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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT**

DANIEL FLANNERY; individually, and on
behalf of other members of the general
public similarly situated;

Plaintiff,

vs.

MCCORMICK & SCHMICK'S SEAFOOD
RESTAURANTS, INC., an unknown
business entity; MCCORMICK &
SCHMICK RESTAURANT CORP., an
unknown business entity; LANDRY'S
RESTAURANTS, INC.; an unknown
business entity; LANDRY'S, INC.; an
unknown business entity; and DOES 1
through 100, inclusive,

Defendants.

Case No.: BC487942

Honorable Lee Smalley Edmon.
Department D322

CLASS ACTION

**STIPULATION OF CLASS
ACTION SETTLEMENT**

1 This Stipulation of Class Action Settlement (hereinafter "Settlement Agreement")
2 is made and entered into by and between Plaintiff DANIEL FLANNERY ("Plaintiff"),
3 individually and on behalf of other members of the general public similarly situated,
4 and Defendants MCCORMICK & SCHMICK'S SEAFOOD RESTAURANTS, INC.,
5 MCCORMICK & SCHMICK RESTAURANT CORP., and LANDRY'S, INC.,
6 erroneously sued as LANDRY'S RESTAURANTS, INC. (collectively, "Defendants"),
7 subject to the terms and conditions herein and final approval by the above-entitled Court.
8 Plaintiff and Defendants are collectively referred to herein as the "Parties."

9
10 **PROCEDURAL HISTORY AND BACKGROUND FACTS**

11 1. On July 10, 2012, Plaintiff filed the above-entitled class action complaint on
12 behalf of himself and all other members of the general public similarly situated against
13 Defendants (the "Action") alleging false advertising and unfair business practices in
14 violation of California Business and Professions Code §§ 17500 et seq. and §§ 17200 et
15 seq., as well as violations of the Consumers Legal Remedies Act, codified at California
16 Civil Code §§ 1750 et seq. Plaintiff also alleged that Defendants' actions constitute
17 fraud, intentional misrepresentation, and negligent misrepresentation.

18 2. Plaintiff alleged that "Kobe" beef is only available from Japan, and that the
19 term "Kobe" signifies that beef comes from the "Wagyu" bloodline of cattle which are
20 isolated in the Kobe region of Japan and that the beef comes from cattle slaughtered
21 within the Kobe region of Japan. Plaintiff further alleged that the United States
22 Department of Agriculture has banned importation of beef and cattle from Japan since
23 approximately May 2010. Plaintiff further alleged that the menu items at Defendants'
24 McCormick & Schmick's restaurants that purport to contain "Kobe" beef do not actually
25 contain "Kobe" beef. Plaintiff further alleged that Defendants' in store and online menu
26 items have misled consumers into believing that their menu items which purport to
27 contain "Kobe" beef offered at McCormick & Schmick's restaurants do in fact contain
28 "Kobe" beef.

3. Defendants denied and continue to deny all of Plaintiff's allegations, and further deny that the Action is appropriate for class treatment for any purpose other than this settlement. Defendants contend that they have complied at all times with the California Business & Professions Code and Consumer Legal Remedies Act sections at issue, and further contend that, if this case were to be litigated, class certification would be inappropriate because individual issues predominate and no class can be ascertained. Defendants have concluded, however, that further litigation of the Action would be protracted and expensive and, therefore, acknowledge that certification of a settlement class is appropriate.

4. By entering into this Settlement Agreement, including without limitation stipulating to Court approval of it and a class settlement, Defendants do not admit and shall not be deemed to have admitted any violation of or right to remedies or relief under the California Unfair Competition Law (Cal. Bus. and Prof. Code §§ 17200 *et seq.*), California Legal Remedies Act (Cal. Civil Code §§ 1750 *et seq.*), or any of Plaintiff's other causes of action. Nothing in this Settlement Agreement shall be construed as an admission by Defendants of any fact, issue of law or violation of law, nor shall Defendants' compliance with the terms of this Settlement Agreement constitute or be construed as an admission of any fact, issue of law or violation of law. This Settlement Agreement is a settlement document and shall, pursuant to California Evidence Code Sections 1152 and 1154, be inadmissible in evidence in any proceeding. The preceding sentence shall not apply to an action or proceeding to approve, interpret or enforce this Settlement Agreement.

