Claims.

2.9 Cash Benefit—Uncleared Checks. Those Claimants who submitted Cash Claims whose cash payment checks have not cleared the Escrow Account within one hundred eighty (180) calendar days after issuance shall be ineligible to receive a cash payment pursuant to this Settlement Agreement and popchips shall have no further obligation to make any payment pursuant to this Settlement Agreement or otherwise to such Claimants. Except as set forth in paragraph 2.10 below, all unpaid funds from such uncleared checks will be refunded to popchips.

2.10 Cy Pres Distribution. Following payment of all valid and approved Cash Claims, any remaining balance of the Cash Settlement Fund, up to a maximum of twenty-five thousand dollars (\$25,000.00), will be distributed according to the *cy pres* doctrine. To the extent approved and ordered by the Court, the recipient of the *cy pres* distribution will be School Food Focus, which 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. The *cy pres* distribution will be paid by the Settlement Administrator from the Escrow Account to the organization no later than ninety (90) days after



the Claim Payment Deadline, following popchips' deposit into the Escrow Account of the *cypres* distribution funds, taken from the Cash Settlement Fund.

2.11 Modified Business Practices. In addition to the monetary benefits that popchips has agreed to make available to the Settlement Class Members through the Settlement Fund, as described in this Settlement Agreement, the Parties agree that popchips will also implement modifications to its marketing and labeling of popchips Products throughout the United States of America, subject to the terms of the Settlement Agreement, as set forth below.

a. *Scope of Business Practice Modifications*. The modifications described in paragraph 2.11(b) below will apply to all marketing materials for each of the popchips Products, including all labeling and packaging for each of the popchips Products, all descriptive and promotional materials and marketing collateral for each of the popchips Products, and all websites and social media, including but not limited to Facebook and Twitter, maintained by popchips regarding any of the popchips Products; provided, however, that popchips shall have no obligation to modify or remove historical documents on its social media and/or website (including previous posts, comments, press releases, or third party media), nor shall it be obligated to remove past or future content on its social media or websites that is posted by a third party beyond popchips' control.

b. *Required Marketing and Labeling Modifications*. Except as otherwise provided in paragraph 2.11(f), popchips will: (1) eliminate all references to the phrase "all natural" and replace "all natural" claims with a claim or claims such as "naturally delicious," "delicious naturally," "delicious.naturally," "naturally flavored," "natural flavors," "flavored naturally" or a substantially comparable claim; (2) eliminate all references to "healthy" or "healthier"; (3) eliminate all references to "low fat"; (4) replace the "no preservatives" claim with a claim that there are "no added preservatives" in popchips Products; (5) replace the "no artificial colors" claim with a claim such as "no fake flavors," "no synthetic flavors," or a substantially comparable claim; (6) replace the "no MSG" claims with a claim that popchips Products have "no added MSG"; and (7) modify the non-GMO claims and replace them with

claims that refer to a specific ingredient(s) in a popchips Product as being non-GMO (such as “made with non-GMO corn and canola oil”) or describe a specific popchips Product as being non-GMO (such as “katy’s kettle corn is non-GMO”), provided popchips has verified that such ingredients or Products qualify as non-GMO, including, without limitation, where such ingredients or Products are organic.

c. *Substantial Costs to popchips of Business Practice Modifications.* The Parties agree that the changes described in paragraphs 2.11(a) and (b) will require popchips to spend substantial amounts of additional money on behalf of the Settlement Class Members to revise and replace its product packaging, marketing point-of-sale materials, and other marketing collateral.

d. *Schedule for Implementing Business Practice Modifications.* Popchips shall complete the modification of all promotional materials for each of the popchips Products, including but not limited to point-of-sale materials, websites, and social media by no later than thirty (30) days after the Final Settlement Approval Date. Not later than eighteen (18) months after the Final Settlement Approval Date, popchips shall implement its modified labeling and packaging. This implementation date for modified labeling and packaging applies to the date popchips or one of its co-packers manufactures the popchips Products in the modified packaging, not the date the modified labeling and packaging are introduced into commerce or will appear in stores.

e. *Substantial Value of Business Practice Modifications to Settlement Class.* The Parties agree that the value to the Settlement Class of the business practice modifications described in paragraphs 2.11 (a), (b), and (c) above exceeds the substantial costs to be incurred by popchips in making these changes, and further agree that the total overall value of these modifications is estimated to be at least seven hundred fifty thousand dollars (\$750,000.00).

f. *Reservation of Rights.* Notwithstanding the foregoing provisions of this paragraph 2.11, popchips reserves the right to make any claim regarding popchips Products that complies with the relevant requirements for nutrient content claims established by the U.S. Food

and Drug Administration (“FDA”) as set forth in 21 C.F.R. Part 101, Subpart D, such as making a “low fat” claim consistent with the requirements in 21 C.F.R. § 101.62(b)(2) or a “healthy” claim consistent with 21 C.F.R. § 101.65(d)(2). Moreover, notwithstanding the foregoing provisions of this paragraph 2.11, if there are changes after the Final Settlement Approval Date to any applicable federal or state statutes or regulations, including but not limited to changes in FDA and/or other applicable government agencies’ regulations, guidances or pronouncements, which would allow popchips to label or market popchips Products with claims of “all natural,” “healthy” or “healthier,” “low fat,” “no preservatives,” “no artificial colors,” or “no MSG,” to make non-GMO claims prohibited by paragraph 2.11(b), or to bear any other claim prohibited by this Settlement Agreement, popchips reserves the right to modify its business practices, product packaging, and website, advertising, and labeling claims accordingly. Nothing in this paragraph 2.11(f) shall affect the validity or enforceability of the Settlement or this Settlement Agreement or reduce any of the benefits available to Settlement Class Members from the Settlement Fund pursuant to the Settlement Agreement.

### **III. FEE AND EXPENSE AWARD AND INCENTIVE AWARDS**

3.1 Fee and Expense Award. Plaintiffs’ Counsel will petition the Court for an award of attorneys’ fees, costs, and expenses to be paid from the Cash Settlement Fund. Plaintiffs’ Counsel agree that they will not seek more than a cumulative total of nine hundred ninety-one thousand dollars (\$991,000.00) in fees, costs, and expenses (not including Notice and Other Administrative Costs), and popchips agrees that it will not object to an application submitted by Plaintiffs’ Counsel to the Court seeking an award of attorneys’ fees, costs, and expenses that does not exceed this amount. To the extent approved and ordered by the Court, the Fee and Expense Award will be paid to Plaintiffs’ Counsel by the Settlement Administrator by wire transfer from the Escrow Account in two equal installments following popchips’ deposit of the Fee and Expense Award funds from the Cash Settlement Fund into the Escrow Account, as described in paragraph 2.4(b) above. The dollar amount set forth in this paragraph for the Fee

and Expense Award is the maximum amounts popchips shall be obligated to pay to Plaintiffs' Counsel for attorneys' fees, costs, and expenses of any kind (including, but not limited to, travel, filing fees, court reporter and videographer expenses, expert fees and costs, and document review and production costs, but not including the Notice and Other Administrative Costs). Plaintiffs' Counsel shall be responsible for allocating amongst and between Plaintiffs' Counsel the Fee and Expense Award paid to them from the Cash Settlement Fund, and popchips shall have no responsibility, role, or liability in connection with such allocation.

3.2 Incentive Awards. Plaintiffs' Counsel will petition the Court for an award of incentive payments for the Representative Plaintiffs to be paid out of the Cash Settlement Fund. Popchips agrees that it will not object to an application submitted by Plaintiffs' Counsel to the Court seeking an award of such incentive payments not to exceed three thousand dollars (\$3,000.00) for Tonya Kelly and not to exceed two thousand five hundred dollars (\$2,500.00) for Brian Martens. To the extent approved and ordered by the Court, the Incentive Awards will be paid to Representative Plaintiffs from the Escrow Account, following popchips' deposit of funds into the Escrow Account, as described in paragraph 2.4(c) above. The dollar amount set forth in this paragraph is the maximum amount popchips shall be obligated to pay for Incentive Awards.

#### **IV. NOTICE TO CLASS AND ADMINISTRATION OF SETTLEMENT**

4.1 Class Notice. The Class Notice shall conform to all applicable requirements of the Missouri Rules of Civil Procedure and any other applicable law, and shall otherwise be in the manner and form agreed upon by the Parties and approved by the Court.

4.2 General Notice Terms. The Class Notice will:

- a. inform Settlement Class Members that, if they do not exclude themselves from the Settlement Class, they may be eligible to receive the relief to be provided under the proposed Settlement set forth in this Settlement Agreement;
- b. contain a short, plain statement of the background of the Action, the Settlement Class certification and the Settlement;

- c. describe the Settlement outlined in this Settlement Agreement;
- d. explain the impact of the Settlement on any existing litigation, arbitration or other proceeding; and
- e. state that any relief to Settlement Class Members is contingent on the Court's final approval of the Settlement.

4.3 Notice of Exclusion and Objection Rights. The Class Notice will inform Settlement Class Members of their rights to exclude themselves from the Settlement Class or to object to the Settlement, as described in paragraph 5.3 below.

4.4 Manner of Providing Class Notice. The Class Notice will be provided as set forth in the Media Plan, attached hereto as Exhibit D.