5. On January 14, 2013, the Parties participated in a full-day of private mediation before Hon. Edward Infante (Ret.) of JAMS. Pursuant to a mediator's proposal submitted by Judge Infante, the Parties agreed upon the proposed settlement described herein.

6. Plaintiff and his counsel have diligently pursued an investigation of Plaintiff's and the putative class members' claims against Defendants and have conducted

1 a thorough investigation into the facts of the Action, including a review and verification
2 of statistical data and other facts and information provided by Defendants. Class Counsel
3 also represent they have investigated the applicable law as applied to the facts
4 discovered regarding the alleged claims of Plaintiff and potential defenses thereto, and
5 the damages claimed by Plaintiff. Based on their own independent investigation and
6 evaluation, Plaintiff and Class Counsel are of the opinion that the settlement with
7 Defendants for the consideration and on the terms set forth in this Settlement Agreement is
8 fair, reasonable and adequate, and is in the best interest of the class in light of all known
9 facts and circumstances, including the risks and delay associated with continued
10 litigation, the risks associated with a motion for class certification, the defenses
11 asserted by Defendants and numerous potential appellate issues.

12 6. Plaintiff had the benefit of experienced counsel in evaluating the
13 reasonableness of this Settlement, had sufficient time and opportunity to conduct
14 discovery into the merits of the claims and allegations, and relies on nothing other than
15 his own judgment and that of his counsel (and not any representation by Defendants) in
16 reaching the conclusion that the Settlement set forth herein is fair, reasonable, adequate
17 and in the best interests of the Class Members.

18 7. Defendants also consider it desirable to resolve the Action on the terms
19 stated herein in order to avoid further expense, inconvenience and interference with ongoing
20 business operations, and to dispose of this litigation, and thus have determined that
21 settlement of the Action on the terms set forth herein is in their best interests.

22 8. It is the desire of the Parties to fully, finally and forever settle, compromise
23 and discharge all disputes and causes of action raised in the Action.

24 **NOW, THEREFORE**, in consideration of the mutual promises contained herein,
25 and other good and valuable consideration, the sufficiency of which is hereby
26 acknowledged, it is hereby stipulated and agreed, by and between the Parties, by and
27 through their respective undersigned counsel, that the Action shall be fully, finally and
28 forever resolved, discharged, settled and compromised, subject to Court approval, in the

manner and upon the terms and conditions hereafter set forth:

PRELIMINARY TERMS AND DEFINITIONS

9. "Class Counsel" is Edwin Aiwarzian, Arby Aiwarzian, Jill J. Parker and Maria F. Nickerson of Lawyers for Justice, PC, and Kevin Shenkman and Mary Ruth Hughes of Shenkman & Hughes.

10. Subject to Court approval, the Parties have agreed to the appointment of Kurtzman Carson Consultants to perform the duties of the "Settlement Administrator."

11. "Subject Food Product" shall mean any menu item at Defendants' restaurants described as containing "Kobe" beef including, without limitation, "Kobe Beef Sliders" or "Kobe Burger."

12. "Class Period" shall mean July 10, 2008 to July 15, 2012.

13. "Class Members" shall mean all California based consumers who were exposed to Defendants' online and/or in store menus, and who purchased a Subject Food Product (or any menu item that was advertised to contain "Kobe" beef on Defendants' online and/or in store menus) at or from a Defendants' restaurant located in the State of California at any time during the Class Period.

14. "Comp Period" shall mean a date no later than fourteen (14) calendar days after the date the Court enters the order granting preliminary approval of the proposed Settlement herein to the one hundredth and twentieth (120) day thereafter. * Counsel for Defendants agrees to notify Class Counsel, in writing, of the start date of the Comp Period prior to said start date.

15. "M&S" shall mean Defendant MCCORMICK & SCHMICK RESTAURANT CORP., which owns and operates 12 restaurants in California.

16. "Opt-Out Deadline" shall mean forty-five (45) calendar days after the date Defendants commence giving notice to the Settlement Class pursuant to paragraph 42, below.

17. "Settlement" shall refer to the settlement between Defendants and Plaintiff as memorialized in this Settlement Agreement.

CLASS CERTIFICATION FOR SETTLEMENT PURPOSES

18. Pursuant to California Rules of Court, Rule 3.769, for settlement purposes only, the Parties agree that there shall be a certified "Settlement Class," defined as follows:

"All California based consumers who were exposed to Defendants' online and/or in store menus, and who purchased a Subject Food Product (or any menu item that was advertised to contain "Kobe" beef on Defendants' online and/or in store menus) at or from a Defendants' restaurant located in the State of California at any time during the Class Period."