4.5 Responsibilities of Settlement Administrator. Plaintiffs' Counsel have retained the Settlement Administrator to help implement the terms of this Settlement Agreement. The Settlement Administrator shall be responsible for handling publication of the Class Notice and all notification duties imposed by Mo. R. Civ. P. 52.08(c)(2), establishment of the Settlement Website, the processing, review, payment, and all other activities relating to the administration, of all Cash Claims and Voucher Claims made by Claimants and all other payments made from the Escrow Account pursuant to the Settlement Agreement, as well as all other administrative tasks, including, without limitation: (a) arranging, as set forth in the Media Plan, for distribution of the Class Notice (in the form set forth in Exhibit B) and the Claim Forms (in the form set forth in Exhibit A) to Settlement Class Members using the most cost-effective means available; (b) making any mailings to Settlement Class Members required under the terms of this Settlement Agreement; (c) answering written inquiries from Settlement Class Members and/or forwarding such inquiries to Plaintiffs' Counsel or their designee; (d) receiving and maintaining on behalf of the Court and the Parties any Settlement Class Member correspondence regarding requests for exclusion from the Settlement; (e) establishing the Settlement Website that posts the Class Notice and other notices, Claim Forms, and other related documents; (f) receiving, reviewing, approving, and otherwise processing Claims and distributing cash payments and voucher payments to Claimants; (g) issuing payments

pursuant to Court approval for the Fee and Expense Award, the Incentive Awards, and the *cy pres* distribution; (h) holding in trust, maintaining, and accounting for the deposits into and payments from the Escrow Account; (i) communicating with and reporting to Plaintiffs' Counsel, Defendant and/or Defendant's Counsel as described in paragraph 4.6(b) below; and (j) otherwise assisting with implementation and administration of the terms of the Settlement Agreement. The Settlement Administrator will be paid for all Notice and Other Administrative Costs from the Escrow Account.

4.6 Performance Standards of Settlement Administrator. The contract with the Settlement Administrator shall obligate the Settlement Administrator to abide by the following performance standards:

a. The Settlement Administrator shall accurately and objectively describe, and shall train and instruct its employees and agents to accurately and objectively describe, the provisions of this Settlement Agreement in communications with Settlement Class Members;

b. The Settlement Administrator shall provide prompt, accurate, and objective responses to inquiries from Plaintiffs' Counsel or their designee, Defendant, and/or Defendant's Counsel, and shall periodically report to Plaintiffs' Counsel, Defendant, and/or Defendant's Counsel on claims, objectors, and other matters concerning the administration of the Settlement.

c. Popchips retains the right to audit amounts paid from the Cash Settlement Fund and Voucher Settlement Fund.

## **V. CLASS SETTLEMENT PROCEDURES**

5.1 Settlement Approval. As soon as practical after the signing of this Settlement Agreement, Representative Plaintiffs shall move the Court for a Conditional Class Certification and Preliminary Approval Order, substantially in the form as that attached hereto as Exhibit E, conditionally certifying the Settlement Class, preliminarily approving the terms and conditions of this Settlement Agreement as fair, reasonable, and adequate and in the best interests of the Settlement Class Members, approving 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. Representative Plaintiffs shall provide a draft of all papers supporting said Conditional Class Certification and Preliminary Approval Motion to Defendant's Counsel for review at least ten (10) calendar days before the Motion is filed or due to be filed.

5.2 Final Order and Judgment. At or before the final approval hearing, Representative Plaintiffs shall move the Court for entry of a Final Order and Judgment, substantially in the form as that attached hereto and made a part hereof as Exhibit F, granting final approval of this Settlement and holding this Settlement Agreement to be fair, reasonable, and adequate and in the best interests of the Settlement Class Members, and binding (as of the Final Settlement Approval Date) 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 Settlement Agreement, ordering the releases as set forth in Section VI below to be effective on the Final Settlement Approval Date, and entering final judgment in the Action. The parties will request that the Court set a date certain that is sixty-five (65) calendar days after the Notice Date, or the next available date on the Court's calendar thereafter, for a hearing on whether the Settlement should be granted final approval, whether the Final Order and Judgment should be entered, and whether attorneys' fees, costs, and expenses, and incentive awards should be granted.

5.3 Exclusions and Objections. The Class Notice shall advise all Settlement Class Members of their right: (a) to be excluded from the Settlement; and (b) to object to the Settlement. If any Settlement Class Member wishes to be excluded from the Settlement, he or she must mail a valid opt-out notice, as described in the Class Notice, within forty-five (45) calendar days after the Notice Date. Any Settlement Class Member who timely elects to opt out of the Settlement shall not be permitted to object to the Settlement. Persons falling within the definition of the Settlement Class who validly and timely request exclusion from the Settlement effected by this Settlement Agreement, pursuant to the procedures set forth in this paragraph 5.3, shall not be Settlement Class Members, 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. At least seven (7) calendar days prior to the final approval hearing, the Settlement Administrator shall prepare a report identifying the persons who have excluded themselves in a valid and timely manner from the Settlement Class (the “Opt-Outs”), and provide such report to Plaintiffs’ Counsel, Defendant’s Counsel, and the Court.

If any Settlement Class Member wishes to object to the Settlement and/or to be heard, he or she will have forty-five (45) calendar days from the Notice Date to file with the Court written notice of objection and/or request to be heard. Such written notice shall include: (i) the name, address, and telephone number of the Settlement Class Member; (ii) information sufficient to identify the case and demonstrate membership in the Settlement Class; (iii) the specific grounds for each objection asserted, with any legal support, papers, briefs, or evidence the person wishes to bring to the Court’s attention; and (iv) a statement indicating whether the Settlement Class Member intends to appear at the hearing to consider final approval of the Settlement, either in person or through counsel. The written notice of objection must be personally signed by the Settlement Class Member and must be mailed to Plaintiffs’ Counsel and Defendant’s Counsel at the same time it is filed with the Court.

Any Settlement Class Member wishing to appear at the hearing to consider final approval of the Settlement, either in person or through counsel, must file a notice of intention to appear with the Court as described in the Class Notice, and serve the notice upon Plaintiffs’ Counsel and Defendant’s Counsel at the same time it is filed with the Court.

5.4 Stay of the Action. The Parties shall request that the Court, in connection with Preliminary Approval, issue an immediate stay of the Action except to the extent necessary to effectuate this Settlement Agreement, unless and until this Agreement is terminated pursuant to its terms and conditions.

5.5 Effect if Settlement Not Approved. This Settlement Agreement was entered into only for purposes of settlement, subject to and without waiver of the Parties’ respective rights. In the event that the Court fails to enter the order granting Preliminary Approval or fails to grant



Final Approval, or in the event the Final Settlement Approval Date does not occur, Plaintiffs' Counsel and Defendant's Counsel shall endeavor, consistent with the Settlement Agreement, to cure any defect identified by the Court; provided, however, that popchips shall not be obligated to accept such cure if it increases the cost or burden of the Settlement Agreement to popchips or any of the other Released Persons or reduces or otherwise affects the scope of the releases provided by this Settlement Agreement. In the event that the Settlement Agreement is terminated for any reason, Final Approval does not occur for any reason, or the Final Settlement Approval Date does not occur, then, except as set forth in paragraph 2.4(a), no term or condition of the Settlement Agreement, or any draft thereof, or any 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 Action, or in any other proceeding, and the Parties' shall be restored to their respective positions immediately preceding execution of this Settlement Agreement. The Parties agree that all drafts, discussions, negotiations, documentation or other information prepared in relation to the Settlement Agreement and the Parties' settlement discussions shall be treated as strictly confidential and may not be disclosed to any person other than the Parties' counsel, and only for purposes of the Action. Popchips' rights with respect to class certification expressly are reserved and preserved.

5.6 Not Effective Until Signed. The Settlement Agreement shall have no effect, unless and until this Settlement Agreement is fully executed by all Parties.

## **VI. RELEASES**

6.1 Release by Settlement Class Members. Effective as of the Final Settlement Approval Date, each Settlement Class Member (except any such person who has filed a proper and timely request for exclusion) shall release and forever discharge, 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 whatsoever, known or unknown, whether legal, equitable or otherwise, arising from or relating to the labeling, marketing, or advertising of popchips (collectively, the "Released

Claims”). With respect to the Released Claims, each Settlement Class Member shall be deemed to have waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of California Civil Code section 1542 (and equivalent, comparable or analogous provisions of the laws of the United States of America or any state or territory thereof, or of the common law or civil law). Section 1542 provides that:

**A GENERAL RELEASE DOES NOT EXTEND TO THE CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

Each term of this paragraph 6.1 shall inure to the benefit of each and all of the Released Persons, and each and all of their respective successors and personal representatives, which persons and entities are intended to be beneficiaries of this paragraph 6.1.

6.2 Effectuation of Settlement. None of the above releases includes releases of claims or otherwise affects rights to enforce the terms of the Settlement Agreement.

6.3 No Admission of Liability. This Settlement Agreement reflects, among other things, the compromise and settlement of disputed claims among the Parties, and neither this Settlement Agreement nor the releases given herein, nor any consideration therefor, nor any actions taken to carry out this Settlement 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, defense, or of any point of fact or law on the part of any Party. Popchips denies the material allegations of each of the petitions filed in this Action. Neither this Settlement Agreement, nor the fact of settlement, nor the settlement proceedings, nor the settlement negotiations, nor any related document, shall be used as an admission of any fault or omission by any or all of the Released Persons, or be offered or received in evidence as an admission, concession, presumption, or inference of any wrongdoing by any or all of the Released Persons in any proceeding, other than

such proceedings as may be necessary to consummate, interpret, or enforce this Settlement Agreement.

## **VII. CERTIFICATION OF SETTLEMENT CLASS**

7.1 The Parties agree, for settlement purposes only, that this Action shall be certified and proceed as a class action under Missouri Rule of Civil Procedure 52.08(b)(3), with a class consisting of all Settlement Class Members, and with the named Plaintiffs as Representative Plaintiffs and Plaintiffs' Counsel as counsel for the Settlement Class Members.

7.2 Any certification of a conditional, preliminary, or final settlement class pursuant to the terms of this Settlement shall not constitute, and shall not be construed as, an admission on the part of popchips that this Action, or any other proposed or certified class action, is appropriate for trial class treatment pursuant to the Missouri Rules of Civil Procedure, or any similar state or federal class action statute or rule. This Settlement Agreement shall be without prejudice to the rights of popchips to: (a) move to dismiss or stay this Action on any applicable basis if the Settlement Agreement is terminated for any reason, Final Approval does not occur for any reason, or the Final Settlement Approval Date does not occur; (b) oppose final certification in this Action should this Settlement Agreement not be approved or implemented for any reason; or (c) oppose certification in any other proposed or certified class action. Neither the fact of this Settlement nor this Settlement Agreement shall be used in connection with efforts in any proceeding to seek certification of any claims asserted against popchips.