19. The Parties agree that the class described herein may be certified and that any motion for preliminary approval seeking, inter alia, certification of a class is for purposes of the Settlement only. If for any reason the Settlement is not approved, the certification will have no force or effect and will be immediately revoked. The Parties further agree that certification for purposes of the Settlement is in no way an admission that class certification is proper under the more stringent standard applied for litigation and that evidence of this limited stipulation for settlement purposes only will not be admissible in this or any other proceeding.

20. The Settlement is contingent upon the final approval and certification by the Court of the Settlement Class for settlement purposes only. Defendants do not waive, and expressly reserve, their rights to challenge the propriety of class certification for any purpose should the Court not approve this Settlement Agreement and certify the Settlement Class. Plaintiff does not waive, and expressly reserves, his right to move for class certification should the Court not approve this Settlement Agreement and certify the Settlement Class.

TERMS OF SETTLEMENT

* 21. Following notice of the Action, and without admitting any liability or fault, Defendants changed the description of the Subject Food Products on M&S menus from "Kobe beef" to "American Kobe Style" beef. Defendants shall forebear from using the

1 term "Kobe beef" on M&S menus, and will refer to Subject Food Products as "American
2 Kobe Style" beef.

* 3 22. Defendants shall provide a Fifteen Dollar (\$15.00) comp card to any Class
4 Member who submits to the Settlement Administrator during the Comp Period (i) an
5 M&S sales receipt, a credit card receipt or a credit card statement showing that he/she
6 purchased a meal in excess of \$15.00 at any M&S restaurant in the State of California
7 at any time between July 10, 2008 and July 15, 2012 (hereinafter, a "Qualifying
8 Receipt"), and (ii) a claim form ("Claim Form") signed under penalty of perjury under
9 the laws of the State of California attesting that he/she purchased and consumed a
10 Subject Food Product on the date shown on the Qualifying Receipt submitted with the
11 Claim Form. The comp card shall be in the form of a card good for the purchase of any
12 food or beverage item at any M&S restaurant located in the State of California.

* 13 23. Defendants shall provide a Ten Dollar (\$10.00) comp card to any Class
14 Member who submits to the Settlement Administrator during the Comp Period a Claim
15 Form signed under penalty of perjury under the laws of the State of California attesting that
16 he/she purchased a meal in excess of \$15.00 at an M&S restaurant in the State of California
17 on a date between July 10, 2008 and July 15, 2012, and that he/she purchased and
18 consumed a Subject Food Product on that date. The comp card shall be in the form of a
19 card good for the purchase of any food or beverage item at any M&S restaurant located in
20 the State of California.

* 21 24. In order for a Class Member to receive a comp card, the Class Member
22 must accurately complete and sign a Claim Form under penalty of perjury, and return the
23 Claim Form to the Settlement Administrator during the Comp Period. The timeliness of
24 Claim Forms submitted by mail will be determined by valid postmark.

* 25 25. No common fund or minimum or maximum claims amount shall be
26 established. If no objections to this Settlement are timely filed and no objector appears at
27 any final approval hearing, then no later than fifteen (15) calendar days after the Court
28 enters an order granting final approval of this Settlement Agreement, Defendants shall

1 provide the Settlement Administrator with all comp cards in the respective amounts
2 necessary to satisfy all valid claims submitted by Class Members in accordance with the
3 requirements of paragraphs 22 and 23. If objections to this Settlement are timely filed or
4 an objector does appear at any final approval hearing, Defendants shall provide all comp
5 cards in the respective amounts necessary to satisfy all valid claims submitted by Class
6 Members in accordance with the requirements of paragraphs 22 and 23 no later than
7 twenty-one (21) calendar days after the latest of: (1) the last date by which a notice of
8 appeal to the California Court of Appeal of the Judgment may be timely filed, and none
9 is filed; (2) the last date by which a petition for review by the California Supreme Court
10 of a decision by the California Court of Appeal affirming the Judgment may be timely
11 filed, and none is filed; (3) the last date by which a petition for certiorari to the U.S.
12 Supreme Court with respect to a decision by the California Court of Appeal or the
13 California Supreme Court affirming the Judgment may be timely filed, and none is filed;
14 and (4) if a notice of appeal to the Court of Appeal, a petition for review to the California
15 Supreme Court, or a petition for certiorari to the U.S. Supreme Court is timely filed, the
16 date on which the highest reviewing court renders its decision denying the petition
17 (where the immediately lower court affirmed the Judgment) or affirming the Judgment.
18 Upon receipt of the comp cards, the Settlement Administrator shall thereafter mail them
19 to the Class Members who have submitted valid Claim Forms no later than ten (10)
20 calendar days after receipt from Defendants.

* 21 26. Class Members must use their comp cards for the purchase of a food or
22 beverage item at any M&S restaurant located in the State of California after they are mailed
23 by the Settlement Administrator. Purchasing a food or beverage item is a condition
24 precedent to a Class Member's entitlement to any settlement funds, and a Class Member
25 shall have no property interest in any funds remaining due to unused comp cards.

* 26 27. Upon entry of the Court's order finally approving this Settlement, the
27 Court shall enter a judgment approving class action settlement, in a form substantially
28 similar to the one attached hereto as Exhibit "A," so as to permanently bar Plaintiff and

1 the Settlement Class and each of its members, other than those who timely opt-out, from
2 prosecuting the claims released herein against Defendants and/or others released herein.

3 28. The Parties agree that to the extent a perceived or actual violation of
4 the procedures and terms set forth in Paragraphs 21 through 25, above, occurs, and
5 Defendants are expressly informed of such perceived or actual violation, Defendants
6 shall be provided a reasonable amount of time, not less than thirty (30) calendar days,
7 within which to remedy such perceived or actual violation.

8 ATTORNEYS' FEES AND COSTS

9 29. Subject to Court approval, Defendants agree to pay the total amount of
10 \$90,000 to Class Counsel for all attorneys' fees, expenses and court costs incurred in this
11 Action including, but not limited to, attorneys' fees, expenses and court costs (other than
12 costs of the Settlement Administrator) relating to the Settlement and Court approval
13 thereof, and any appeals thereon. Defendants will not object to Class Counsel's request
14 for preliminary and final approval of an award of attorneys' fees, expenses and court
15 costs in the amount of \$90,000.

16 30. Class Counsel agree and stipulate that they will not request attorneys' fees,
17 expenses and court costs in an amount greater than \$90,000. In the event the Court
18 awards Class Counsel an amount greater than \$90,000, Class Counsel agree and stipulate
19 that they will accept the amount of \$90,000 as full and complete satisfaction of and
20 compliance with any such order and award.

21 31. Class Counsel agree and stipulate that they will not request a named-
22 plaintiff incentive award in an amount greater than \$2,000. Defendants will not object to
23 any request for an incentive award in an amount not greater than \$2,000. Subject to
24 Court approval, Defendants agree to pay the incentive award, in addition to the other
25 items contemplated in this Settlement Agreement. In the event that the Court awards
26 Plaintiff an amount greater than \$2,000, then Plaintiff agrees that he will accept the
27 amount of \$2,000 as full and complete satisfaction and compliance with any such order
28 and award.

32. Defendants shall pay the \$90,000 (or any lesser amount if so awarded by the Court) in attorneys' fees, expenses and court costs to the Settlement Administrator, for the benefit of Class Counsel, and the named-plaintiff incentive award of \$2,000 (or any lesser amount if so awarded by the Court), no later than twenty (20) calendar days from the date the Court enters the order granting final approval of the proposed settlement herein and awarding attorneys' fees, expenses and court costs to Class Counsel and a named-plaintiff incentive award to Plaintiff. The Settlement Administrator shall thereafter pay the \$90,000 (or any lesser amount if so awarded by the Court) to Lawyers for Justice, PC and Shenkman & Hughes according to the fee splitting agreement entered into by the lawyers of each firm and consented to by Plaintiff, and the \$2,000 (or any lesser amount if so awarded by the Court) to Plaintiff, no later than ten (10) calendar days after the Settlement Agreement becomes final and effective upon occurrence of all of the events set forth in paragraph 51.

33. Plaintiff and Class Counsel understand and agree that neither Defendants nor Defendants' counsel are providing any tax or legal advice, and that they make no representations regarding tax obligations or consequences, if any, related to this Settlement Agreement.

34. Plaintiff and Class Counsel agree that they shall be exclusively responsible for the payment of any applicable federal and state taxes which may be due as the result of the consideration paid under this Settlement, and they shall not seek any indemnification or contribution from Defendants in that regard. Class Counsel shall provide Defendants with a W-9 form in order to process the above-referenced payment.