## **VIII. MISCELLANEOUS PROVISIONS**

8.1 Reasonable Efforts. Subject to the other terms and conditions of this Settlement Agreement, the Parties and their respective counsel shall use reasonable efforts to cause the Court to give Preliminary Approval to this Settlement Agreement as promptly as practical, to take all steps contemplated by this Settlement Agreement that are necessary to effectuate the Settlement on the stated terms and conditions, and to obtain Final Approval of this Settlement Agreement and achieve a Final Settlement Approval Date.

8.2 Change of Time Periods. The time periods and/or dates described in this Settlement 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 Plaintiffs' Counsel and Defendant's Counsel, without notice to Settlement Class Members. 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 Settlement Agreement.

8.3 Time for Compliance. If the date for performance of any act required by or under this Settlement 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 Settlement Agreement.

8.4 Governing Law. This Settlement Agreement is intended to and shall be governed by the laws of the State of Missouri without giving effect to principles of conflicts of laws.

8.5 Entire Agreement. The terms and conditions set forth in this Settlement Agreement constitute the complete and exclusive statement of the agreement between the Parties relating to the subject matter of this Settlement 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 Settlement Agreement constitutes the complete and exclusive statement of its terms as between the Parties, and that no extrinsic evidence whatsoever may be introduced in any agency or judicial proceeding, if any, involving this Settlement Agreement.

8.6 Advice of Counsel. The determination of the terms and the drafting of this Settlement Agreement have been by mutual agreement after negotiation, with consideration by and participation of all Parties and their counsel. Any presumption found in Missouri law (and equivalent, comparable or analogous provisions of the laws of the United States of America or any state or territory thereof, or of the common law or civil law) that uncertainties in a contract are interpreted against the party causing an uncertainty to exist hereby is waived by all Parties.

8.7 Binding Agreement. This Settlement Agreement shall be binding upon and inure to the benefit of the respective heirs, successors, and assigns of the Parties, the Settlement Class Members, and the other Released Persons.

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

8.9 Execution in Counterparts. This Settlement Agreement shall become effective upon its execution by all of the undersigned. The Parties may execute this Settlement Agreement in counterparts, and execution of counterparts shall have the same force and effect as if all Parties had signed the same instrument. The Parties further agree that signatures provided by .pdf or other electronic transmission shall have the same force and effect as original signatures.

8.10 Press Releases and Public Statements. Except for the notice provisions set forth in the Order of Preliminary Approval or as otherwise ordered by the Court, the Parties agree that they will not issue any press release or public statement (including on the Internet), or otherwise initiate any media coverage or campaign online concerning this Action, without first obtaining the written authorization of the opposing Party. The Parties agree to provide at least five (5) business days' notice of any intended press release, public filing, or statement regarding the Action. However, nothing in this paragraph shall prevent the Parties from responding to inquiries initiated by media, but in doing so, the Parties shall restrict their statements to a factual description of the terms of Settlement and shall not make assertions or statements regarding the Settlement or the Parties insofar as the substance of such statements is not, as of the execution of this Settlement Agreement, already set forth in the pleadings and briefing on file in the Action. Approval for press releases, notices, and any other public statements shall not be unreasonably withheld.

8.11 Excessive Opt Outs. Popchips' willingness to enter into the Settlement Agreement is conditioned upon the Settlement Agreement providing adequate protections that

the Settlement will resolve all or substantially all of the Settlement Class Member claims against popchips. Popchips retains the right to withdraw from the Settlement Agreement if the number of Settlement Class Members who properly and timely exercise their right under this Agreement to exclude themselves from the Class or opt out exceeds one hundred (100). In the event that popchips wishes to exercise its right to withdraw from the Settlement Agreement pursuant to this provision, popchips must notify Plaintiffs' Counsel of its intention to withdraw from the Settlement Agreement and terminate this Agreement in writing, within seven (7) calendar days after receipt of the Settlement Administrator's report regarding "opt-out" Settlement Class Members.

8.12 Modification or Amendment. The Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all parties or their respective successors-in-interest.

8.13 Enforcement of Settlement Agreement. The Court shall have and retain exclusive jurisdiction at all times to enforce, interpret, and implement this Settlement Agreement and all aspects of the Settlement, and the terms of any orders and judgments entered pursuant to this Settlement Agreement.

8.14 Notices. All notices to the Parties or counsel required by this Settlement Agreement shall be made in writing and communicated by e-mail and mail to the following addresses:

If to Representative Plaintiffs, Settlement Class Members or Plaintiffs' Counsel:

Christopher S. Shank, Esq.  
Brenda G. Hamilton, Esq.  
Shank & Hamilton, P.C.  
2345 Grand Blvd., Suite 1600  
Kansas City, MO 64108  
Telephone: (816) 471-0909  
Facsimile: (816) 471-3888  
chriss@shankhamilton.com  
brendah@shankhamilton.com

If to popchips or Defendant's Counsel:

James P. Muehlberger, Esq.  
Douglas B. Maddock, Jr., Esq.  
Shook, Hardy & Bacon L.L.P.  
2555 Grand Blvd.  
Kansas City, MO 64108-2613  
Telephone: (816) 474-6550  
Facsimile: (816) 421-5547  
jmuehlberger@shb.com  
dmaddock@shb.com


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

**APPROVED AND AGREED:**

Representative Plaintiffs

DATED: \_\_\_\_\_, 2013 \_\_\_\_\_  
Tonya Kelly

DATED: \_\_\_\_\_, 2013 \_\_\_\_\_  
Brian Martens

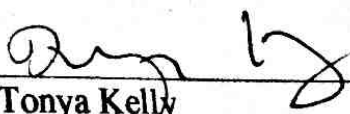
popchips, inc.  
DATED: 11/13, 2013 By:   
Keith Belling, CEO



**APPROVED AND AGREED:**

Representative Plaintiffs

DATED: 11-13-13, 2013

  
\_\_\_\_\_  
Tonya Kelly

DATED: \_\_\_\_\_, 2013

\_\_\_\_\_  
Brian Martens

popchips, inc.

DATED: \_\_\_\_\_, 2013

By: \_\_\_\_\_  
Keith Belling, CEO

**APPROVED AND AGREED:**

Representative Plaintiffs

DATED: \_\_\_\_\_, 2013

\_\_\_\_\_  
Tonya Kelly

DATED: 11-12, 2013

\_\_\_\_\_  
Brian Martens

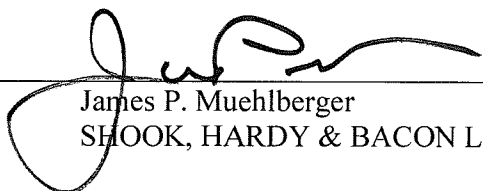
popchips, inc.

DATED: \_\_\_\_\_, 2013

By: \_\_\_\_\_  
Keith Belling, CEO

**APPROVED AS TO FORM:**

DATED: 11/14, 2013

  
James P. Muehlberger  
SHOOK, HARDY & BACON L.L.P.  
Attorneys for Defendant popchips, inc.

DATED: \_\_\_\_\_, 2013

Christopher S. Shank  
SHANK & HAMILTON, P.C.  
  
Attorneys for Plaintiffs Tonya Kelly and Brian  
Martens

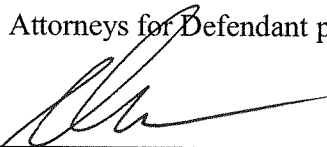
**APPROVED AS TO FORM:**

DATED: \_\_\_\_\_, 2013 \_\_\_\_\_

James P. Muehlberger  
SHOOK, HARDY & BACON L.L.P.

Attorneys for Defendant popchips, inc.

DATED: 11/14, 2013 \_\_\_\_\_

  
Christopher S. Shank  
SHANK & HAMILTON, P.C.

Attorneys for Plaintiffs Tonya Kelly and Brian  
Martens

# **Exhibit A**

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## **Claim Form**

POPCHIPS SETTLEMENT

[ADDRESS]

[ADDRESS]

## IMPORTANT LEGAL MATERIALS

### CLAIM FORM

*In re: Popchips, Inc. Settlement*

To make a claim, you must fully complete the online claim form on the Settlement Website at: [www.PopchipsSettlement.com](http://www.PopchipsSettlement.com) and submit it by [Claim Submission Deadline]. You may also fully complete this form and mail it, postmarked no later than [Claim Submission Deadline], to the Claims Administrator at:

Popchips Settlement

[Address]

[Address]

For each purchase of “popchips” brand snack products made between January 1, 2007 and [Preliminary Approval Date], up to a maximum of 10 “popchips” product purchases per household, Class Members may make a claim for a cash payment or, alternatively, vouchers redeemable for “popchips” products.

The “popchips” products included in this Settlement are: “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.”

*Please read all of the following instructions carefully before filling out your Claim Form.*

1. Please review the Notice of Class Action Settlement (the “Notice”) that is available at [www.PopchipsSettlement.com](http://www.PopchipsSettlement.com) before you complete your Claim Form. If you do not have access to a computer, call 1-###-###-#### to have the Notice sent to you.
2. Type or print legibly in black ink.
3. Complete Part A (“Claimant Information”) by filling in your name, current mailing address, daytime telephone number with area code, and e-mail address (required for voucher option).
4. Complete Part B (“Purchase Information”) by stating the amount of “popchips” products you have purchased from January 1, 2007 to [the Preliminary Approval Date].
5. Complete Part C (“Benefit Selection”) by selecting between the Voucher Option or the Cash Option.
6. Complete Part D (“Purchase Verification”) by identifying which “popchips” products you purchased and the quantity purchased, and the name of the stores, including city and state, where the purchase(s) occurred.
7. Complete Part E.
8. Keep a copy of your completed Claim Form for your records. If your claim is rejected for any reason, the Claims Administrator will notify you of the rejection and the reasons for such rejection.

**Part A: Claimant Information**

Claimant Name: \_\_\_\_\_  
 Street Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_ Zip Code: \_\_\_\_  
 Daytime Phone Number: ( \_\_\_\_ ) \_\_\_\_ - \_\_\_\_  
 E-mail Address (required for Voucher Option): \_\_\_\_\_

**Part B: Purchase Information**

\_\_\_\_\_ Total number of “popchips” products I purchased between January 1, 2007 and [the Preliminary Approval Date].

**Part C: Benefit Selection**

All Claimants must choose between receiving vouchers or cash. You may **not** select both the voucher and cash options.

\_\_\_\_\_ **Cash Option.** Claimant requests the Cash Option. Each Claimant is eligible to receive \$1.00 per bag of “popchips” product purchased, up to a maximum of 10 bags per household.

\_\_\_\_\_ **Voucher Option.** Claimant requests the Voucher Option. Each Claimant is eligible to receive two (2) \$1.00 vouchers per “popchips” product purchased, up to a maximum of 10 bags per household.

**Part D: Purchase Verification**

For purchases between January 1, 2007 and [Preliminary Approval Date], please identify the “popchips” products you purchased and the name of the stores, including city and state, where the purchase(s) occurred.

	“Popchips” Product(s) Purchased	Store	Location (City, State)
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			

Part E: Signature

I certify under penalty of perjury that my purchase(s) occurred before [preliminary approval date] and that the information stated in this Claim Form is, to the best of my knowledge, true and correct.

Signature: \_\_\_\_\_ Dated: \_\_\_ \_\_\_ / \_\_\_ \_\_\_ / \_\_\_ \_\_\_ \_\_\_



# **Exhibit B**

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## **Notice of Class Action Settlement**

**NOTICE OF CLASS ACTION SETTLEMENT**

**If You Bought “Popchips” Brand Snack Products  
Between January 1, 2007 and [the preliminary approval date],  
Your Rights May Be Affected and You May Be Eligible for Settlement Benefits**

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

- Please read this Notice carefully. Your legal rights are affected whether you act or do not act.
- A proposed nationwide Settlement has been reached in a class action lawsuit that claims popchips, inc. violated state laws regarding the marketing and sale of its “popchips” brand snack products (*see* Question 3). Popchips, inc. (“popchips”) denies it did anything wrong. The court in charge of this lawsuit has granted preliminary approval of the proposed Settlement, but still has to decide whether to grant final approval.
- You may be eligible to participate in the proposed Settlement, if it is finally approved, if you reside in the United States and purchased any of the following “popchips” brand snack products in the United States between January 1, 2007 and [Preliminary Approval Date]: “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.”
- Those eligible to participate in the proposed Settlement may be eligible to receive either a cash payment of up to \$10.00 (\$1.00 per bag of “popchips” brand snack products purchased, regardless of size, for a maximum of 10 bags per household) or alternatively receive “popchips” vouchers worth up to \$20.00 in value for use in purchasing “popchips” brand snack products (two \$1.00 vouchers per bag of “popchips” brand snack products purchased, regardless of size, for a maximum of 10 bags per household). The amount of benefits you may receive will be based on the amount of “popchips” brand snack products you purchased between January 1, 2007 and **[the preliminary approval date]** and whether you timely and properly act according to the requirements of this Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
<b>SUBMIT A CLAIM FORM [DATE]</b>	This is the only way to receive a share of the proposed Settlement benefits.
<b>EXCLUDE YOURSELF [DATE]</b>	You will not get a share of the proposed Settlement benefits, but will retain any right you may have to sue popchips, inc. separately about the claims involved in this case.
<b>OBJECT OR COMMENT [DATE]</b>	Write to the court in charge of this case explaining why you do not like the proposed Settlement. You must remain in the class to comment in support of or in opposition to the proposed Settlement. If you file an objection, you may also speak in Court at the hearing that will be held to determine the fairness of the proposed Settlement (“Fairness Hearing”).
<b>DO NOTHING</b>	You will not get a share of the proposed Settlement benefits, will give up your right to object to the proposed Settlement, and will give up your rights to sue popchips, inc. separately about the claims involved in this case.

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

## BASIC INFORMATION

### 1. Why was this Notice issued?

You have a right to know about the proposed Settlement of this class action lawsuit and about your options before the Court decides whether to give final approval to the Settlement. This Notice explains the lawsuit, the proposed Settlement, your legal rights and options, what benefits are available, who is eligible for them, and how to get them.

This lawsuit is being overseen by the Honorable Marco Roldan, a Judge in the Circuit Court of Jackson County, Missouri at Kansas City (the “Court”). The lawsuit is known as *Tonya Kelly, et al. v. Popchips, Inc.*, Case No. 1316-CV11037. The people who sued (Tonya Kelly and Brian Martens) are called the “Plaintiffs” or the “Class Representatives.” The “Defendant,” the party who was sued, is popchips, inc. Sometimes the Plaintiffs and the Defendant are referred to in this Notice collectively as “Parties” or individually as “Party.”

The Court has not decided in favor of any Party, and it has not been established that popchips, inc. did anything wrong. This Notice is not an expression of any opinion by the Court about the merits of any claims or defenses by any of the Parties to this lawsuit or the fairness or adequacy of the proposed Settlement. This Notice is provided so that you may decide what steps, if any, you wish to take in relation to the proposed Settlement.

### 2. What is a class action?

A class action is a lawsuit in which one or more individuals (in this case, Tonya Kelly and Brian Martens) sue on behalf of other people who have similar claims. All of these people are collectively referred to as a “class” or “class members.” In a class action, the court resolves the legal issues, legal claims, and legal defenses for all class members in one lawsuit, except for those people who ask to be excluded from the class.

### 3. What is this lawsuit about?

This lawsuit is about popchips, inc.’s marketing and labeling of “popchips” brand snack products as an “all natural” and “healthier” food product that contains “no preservatives” and “no artificial flavors or colors.” Plaintiffs claim that popchips, inc. falsely and deceptively represented the nature of its “popchips” brand snack products because “popchips” brand snack products are allegedly highly processed, contain artificial and synthetic ingredients, including ingredients containing genetically modified organisms (GMOs), and contain too much fat to be labeled “healthier.” Popchips fully denies Plaintiffs’ allegations. Popchips asserts that it produces and markets a premium line of natural snack products in strict compliance with food labeling laws, including all federal Food & Drug Administration (“FDA”) requirements. Popchips asserts that it pays a premium for its high quality ingredients and requires its vendors to certify that its ingredients are derived from natural sources and are non-GMO. It also asserts that no consumers have been damaged because its products are fairly priced to reflect the higher quality and cost of their premium ingredients, and are comparably priced to other premium quality snack foods.

#### **4. Why is there a proposed Settlement?**

The Parties have reached a proposed Settlement to resolve this matter without the expense and uncertainty of litigation. The Court has not decided in the favor of either Party, and there has been no trial. If the Court grants final approval of the proposed Settlement, the class members in this lawsuit (“Class Members” or “Class”) (described more specifically in Question 5) may receive the Settlement benefits described in this Notice, if they are eligible according to the requirements of this Settlement. The Class Representatives and the Class Counsel (described more specifically in Question 16) believe that the proposed Settlement is in the best interests of the Class.

### **WHO IS INCLUDED IN THE SETTLEMENT?**

#### **5. Am I part of this Settlement Class?**

To participate in the Settlement if it is granted final approval by the Court, you must be a member of the Class. The Class includes anyone who resides in the United States and bought the “popchips” brand snack products listed below in the United States between January 1, 2007 and [preliminary approval date].

Eligible “popchips” brand snack products include:

- “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.”

The full class definition is provided in the Settlement Agreement, which was filed with the Court and is available on the Settlement website, [www.PopchipsSettlement.com](http://www.PopchipsSettlement.com).

#### **6. Are there exceptions to being included?**

The proposed Settlement does not include:

- Popchips, inc.'s board members, employees, or attorneys;
- Any government entities;
- The judge presiding over the class action lawsuit, the Court staff, and their immediate families;
- Any person who excludes himself or herself from the Class (*see* Question 13); and
- Anyone who purchased the “popchips” brand snack products outside of the United States or in the United States while residing outside of the United States.

#### **7. What if I am still not sure if I am included?**

If you are not sure whether you are a Class Member, or have any other questions about the proposed Settlement, visit the website, [www.PopchipsSettlement.com](http://www.PopchipsSettlement.com), or call the toll free number, 1-###-###-####. You may also send questions to the Settlement Administrator at Popchips Settlement, P.O. Box \_\_\_\_\_, Faribault, MN 55021-\_\_\_\_\_.

### **THE SETTLEMENT BENEFITS**

#### **8. What does the proposed Settlement provide?**

The proposed Settlement, if finally approved, provides benefits to Class Members in the form of monetary relief and marketing and labeling modifications. The amount of monetary relief you may receive is based on the quantity of “popchips” brand snack products you purchased during the January 1, 2007 through [preliminary approval date] time frame and your choice between receiving a cash payment or product vouchers.

For the monetary benefit, popchips, inc. will pay up to two million four hundred thousand dollars (\$2,400,000), consisting of a Cash Settlement Fund of up to two million one hundred thousand dollars (\$2,100,000) from which cash benefits will be paid, and a Voucher Settlement Fund of up to three hundred thousand dollars (\$300,000) from which “popchips” vouchers will be provided. You can choose between a cash payment **or** “popchips” vouchers, as follows:

- **Cash Option:** You may be eligible to receive a cash payment of \$1.00 per bag of “popchips” brand snack products purchased, regardless of size, up to a maximum of 10 bags, per household. You may file a claim for cash benefits by stating, under penalty of perjury: (1) the amount and identity of the “popchips” brand snack products purchased; (2) the name of the store or stores, including city and state, where the purchase or purchases occurred; and (3) that the “popchips” brand snack products were purchased between January 1, 2007 and [the preliminary approval date].
- **Voucher Option:** You may be eligible to receive two (2) \$1.00 “popchips” vouchers per bag of “popchips” brand snack products purchased, regardless of size, up to a maximum of 10 bags, per household. You may file a claim for “popchips” vouchers by stating, under penalty of perjury: (1) the amount and identity of popchips products purchased; (2) the name of the store

or stores, including city and state, where the purchase or purchases occurred; and (3) that the “popchips” brand snack products were purchased between January 1, 2007 and [the preliminary approval date].