SETTLEMENT ADMINISTRATOR

35. Defendants agree to pay the Settlement Administrator all costs associated with administering the proposed Settlement, not to exceed ten thousand dollars (\$10,000). Any costs or fees associated with administering this Settlement in excess of \$10,000 shall be paid by Plaintiff or Class Counsel.

1 36. Notwithstanding such payment by Defendants, the Settlement
2 Administrator has been selected by Class Counsel. Neither Defendants nor their
3 counsel shall have any liability for the administration of the Settlement by the Settlement
4 Administrator, nor shall they have any liability to Plaintiff, the Settlement Class, Class
5 Members, or Class Counsel in connection with such administration.

6 37. All proceedings with respect to the administration of the Settlement shall be
7 subject to the exclusive jurisdiction of this Court.

8 **DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL**

9 38. Promptly after execution of this Settlement Agreement, Plaintiff shall move the
10 Court for preliminary approval of this Settlement and entry of an order scheduling a fairness
11 hearing on the question of whether the proposed Settlement should be finally approved as fair,
12 reasonable and adequate as to the Class Members. Plaintiff shall submit this Settlement
13 Agreement in support of the motion for preliminary approval of the Settlement. Defendants
14 shall thereafter file a Notice of Non-Opposition (or similarly-captioned pleading).

15 39. In connection with the hearing on final approval of the Settlement provided for
16 in this Settlement Agreement, Plaintiff through Class Counsel, will submit a proposed final
17 order in a form substantially similar to Exhibit A ten (10) days prior to the scheduled date of
18 the hearing on final approval:

19 (a) approving the settlement, adjudging the terms thereof to be fair, reasonable and
20 adequate, and directing consummation of its terms and provisions;

21 (b) approving Class Counsel's application for an award of attorneys' fees and
22 reimbursement of documented litigation costs and expenses, the Plaintiff's incentive
23 award, and the costs of administering the settlement; and;

24 (c) entering Judgment in conformance with the Settlement Agreement and permanently
25 barring all Class Members from prosecuting any Released Claims against any of the
26 Released Parties.

27 40. Class Counsel will file an application for attorneys' fees and reimbursement of
28 costs and expenses ten (10) calendar days prior to the scheduled date of the hearing on final

1 approval.

2 41. The Parties each expressly waive any right to appeal they may have in
3 connection with any ruling of the Court in connection with the Action and settlement of it;
4 except that Plaintiff and/or Class Counsel may appeal any reduction in the award of attorneys'
5 fees and costs; and the Parties may jointly agree to appeal any ruling notwithstanding this
6 waiver.

7 NOTICE TO THE CLASS MEMBERS

8 * 42. For a period of ninety (90) calendar days, commencing no later than
9 fourteen (14) calendar days after the date the Court enters the order granting preliminary
10 approval of the proposed settlement herein, Defendants shall post a short notice, in the
11 form attached hereto as Exhibit "B" (actual size of notice) and approved by the Court,
12 viewable by the public at the host/hostess station at all M&S California restaurants
13 generally notifying customers that a class action lawsuit involving the Subject Food
14 Product was filed and has been conditionally settled without admission of liability. In
15 addition, Defendants shall provide a notice in a form substantially similar to the form
16 attached hereto as Exhibit "C" as part of a table tent, check presenter or other form of
17 table flyer at each dining room table at all M&S California restaurants. Both notices
18 will direct customers to www.kobecclassaction.com, or a similar website URL maintained
19 by the Settlement Administrator, which will provide customers with additional information
20 about the lawsuit and Notice of Proposed Class Action Settlement, a copy of which is
21 attached hereto as Exhibit "D." Said website shall remain active and viewable for a
22 period of one hundred and twenty (120) calendar days, commencing no later than
23 fourteen (14) calendar days after the date the Court signs the order granting preliminary
24 approval of the proposed Settlement herein. Said website will provide, free of charge,
25 viewable and printable copies of the Settlement Agreement, Preliminary Approval Order,
26 Claim Forms, and the Notice of Proposed Class Action Settlement. Counsel for
27 Defendants agrees to notify Class Counsel and the Settlement Administrator, in writing,
28 of the start date of both of these forms of notice.

OPT-OUT PROCEDURE

43. Class Members have a right to opt-out of the Settlement. To opt-out, the Class Member must electronically complete and submit an opt-out form made available on www.koboclassaction.com, or such similar website URL as may be used, on or before the Opt-Out Deadline. This form shall require the Class Member to (a) provide his or her full name and address, (b) attest that he/she purchased a meal in excess of \$15.00 at an M&S restaurant in the State of California on a date between July 10, 2008 and July 15, 2012 and that he/she purchased and consumed a Subject Food Product on that date, and (c) check a box stating that he/she wants to opt-out of the Settlement. Class Members who opt-out must send their opt out form via U.S. Mail to the Settlement Administrator at the physical address provided on Settlement Administrator's website. Requests to opt-out that do not include all required information, or that are not submitted on a timely basis, will be deemed null, void and ineffective. Class Members who submit valid and timely requests to opt-out of the Settlement will not participate in the Settlement, nor will they be bound by the terms of the Settlement, if it is approved. The timeliness of requests to opt-out submitted by mail will be determined by valid postmark.

44. The Settlement Administrator will notify the Parties of the total number of valid Claim Forms (under paragraphs 22 and 23, respectively) and valid requests to opt-out no later than ten (10) calendar days after the end of the Comp Period. The Settlement Administrator will also provide to the Parties, at least fourteen (14) calendar days prior to the final approval hearing, a report listing the amount of all comp cards to be made to Class Members that have submitted valid Claim Forms under paragraphs 22 and 23, respectively.

45. Defendants may choose to void the Settlement if fifty (50) Class Members timely and validly opt-out of the Settlement. If Defendants wish to void this Settlement Agreement pursuant to this paragraph, Defendants must do so by delivering written notice to Class Counsel and the Settlement Administrator at least five (5) court days prior to the Final Approval Hearing.

OBJECTIONS TO THE PROPOSED SETTLEMENT

46. Class Members have a right to object to the Settlement if they do not opt-out of the proposed Settlement. Class Members who object to the Settlement will still be bound by the terms of the Settlement. To object, Class Members must complete and submit an objection form available on www.kobeclassaction.com, or such similar website URL as may be used, on or before the Opt-Out Deadline. This form shall require the Class Member to provide his or her full name and address, and check a box stating that he/she objects to the Settlement. Class Members who object to the Settlement must also send to the Settlement Administrator via U.S. Mail at the address provided on said website a Claim Form signed under penalty of perjury, evidencing their purchase of a Subject Food Product from one of M&S' restaurants in California during the Class Period.

RELEASE OF CLAIMS BY THE SETTLEMENT CLASS

47. Upon the final approval by the Court of this Settlement Agreement and the class action settlement, and except as to such rights or claims as may be created by this Settlement Agreement, Plaintiff, the Settlement Class, and each Class Member (other than those who timely opt-out), including their respective successors, assigns, legatees, heirs, and personal representatives, fully, finally, and forever release and discharge Defendants, and each of them, including their respective parents, subsidiaries, sister corporations and affiliates, owners, officers, ~~employees~~, directors, employees, agents, representatives, attorneys, insurers, successors, assigns, and all persons acting by, through, under or in concert with them, or any of them ("Released Parties"), from any and all claims, debts, liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorneys' fees, damages, actions or causes of action of whatever kind or nature, which were alleged, or which could have been alleged based on the facts and claims alleged, in the Action.

48. In addition to the release given in paragraph 47, above, upon the final approval by the Court of this Settlement Agreement and the class action settlement, and

1 except as to such rights or claims as may be created by this Settlement Agreement,
2 Plaintiff, on behalf of himself and his successors, assigns, legatees, heirs, and personal
3 representatives, does hereby completely release and forever discharge Defendants and
4 the Released Parties from any and all claims, rights, demands, actions, obligations,
5 liabilities, indebtedness, and causes of action, of any and every kind, nature and character
6 whatsoever, whether known or unknown, which Plaintiff may now have or has ever had
7 against Defendants and/or the Released Parties.