Each Class Member household may only submit one (1) claim for up to ten (10) bags of “popchips” brand snack products. If the total dollar value of valid claims filed by Class Members is more than the Settlement amounts available to satisfy the claims, the benefit available to Class Members will be reduced on a pro-rata basis, as explained in the Settlement Agreement, which was filed with the Court and is available on the Settlement website, [www.PopchipsSettlement.com](http://www.PopchipsSettlement.com).

The actual amount available for each Class Member will not be determined until after [**Claim Submission Date**] and all Claim Forms have been received, and may not be determined until after the Settlement is granted final approval by the Court.

In addition, popchips has agreed to modify its marketing and labeling of “popchips” brand snack products throughout the United States, including but not limited to removing any reference to the phrases “all natural,” “healthy,” “healthier,” and “low fat” regarding “popchips” brand snack products. The specific relief agreed to between the Parties can be found in the Settlement Agreement filed with the Court and available on the Settlement website, [www.PopchipsSettlement.com](http://www.PopchipsSettlement.com).

#### **9. What happens if there are any Settlement funds remaining?**

If there are any funds remaining in the Cash Settlement Fund after all claims for cash payments are processed and all attorneys’ fees and expenses, notice and administrative costs, and Class Representative incentive awards are paid, up to \$25,000 in remaining funds will be distributed to School Food Focus ([www.schoolfoodfocus.org](http://www.schoolfoodfocus.org)), which is a registered 501(c)(3) not-for-profit organization. More information about this organization can be found at the above website or in the Settlement Agreement filed with the Court and available on the Settlement Website, [www.PopchipsSettlement.com](http://www.PopchipsSettlement.com).

### **HOW TO GET A CASH PAYMENT OR VOUCHERS**

#### **10. How can I get a cash payment or vouchers?**

If you are a Class Member and you want to participate in this proposed Settlement, you must properly and timely submit a completed Claim Form. The Claim Form is included with this Notice and is also available online from the Settlement website, [www.PopchipsSettlement.com](http://www.PopchipsSettlement.com). Read the instructions carefully and fill out the form fully.

The Claim Form can be submitted online or by mail. If you choose to submit it online, you must do so by [Claim Submission Deadline]. If you choose to submit a hard copy by mail, it must be postmarked by [Claim Submission Deadline] and mailed to:

Popchips Settlement  
P.O. Box \_\_\_\_\_  
Faribault, MN 55021-\_\_\_\_\_

You must fully complete the Claim Form and submit it by the deadline in order to receive benefits under the proposed Settlement.

**11. When will I get my cash payment or vouchers, if any?**

Settlement benefits will be distributed if the Court grants final approval of the proposed Settlement and after any appeals are resolved. The Court will hold a Fairness Hearing on [Fairness Hearing date], to decide whether to grant final approval of the proposed Settlement. If the Court grants final approval, there may be appeals. We do not know how much time it could take to resolve any appeals that may be filed. If the Court does not grant final approval of the proposed Settlement or if the proposed Settlement is not approved in any appeal that may be brought, you will not receive any cash payment or vouchers. Please check the Settlement website for updates on the progress of the Settlement.

**12. What happens if I do nothing at all?**

If you do nothing, you will not receive a cash payment or vouchers from this proposed Settlement, and you will not be able to sue popchips, inc. on the basis of the legal and factual issues involved in this lawsuit or otherwise released by the Settlement Agreement and the Court's Final Judgment and Order. You must submit a valid, timely, and complete Claim Form in order to receive benefits from the proposed Settlement, or you must exclude yourself from the proposed Settlement in order to sue popchips, inc. on the basis of the legal and factual issues involved in this lawsuit or that are released by the Settlement Agreement and the Court's Final Judgment and Order.

**EXCLUDING YOURSELF FROM THE PROPOSED SETTLEMENT**

If you do not want to participate in this proposed Settlement or receive the benefits provided by this Settlement, but you want to keep the right to sue popchips, inc. on your own concerning the legal and factual issues involved in this case, then you must take steps to exclude yourself or "opt out" of the Class, as described in this Notice and the Settlement Agreement, which was filed with the Court and is available on the Settlement website, [www.PopchipsSettlement.com](http://www.PopchipsSettlement.com). All Class Members who do not properly and timely exclude themselves from the Class will be bound by the terms of the Settlement Agreement, the releases set forth in the Settlement Agreement, and the Court's Final Judgment and Order, if the Court grants final approval of the proposed Settlement.

**13. How can I get out of – or exclude myself from – the Proposed Settlement?**

You can exclude yourself from the Class and the proposed Settlement by mailing a letter, postmarked no later than [45 days after the Notice Date], to the Settlement Administrator at the following address:

Popchips Settlement  
P.O. Box \_\_\_\_\_  
Faribault, MN 55021-\_\_\_\_\_

Your letter must state that you want to be excluded from the Class in *Tonya Kelly, et al. v. Popchips, Inc.*, Case No. 1316-CV11037, and must include your legal name, address, and telephone number. The letter must also be personally signed by you.

If you ask to be excluded from the Class, you will not be eligible to receive any benefits of the proposed Settlement, and you cannot object to the proposed Settlement. If you do not include the required information or do not mail your letter within the deadline, you will remain a Class Member



and will not be able to sue popchips, inc. on the basis of the legal and factual issues involved in this case or that are released by the Settlement Agreement and the Court's Final Judgment and Order.

#### **14. What am I giving up if I stay in the Class?**

Unless you exclude yourself, you are part of the Class and cannot sue, continue to sue, or be part of any other lawsuit against popchips, inc. concerning the legal and factual issues involved in this case or that are released by the Settlement Agreement and the Court's Final Judgment and Order, if the Court grants final approval of the proposed Settlement. It also means that all of the Court's orders will legally bind you.

#### **15. If I exclude myself, can I still get a cash payment or vouchers?**

No. If you exclude yourself, then do not submit a Claim Form to ask for a cash payment or for vouchers for "popchips" brand snack products. If you request exclusion from the Class, then:

- You will not be eligible for a cash payment or vouchers under the proposed Settlement;
- You will not be allowed to object to the terms of the proposed Settlement; and
- You will not be bound by any subsequent rulings entered in this case if the proposed Settlement is finally approved.

However, you may sue, continue to sue, or be part of a different lawsuit against popchips, inc. involving the claims in this case.

### **THE LAWYERS REPRESENTING YOU**

#### **16. Do I have a lawyer in this case?**

The Court has appointed the law firm of Shank & Hamilton, P.C. of Kansas City, Missouri, to represent you and the other Class Members in this lawsuit. The lawyers representing you and the other Class Members are called "Class Counsel."

#### **17. Should I get my own lawyer?**

You do not need to hire your own lawyer in this case because Class Counsel is working on your behalf. However, if you want to be represented by your own lawyer and have that lawyer appear in Court for you in this case, you may hire one at your own expense. You also have the right to represent yourself before the Court without a lawyer.

#### **18. How will the lawyers be paid?**

Class Counsel has prosecuted this case seeking damages and injunctive relief for the Class on a contingency fee basis. They have not received any fees or reimbursement for the expenses associated with litigating this case. If the Court grants final approval of the proposed Settlement, Class Counsel will ask the Court to award them reasonable attorneys' fees, costs, and expenses to compensate and reimburse them for their efforts and risks incurred in prosecuting this case and obtaining the Settlement benefits for the Class. Popchips has agreed not to oppose, or support any objection to, Class Counsel's request for attorneys' fees, costs, and expenses in an amount not to exceed \$991,000 to be paid out of the Cash Settlement Fund. Class Counsel will base this request on, among other



things, the total value to the Class of the Settlement, which the Parties have valued to be at least \$3,150,000. Class Counsel will file their application with the Court for an award of attorney's fees, costs, and expenses not to exceed the above amounts on or before \_\_\_\_\_, 2014.

## **OBJECTING TO THE PROPOSED SETTLEMENT**

### **19. How do I object to the Proposed Settlement?**

As a Class Member, you have the right to file written comments or objections with the Court if there is something about the proposed Settlement that you do not like. If you object, you also have the right to appear at the Court's Fairness Hearing, either in person or through your own counsel hired at your own expense, and tell the Court why you object to the proposed Settlement.

To object to the proposed Settlement, your written objections must be filed with the Court by [45 days after the Notice Date], and mailed to each of the following three addresses, postmarked by [45 days after the Notice Date]:

<b>COURT</b>	<b>CLASS COUNSEL</b>	<b>DEFENSE COUNSEL</b>
Clerk of the Court Circuit Court of Jackson County 415 E. 12th Street Kansas City, Missouri 64106	Christopher S. Shank Brenda G. Hamilton Shank & Hamilton, P.C. 2345 Grand Blvd., Suite 1600 Kansas City, MO 64108	James P. Muehlberger Douglas B. Maddock, Jr. Shook, Hardy & Bacon, L.L.P. 2555 Grand Blvd. Kansas City, MO 64108-2613

In your written objections, you must include your legal name, address, and telephone number; provide information sufficient to identify the case and demonstrate membership in the Class (including the specific "popchips" brand snack product(s) purchased, the quantity purchased, and the store(s) (including city and state) where the purchase(s) occurred); state the specific grounds for each objection asserted and include any legal support, papers, briefs, or evidence you wish to bring to the Court's attention; and state whether you intend to appear at the Fairness Hearing, either in person or through counsel. You must also personally sign your written objections.

Even if you object to the proposed Settlement, you may submit the Claim Form in order to share in the benefits of the proposed Settlement, if it is granted final approval by the Court.

### **20. What is the difference between objecting and asking to be excluded?**

Objecting is telling the Court that you do not like something about the proposed Settlement. You can object only if you stay in the Class. Excluding yourself from the Class is telling the Court that you do not want to be part of the Class or participate in the proposed Settlement. If you exclude yourself, you have no basis to object because the case no longer affects you.

## **THE COURT'S FAIRNESS HEARING**

The Court will hold a Fairness Hearing to decide whether to grant final approval to the proposed Settlement. You may attend at your own cost and you may ask to speak at the Fairness Hearing, but you do not have to do so.

## 21. When and where will the Court decide whether to approve the proposed Settlement?

The Court will hold a Fairness Hearing at \_\_\_\_ a.m. on \_\_\_\_\_, in the Circuit Court of Jackson County, Missouri at Kansas City, 415 East 12th Street, Kansas City, Missouri 64106. The Fairness Hearing may be moved to a different date or time without additional notice, so it is a good idea to check the Settlement website, [www.PopchipsSettlement.com](http://www.PopchipsSettlement.com), or call 1-###-###-#### for updates.

At the Fairness Hearing, the Court will consider whether the proposed Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court may also decide how much to pay Class Counsel and whether to pay the Class Representatives incentive awards for prosecuting this case on behalf of the Class. The Parties have agreed that Class Counsel may request from the Court incentive awards for the Class Representatives in the amount of up to \$3,000 for Tonya Kelly and up to \$2,500 for Brian Martens. After or at the Fairness Hearing, the Court will decide whether to grant final approval of the proposed Settlement. We do not know how long it will take for the Court to make these decisions.

## 22. Do I have to come to the Fairness Hearing?

No. Class Counsel will represent the interests of all Class Members who have not excluded themselves from the Class, and will answer questions the Court may have, at the Fairness Hearing. However, you are welcome to come at your own expense or pay your own lawyer to attend. If you send an objection, you do not have to come to the Court to talk about it. As long as you properly and timely mailed your objection, the Court will consider it.

Please note that the Court has the right to change the date and/or time of the Fairness Hearing without further notice. If you are planning to attend the Fairness Hearing, you should confirm the date and time before going to the Court.

## 23. May I speak at the Fairness Hearing?

Yes, you may ask the Court for permission to speak at the Fairness Hearing, if you have timely and properly filed a written objection. To ask for permission to speak at the Fairness Hearing, you must send a letter to the Court saying that it is your “Notice of Intention to Appear” in *Tonya Kelly, et al. v. Popchips, Inc.*, Case No. 1316-CV11037 and telling the Court that you plan to attend the Fairness Hearing and would like permission to speak during the Hearing. Your Notice of Intention to Appear letter must be postmarked no later than \_\_\_\_\_, and mailed to the Clerk of the Court, Class Counsel, and Defense Counsel, at the following addresses:

COURT	CLASS COUNSEL	DEFENSE COUNSEL
Clerk of the Court Circuit Court of Jackson County 415 E. 12th Street Kansas City, Missouri 64106	Christopher S. Shank Brenda G. Hamilton Shank & Hamilton, P.C. 2345 Grand Blvd., Suite 1600 Kansas City, MO 64108	James P. Muehlberger Douglas B. Maddock, Jr. Shook, Hardy & Bacon, L.L.P. 2555 Grand Blvd. Kansas City, MO 64108-2613

The “Notice of Intention to Appear” letter must include your name, address, and your signature. You cannot speak at the Fairness Hearing if you do not timely file your objections or if you otherwise exclude yourself from the Class.

## GETTING MORE INFORMATION

### 24. Where do I get more information?

This Notice provides a summary of the proposed Settlement. More details are available at the Settlement website, [www.PopchipsSettlement.com](http://www.PopchipsSettlement.com), where you will find the Notice of Class Action Settlement, the Settlement Agreement, the Amended Petition filed by Class Counsel, the Claim Form, and the Court's Order Granting Preliminary Approval of the Class Action Settlement. Updates regarding the case will be posted on the Settlement website. You may also write with questions to the Settlement Administrator at Popchips Settlement, P.O. Box \_\_\_\_\_, Faribault, MN 55021-\_\_\_\_\_ or call the toll-free number, 1-###-###-####.

# **Exhibit C**

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## **Short Form Notice**

# If You Bought a “popchips” Brand Snack Product

**You Could Get Up to \$20 in “popchips  
Brand Snack Product Vouchers  
or \$10 in Cash From a Settlement**

**Includes: various flavors of “popchips”  
brand potato, tortilla, corn, and rice chips**

There is a class action Settlement involving popchips brand snack products (“popchips snacks”). The lawsuit claims that popchips, the manufacturer of popchips snacks, violated certain state laws regarding the marketing and sale of its products. Popchips, inc. denies it did anything wrong and asserts that it produces and markets a premium line of natural snack products in strict compliance with food labeling laws.

## **Who is included in the Settlement?**

Anyone residing in the U.S. who bought an eligible popchips snack in the U.S. from January 1, 2007 to [Preliminary Approval Date] is included in the Settlement. A full list of the popchips snacks involved in the Settlement is available at the Settlement Website ([www.PopchipsSettlement.com](http://www.PopchipsSettlement.com)) or by calling 1-800-XXX-XXX.

## **What does the Settlement provide?**

A cash settlement fund of up to \$2.1 million and a voucher settlement fund of up to \$300,000 will pay: (1) money or popchips snack vouchers to eligible Class Members; (2) the costs of notice and administration; (3) attorneys’ fees and expenses; and (4) incentive award payments to the Class Representative. Popchips, inc. has also agreed to change some of its business practices, including making certain modifications to its popchips snack labels and advertising. The Settlement provides benefits valued to be at least \$3.15 million. Any money remaining in the Settlement Fund after all claims and costs are paid, up to \$25,000, will be donated to School Food Focus. Additional details are in the Settlement Agreement available on the Settlement Website.

## **How can I get a payment?**

Submit a Claim Form online or by mail by \_\_\_\_\_, 2014. If the Settlement is approved, Class Members who remain in the Settlement will be eligible to receive a cash payment of \$1.00 per bag of popchips snacks purchased, up to ten (10) bags per household, or two (2) \$1.00 popchips snacks vouchers per bag of popchips snacks purchased, up to ten (10) bags per household. The benefits you receive will be based in part on the amount of products you purchased and the total number of claims made.

## **What are my rights?**

Even if you do nothing you will be bound by the Court’s decisions. If you want to keep your right to sue popchips, inc., yourself, you must exclude yourself in writing from the Settlement by **Month 00, 2014**. If you stay in the Settlement, you may object to it by **Month 00, 2014**.

The Court will hold a hearing on \_\_\_\_\_, 2014 to consider whether to approve the Settlement, a request for attorneys’ fees and expenses up to \$991,000, and incentive awards to Class Representatives totaling \$5,500 from the Settlement Fund. You or your own lawyer may appear and speak at the hearing at your own expense.

**For More Information:**

**1-800-000-0000**

**[www.PopchipsSettlement.com](http://www.PopchipsSettlement.com)**

# **Exhibit D**

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## **Media Plan**

# Media Plan

Kelly v. Popchips, Inc.

11/7/2013



## **Paid Media**

### **Print Media** **Magazine(s)**

Circulation

Unit Type/Size

Insertions

*Ladies' Home Journal*

3,200,000

1/3 Page (2.25" x 10")

1

### **Online Media**

#### **Web**

Ad Type/Size

Estimated Impressions

*Microsoft Media Network*

728x90, 300x250 &  
160x600

5,369,639

**Specifications regarding online ads:** Banner delivery will be based on behavioral targeting against the following target segments; "Healthy Eating Enthusiasts," "Diet Seekers" and "Active Lifestyle and Fitness Seekers."

### **Consumer Characteristics**

Demographic data indicate that the Class consists of people whose interests include fitness and weight loss. Class Members tend to be women with a college education, aged 25-54, with household incomes of \$50,000 or more. They tend to live in larger metropolitan cities in the U.S. and are not notably more ethnically diverse than the general population. Their media habits include heavy magazine readership and strong internet use. The selected media provide a cost effective opportunity for Class Members to be exposed to the message while minimizing media waste to consumers who do not fit the profile of this product.

# **Exhibit E**

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## **Proposed Order Granting Preliminary Approval**



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

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

**ORDER GRANTING PRELIMINARY APPROVAL OF  
PROPOSED SETTLEMENT AND  
DIRECTING DISSEMINATION OF NOTICE TO SETTLEMENT CLASS**

This matter comes before the Court on Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement (“Motion for Preliminary Approval”) submitted to the Court in this action (“Action”). The Court has carefully reviewed and considered the Motion for Preliminary Approval, the Settlement Agreement dated November \_\_, 2013 (“Agreement”), as well as all of the exhibits attached to the Motion for Preliminary Approval and the Agreement, and finds that the Motion for Preliminary Approval should be **GRANTED**.

**IT IS THEREFORE ORDERED** that:

**Preliminary Approval of Settlement**

1. The Court has conducted a preliminary examination of the record and has made a preliminary determination that there is probable cause to find that the proposed settlement set forth in the Agreement (“Settlement”) is fair, reasonable, adequate, and in the best interests of the Settlement Class (defined below in the Class Definition section) pursuant to Missouri Rule of

Civil Procedure 52.08 and applicable case law.<sup>1</sup> 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 Action; (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 opinions of Plaintiffs' Counsel and Representative Plaintiffs. *State ex rel. Byrd v. Chadwick*, 956 S.W.2d 369, 378, n.6 (Mo. App. 1997). The Court finds that each of these factors favors granting preliminary approval and sending notice of the Settlement to the Settlement Class.

2. In particular, the Court finds that the Settlement is not the product of fraud or collusion, but rather is a fair and reasonable compromise resulting from arm's-length negotiations between adverse parties represented by experienced counsel through a mediation conducted by an experienced mediator, John R. Phillips of Husch Blackwell LLP. This Action presents complex factual and legal issues that would require lengthy and expensive litigation. The benefits afforded to the Settlement Class by the Settlement, including both monetary and non-monetary relief, fall within the reasonable range of possible recovery under the circumstances, particularly when considering the finite assets of Defendant popchips, inc. ("Defendant"), the likely duration and expense of continued litigation necessary to take the case to trial, and the risks that Representative Plaintiffs face in litigating the case. Plaintiffs' Counsel conducted extensive pre-suit investigation and confirmatory discovery sufficient to effectively evaluate the Settlement and to represent the Settlement Class. The Settlement provides immediate, certain, and substantial benefits to the Settlement Class, eliminating the uncertainty

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<sup>1</sup> Capitalized terms used herein shall have the meanings ascribed to such terms in the Agreement, which is incorporated herein and made a part hereof, unless otherwise defined herein.

inherent in litigation on the merits. Accordingly, the Court preliminarily approves the Settlement and directs that members of the Settlement Class whose claims would be settled, compromised, dismissed and/or released pursuant to the Settlement should be given notice and an opportunity to be heard.

### **Appointment of Representative Plaintiffs and Class Counsel**

3. The Court finds that the named plaintiffs in this Action, Tonya Kelly and Brian Martens, are adequate to represent the Settlement Class for settlement purposes under Missouri Rule of Civil Procedure 52.08 and, therefore, appoints them as representatives of the Settlement Class for settlement purposes (“Representative Plaintiffs”). The Court further appoints Shank & Hamilton, P.C. as Plaintiffs’ Counsel and as counsel for the Settlement Class (“Class Counsel”) for settlement purposes, whom the Court finds to be experienced and adequate counsel for the Settlement Class under Rule 52.08.

### **Class Definition**

4. The Court has conducted a preliminary examination of the record submitted in support of certification of a class for purposes of settlement. The Court finds that the standards for class certification under Rule 52.08 of the Missouri Rules of Civil Procedure and applicable case law have been met and certifies a settlement class (“Settlement Class”) defined as follows:

All persons residing in the United States of America who, at any time between January 1, 2007, and [Preliminary Approval Date], purchased any “popchips” brand snack products in the United States. The “popchips” brand 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.

5. Settlement Class Members who exclude themselves from the Settlement, pursuant to the procedures set forth in Paragraph 14 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.

6. Certification of the Settlement Class shall be solely for settlement purposes and without prejudice to the Parties in the event that the Agreement is not finally approved by this Court or otherwise does not take effect.

7. In evaluating whether to certify the Settlement Class for settlement purposes, the Court has considered whether the Settlement Class satisfied the four prerequisites of numerosity, commonality, typicality, and adequacy under Rule 52.08(a) and one of the requirements of Rule 52.08(b). The Court finds that the prerequisites under Rule 52.08(a) have been satisfied to certify a class for settlement purposes, in that: (1) the Settlement Class is so numerous that joinder of all individual Settlement Class Members is impracticable; (2) there are questions of law and fact common to the Settlement Class; (3) the claims of the Representative Plaintiffs are typical of the claims of the Settlement Class; and (4) the Representative Plaintiffs and Class Counsel will fairly and adequately represent the interests of the Settlement Class.

8. The Court also finds that the requirements under Rule 52.08(b)(3) for predominance and superiority have been met to certify a class for settlement purposes. The claims held by members of the Settlement Class arise from the same course of conduct by Defendant – the uniform labeling of popchips Products as “all natural,” “healthier” products that contain “no preservatives,” “no artificial flavors or colors,” and no genetically modified organisms (“GMOs”) – and gives rise to the same remedial theory. Numerous common

questions of law and fact exist, including whether Defendant's representations are false or misleading and whether Defendant's alleged conduct constitutes an unfair and deceptive trade practice. These common questions of law and fact predominate over any issues that may affect the members of the Settlement Class individually. Lastly, because this case involves numerous claims of consumers for relatively small amounts of money, a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Because the Settlement Class is being certified for settlement purposes only, the Court need not determine whether the case would be unmanageable as a class action if the case were tried. *See Byrd*, 956 S.W.2d at 384.

#### **Form and Content of Class Notice and Method of Dissemination**

9. The Court finds that the long-form Notice of Class Action Settlement and the Short Form Notice for publication (hereinafter collectively, "Class Notice") proposed by the Parties and attached to the Agreement as Exhibits B and C, respectively, are reasonably calculated under the circumstances to apprise interested individuals of the Settlement and afford them an opportunity to exercise all options available to them with respect thereto. The Court finds that the Class Notice fairly and adequately: (a) describes the terms and effect of the Settlement and proposed plan of allocation; (b) notifies the Settlement Class that Class Counsel will seek reimbursement of litigation expenses, an award of attorneys' fees, and incentive awards for the Representative Plaintiffs; (c) notifies the Settlement Class of the time and place of the final approval hearing; (d) advises the Settlement Class that the Court will exclude all members who request exclusion by a specified date; (e) advises the Settlement Class that a judgment in the case, whether favorable or not, will bind all Settlement Class members who do not properly request exclusion; and (f) advises the Settlement Class that members who do not request

exclusion may, if so desired, enter an appearance. For these reasons, the Court approves the form and content of the proposed Class Notice. The Court authorizes the parties to make minor revisions to the Class Notice as they may jointly deem necessary or appropriate, without necessity of further Court action or approval.

10. The Court also finds that the proposed method of dissemination outlined in the Media Plan attached to the Agreement as Exhibit D provides the best notice practicable under the circumstances and satisfies the requirements of Missouri law and due process. The Parties propose to publish the Short Form Notice in various online advertisements and in print media targeted to the estimated demographic profile of consumers of popchips Products. The Court directs the Parties and the Settlement Administrator to disseminate the Class Notice and Claim Form as provided in the Media Plan. The first date on which the Short Form Notice is published in print media shall be no later than \_\_\_\_\_ (“Notice Date”).

11. The Court approves the designation of Rust Consulting, Inc. as the Court-appointed Settlement Administrator for the Settlement. The Court authorizes and directs the Settlement Administrator to establish and maintain a Settlement Website on which all significant Settlement-related documents will be made available for review by Settlement Class members, as well as to establish a post office box and toll-free number to facilitate communication with Settlement Class members. The Settlement Administrator shall establish the Settlement Website, post office box, and toll-free telephone number on or before the Notice Date.

12. Accordingly, the Court approves the proposed dissemination plan. Commencing on or before the Notice Date, the Settlement Administrator shall arrange for publication of the Short Form Notice in *Ladies’ Home Journal*. The Settlement Administrator also shall create internet banner advertisements on or before the Notice Date and arrange for the online

advertising campaign to begin on or before the Notice Date. All costs and expenses associated with providing Class Notice to members of the Settlement Class and administering the Settlement will be paid from the Settlement Fund and in accordance with the Agreement.

**Procedure for Settlement Class Members to Participate in the Settlement**

13. The Court approves the proposed Claim Form attached to the Agreement as Exhibit A. To be eligible to receive a monetary benefit under the Settlement Fund, Settlement Class members must complete and timely submit the Claim Form, which will be published on the Settlement Website. All Claim Forms must be submitted to the Settlement Administrator, as directed in the Claim Form, by \_\_\_\_\_, 2014. Any Settlement Class member who fails to submit a valid, timely Claim Form will be forever barred from receiving any distribution from the Settlement Fund or payment pursuant to the Settlement, but will in all other respects be bound by all of the terms of the Settlement and any judgment entered in this matter, including the releases provided therein.

**Procedure for Requesting Exclusion from the Settlement Class**

14. All persons who fall within the Settlement Class definition and who wish to exclude themselves from the Settlement Class shall request exclusion within the time and manner set forth in the Class Notice, including mailing or delivering a written exclusion request to the Parties' counsel at the addresses set forth in the Class Notice such that it is received on or before \_\_\_\_\_, 2014. Unless the Court orders otherwise, no request for exclusion shall be valid until it is made within the time and in the manner set forth in the Class Notice. Persons who have properly excluded themselves from the Settlement Class: (a) will not participate in any distribution of the Settlement Fund benefits and will not receive a cash payment or popchips Product vouchers; (b) will not be bound by the terms of the Agreement or any judgment entered

in this matter, including the releases provided therein; and (c) will not be able to object to the Settlement.

15. Persons who fall within the Settlement Class definition and who do not properly exclude themselves from the Settlement Class shall be bound by all determinations and judgments in the Action concerning the Settlement, whether favorable or unfavorable to the Settlement Class, and shall be bound by all terms of the Settlement if it is finally approved by the Court.

### **Objections to the Settlement**

16. Any member of the Settlement Class may appear and show cause why the Settlement should or should not be approved based on the fairness, reasonableness, or adequacy of the Settlement, the proposed requests for litigation expenses, attorneys' fees and/or incentive awards, or any other objection or submission that the Settlement Class member may wish to bring to the attention of the Court. The Settlement Class member may enter an appearance in the Action individually or through counsel at his or her own expense.

17. Any member of the Settlement Class who desires to object to the Settlement, including the requested attorneys' fees and expenses or the incentive awards to the Representative Plaintiffs, must timely file with the Clerk of Court a written notice of the objection(s). A valid and proper objection or submission must be filed no later than \_\_\_\_\_, 2014 ("Objection Date") with the Clerk of the Court, Circuit Court of Jackson County, Missouri at Kansas City, 415 E. 12th Street, Kansas City, Missouri 64106. In addition to the filing with this Court, copies of such objection or submission must be delivered or mailed to the Parties' counsel at the addresses listed in the Class Notice such that they are received no later than \_\_\_\_\_, 2014. The Parties may respond to any objection or submission regarding the



Settlement, application for reasonable attorneys' fees and reimbursement of expenses, or the incentive awards to the Representative Plaintiffs so long as such response is filed and served no later than \_\_\_\_\_, 2014.

18. A valid and proper objection or submission must include: (a) the name, address, and telephone number of the person appearing; (b) a clear statement that the objection or submission is made with respect to the Settlement in the case of *Kelly, et al. v. Popchips, Inc.*, Case No. 1316-CV11037; (c) information sufficient to demonstrate membership in the Settlement Class; (d) a concise statement of the objection(s) and the grounds supporting the objection(s), along with any legal support or evidence that such person wishes to bring to the Court's attention; (e) a statement whether the objector intends to appear at the fairness hearing, either in person or through counsel; (f) copies of any papers, briefs, or other documents supporting the objection(s); and (g) the objector's signature. Any member of the Settlement Class who does not make his or her objection or submission in the manner provided will be deemed to have waived such objection and will forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the Settlement, the proposed requests for litigation expenses, attorneys' fees and/or incentive awards, or any other objection or submission that the Settlement Class member may wish to bring to the attention of the Court.

19. The filing of any submission or objection allows Class Counsel or counsel for Defendant to notice such person for and to take his or her deposition pursuant to the Missouri Rules of Civil Procedure and to seek any documentary evidence or other tangible things that are relevant to the objection or submission. The failure of any objecting member of the Settlement Class to make himself or herself available for a deposition or to respond to other discovery

requests may result in the Court striking the objection and otherwise denying the opportunity for the Settlement Class member to make an objection or submission to the Court.

20. Attendance at the fairness hearing is not necessary; however, any member of the Settlement Class who files and serves a written submission or objection as described above wishing to be heard orally may appear at the fairness hearing, either in person or through counsel hired at the Settlement Class member's expense, to show cause why the Settlement should or should not be approved or to object to any aspect of the fairness, reasonableness, or adequacy of the Agreement, including the requested attorneys' fees and expenses or the incentive awards to the Representative Plaintiffs. Settlement Class members or their attorneys who intend to make an appearance at the fairness hearing must serve a notice of intention to appear on the Parties' counsel, and file the notice of appearance with the Court, no later than \_\_\_\_\_ (\_\_) days before the fairness hearing. Members of the Settlement Class who do not oppose the settlement or the applications for attorneys' fees, litigation expenses, and incentive awards need not take any action to indicate their approval.

#### **Final Approval of the Settlement**

21. A fairness hearing is scheduled for \_\_\_\_\_ \_\_, 2014 before the Court at \_\_\_\_\_ a.m. in Division 16 of the Circuit Court of Jackson County, Missouri, in the courtroom of the Honorable Marco A. Roldan, Jackson County Courthouse, 412 E. 12th Street, 5th Floor, Kansas City, MO 64106, to determine: (a) whether the proposed Settlement should be approved by the Court as a fair, reasonable, and adequate Settlement; (b) whether the notice to the Settlement Class was sufficient under the circumstances; (c) whether a judgment should be entered pursuant to the terms of the Agreement, dismissing this Action with prejudice; and (d) whether the

applications for litigation expenses, attorneys' fees, and incentive awards to the Representative Plaintiffs should be approved.

22. The Court reserves the right to adjourn the date of the fairness hearing and to reconvene such hearing at a later date and time without further notice to the members of the Settlement Class, and may approve the Settlement, with such modifications as agreed by the Parties, if appropriate, without further notice to the members of the Settlement Class.

**Application for Attorneys' Fees, Costs, and Expenses, and Incentive Awards**

23. Class Counsel shall file and serve all documents in support of the Settlement, including a motion for final approval of the Settlement, and any application for an award of reasonable attorneys' fees, costs and expenses, and incentive awards to Representative Plaintiffs, no later than \_\_\_\_\_, 2014. Any application for reasonable attorneys' fees, costs and expenses, and incentive awards will be considered separately from the fairness, reasonableness, and adequacy of the Settlement. At or following the fairness hearing, the Court will rule on any such application for attorney's fees, costs, expenses, and incentive awards, and if it grants such application, shall determine and award an amount for reasonable attorneys' fees, costs and expenses, and incentive awards to Representative Plaintiffs.

**Termination of the Settlement**

24. If the Settlement is not approved by the Court or the Agreement is terminated in accordance with its terms, this Order shall become null and void, *ab initio*, and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions.

**Use of Order**

25. Neither this 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. Neither this Order, the Agreement, nor any act performed or document executed pursuant to or in furtherance of the Settlement shall be construed or used 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 Order or the Agreement be construed or used as an admission, concession, or declaration by or against the Representative Plaintiffs or the Settlement Class members 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 the validity of any legal argument that has been, could have been, or in the future might be asserted. Nothing in this 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.

26. Counsel for the Parties are hereby authorized to utilize all reasonable procedures in connection with the administration of the Settlement that are not materially inconsistent with either this Order or the terms of the Agreement.

27. Except as agreed to by the parties, or for any actions necessary to effectuate the Settlement or this Order, or pertaining to final approval of the Settlement, all discovery, pretrial deadlines, and pretrial proceedings in this Action, and in any other action in which the plaintiffs' claims have been released by the Agreement, are stayed and suspended until further order of the Court. Pending final approval, no class member shall commence, continue, or prosecute against

any Released Party any action or proceeding in any court or tribunal asserting any of the matters, claims, or causes of action that are to be released upon final approval pursuant to the Agreement, and they are hereby enjoined from so proceeding. Upon final approval, all class members who have not filed a timely notice of exclusion shall be forever enjoined and barred from asserting any of the matters, claims, or causes of action released pursuant to the Agreement, and any such class member shall be deemed to have forever released any and all such matters, claims, and causes of action as provided for in the Agreement.

**IT IS SO ORDERED.**

Date: \_\_\_\_\_

\_\_\_\_\_  
Hon. Marco A. Roldan  
Circuit Judge

# **Exhibit F**

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## **Proposed Final Order and Judgment**

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

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

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

This matter came before the Court for hearing pursuant to Plaintiffs’ Motion for Final Approval of Proposed Settlement (“Motion for Final Approval”). Plaintiffs’ Motion for Final Approval follows the Court’s Order Granting Preliminary Approval of Proposed Settlement and Directing Dissemination of Notice to Settlement Class (“Preliminary Approval Order”), dated \_\_\_\_\_, 2013. In the Preliminary Approval Order, the Court preliminarily certified a settlement class (“Class”) defined as:

All persons residing in the United States of America who, at any time between January 1, 2007, and [Preliminary Approval Date], 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 set the date for a fairness hearing.

The Court held a fairness hearing on \_\_\_\_\_ \_\_, 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 expenses to Class Counsel and incentive awards to Class Representatives. Having considered all matters submitted to it at the hearing and otherwise, and with due and adequate notice given to the Class as directed by the Court in its Preliminary Approval Order, the Court finds that the Motion for Final Approval should be granted.

**IT IS THEREFORE ORDERED** that Plaintiffs' Motion for Final Approval and Application for Fees, Expenses, and Incentive Awards is hereby **GRANTED**.

**IT IS FURTHER ORDERED** that:

1. Incorporation of Settlement Agreement. This Final Order and Judgment incorporates by reference the Settlement Agreement dated November \_\_, 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. Final Approval of Settlement. The Court has conducted an 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 Action; (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. The Court finds that each of these factors supports granting final approval of the Settlement.

First, the Court finds that the Settlement is the result of arm's length negotiations between two adverse parties. There is no evidence of fraud or collusion in reaching the Settlement, which 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.

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, apply.

Third, the Settlement was reached by parties with sufficient information to effectively evaluate the terms of the Settlement and represent the Class. Prior to filing the action, Class Representatives and Class Counsel conducted an extensive investigation into popchips, from 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 precise 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 their retained financial expert of Defendant's audited financial reports, sales data, and labeling materials at its facilities in Los Angeles, California. The information obtained by Class Representatives and Class Counsel supports the fairness of the Proposed Settlement.

Fourth, the Court finds that success on the merits is far from certain. Defendant has available several 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.

Fifth, the Settlement falls within the range of possible recovery the Class could achieve at trial if they 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, the Settlement provides for a relaxed proof-of-purchase requirement than may be required at trial, allowing more members of the Class to obtain benefits. Accordingly, the Settlement provides immediate and certain benefits to the Class that may not be available through continued litigation.

Lastly, the Court finds that the opinion of Class Representatives and Class Counsel that the Settlement is fair, adequate, and reasonable weighs in favor of final approval. Class Representatives and Class Counsel have extensive knowledge of the factual and legal issues in

the case and were actively involved in the negotiations and mediation. Their assessment of the benefits provided by the Settlement in light of the risks associated with litigation is entitled to appropriate weight.

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.

3. Appointment of Representative Plaintiffs and Class Counsel. The Court reaffirms its finding in the Preliminary Approval Order that the named Plaintiffs in this Action, Tonya Kelly and Brian Martens, are adequate to represent the Class and, therefore, appoints them as representatives of the Class. The Court also reaffirms its appointment of Shank & Hamilton, P.C. as Plaintiffs' Counsel and Class Counsel.

4. Certification of the Class. The Court reaffirms its finding in the Preliminary Approval Order that 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 Class for settlement purposes. Accordingly, the Court grants final certification of the Class for the purposes of settlement only, as defined in the Preliminary Approval Order:

All persons residing in the United States of America who, at any time between January 1, 2007, and [Preliminary Approval Date], 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.

5. Cy Pres Distribution. The parties have agreed that any remaining balance of the Cash Settlement Fund after payment of 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). 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.

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 Class throughout the United States, which corresponds to the geographic distribution of the members of the Class.

6. Notice to the Class. The notice to the 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 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 finds that the notice issued to the class satisfies the requirements of due process and Missouri law.

7. Dismissal with Prejudice. The Court hereby dismisses this action against Defendant with prejudice as to all members of the Class, as outlined in the Agreement. On completion of the terms of the Settlement, the Class Representatives and each member of the 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.

8. Excluded Persons. Within thirty (30) days, the Parties shall file an agreed listing of each Person who submitted a request for exclusion from the Class in compliance with the procedures set forth in the Notice. The Persons so identified shall not be bound by the Settlement and shall not be eligible to receive benefits under the Settlement. All Persons who meet the Class definition and have not submitted a proper and timely exclusion request shall be bound by this Judgment.

9. Use of Order. Neither this 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 Order shall not be construed or used 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 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 the validity of any legal argument that has been, could have been, or in the future might be asserted. Nothing in this 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.

10. Continuing Jurisdiction. Without affecting the finality of the Judgment, 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 Class as provided in the Agreement, pay Class Representatives incentive awards as provided in this Judgment and the Agreement, 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. In the event that the Final Settlement Approval Date does not occur, this Final Order and Judgment shall automatically be rendered null and void and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void.

**IT IS SO ORDERED.**

Date: \_\_\_\_\_

\_\_\_\_\_  
Hon. Marco Roldan  
Circuit Judge