* 8 49. In order to achieve a full and complete release of Defendants and the
9 Released Parties, as set forth in paragraph 47 above, the Settlement Class and each
10 member thereof (other than those that timely opt-out), and each of their respective
11 successors, assigns, legatees, heirs, and personal representatives, acknowledge that this
12 Settlement Agreement is intended to include in its effect all causes of action and
13 allegations which were alleged, or which could have been alleged based on the facts and
14 claims alleged, in the Action, including any claims that the Settlement Class, and the
15 individual members thereof, do not know or suspect to exist in their favor.
16 Consequently, with regard to the causes of action which were alleged, or which could
17 have been alleged based on the facts and claims alleged, in the Action, the Settlement
18 Class, and each individual member thereof (other than those who timely opt-out), waive all
19 rights and benefits afforded by California Civil Code Section 1542, or any other similar
20 provision under federal or state law, and do so understanding the significance of that
21 waiver. Section 1542 provides:

22 "A general release does not extend to claims which the creditor does not
23 know or suspect to exist in his or her favor at the time of executing the
24 release, which if known by him or her must have materially affected his
25 settlement with the debtor."

* 26 50. In order to achieve a full and complete release of Defendants and the
27 Released Parties, as set forth in paragraph 48, above, Plaintiff, on behalf of himself and
28 his successors, assigns, legatees, heirs, and personal representatives, acknowledges and

1 understands that his is a full and final release covering all unknown and unanticipated
2 injuries, debts, claims, or damages to him which may have arisen, or may arise, in
3 connection with any act or omission by Defendants or the Released Parties prior to the
4 date of execution of this Settlement Agreement. For that reason, Plaintiff hereby waives
5 any and all rights or benefits, which he may have under the terms of California Civil Code
6 Section 1542 or any other similar provision under federal or state law, and does so
7 understanding the significance of that waiver.

8 CONDITIONS OF SETTLEMENT

9 * 51. This Settlement Agreement will become final and effective upon
10 occurrence of all of the following events:

11 a. execution of the Settlement Agreement by the Defendants, Plaintiff,
12 Defendants' counsel and Class Counsel;

13 b. entry by the Court of a preliminary approval order;

14 c. the Court's certification of the Settlement Class for settlement purposes;

15 d. entry by the Court of a final approval order and judgment; and

16 e. unless the Parties otherwise agree in writing to waive all or any portions of
17 the following provisions, there has occurred (i) in the event that there is a properly and
18 timely filed objection to entry of the final approval order and judgment, the expiration
19 (without the filing or noticing of an appeal) of the time to appeal from the final approval
20 order and judgment; (ii) the final dismissal of an appeal from the final approval order and
21 judgment; (iii) affirmance on appeal of the final approval order and judgment in
22 substantially the same form as approved by the Court; (iv) if a ruling or decision is
23 entered by an appellate court with respect to affirmance of the final approval order and
24 judgment, the time to petition for a *writ of certiorari* with respect to such ruling or
25 decision has expired; or (v) if a petition for a *writ of certiorari* with respect to the final
26 approval order and judgment is filed, the petition has been denied or dismissed or, if
27 granted, has resulted in affirmance of the final approval order and judgment in substantial
28 form.

52. A failure of the Court to approve any material condition of this Settlement Agreement other than a modification or reduction of the request for an award of attorneys' fees, expenses, or court costs, which effects a fundamental change of the Settlement, or if the Settlement is reversed or materially modified on appellate review, shall render the entire Settlement Agreement voidable and unenforceable as to all Parties herein at the option of any Party. Except as otherwise provided herein, in the event the Settlement is terminated for any reason or any of the conditions set forth in paragraph 51 are not satisfied, then the Parties shall be deemed to have reverted to their respective status in the Action as of April 30, 2013, and the Parties shall proceed in all respects as if this Settlement Agreement and any related orders had not been entered, and any monies, including without limitation any attorneys' fees and costs awarded by the Court, paid by or on behalf of the Defendants to the Settlement Administrator for Class Counsel shall be returned to Defendants forthwith.

PARTIES' AUTHORITY

53. The signatories hereto represent that they are fully authorized to enter into this Settlement Agreement and bind that respective Party to the terms and conditions hereof.

MUTUAL FULL COOPERATION

54. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including, but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the cooperation of Defendants and their counsel, take all necessary steps to secure the Court's preliminary and final approval of the Settlement.

55. Defendants agree not to encourage Class Members to opt-out of or object in

1 any way to the proposed Settlement.

2 **MISCELLANEOUS PROVISIONS**

3 56. This Settlement Agreement may not be changed, altered, or modified, except
4 in writing and signed by the Parties, and approved by the Court. This Settlement
5 Agreement may not be discharged except by performance in accordance with its terms or
6 by a writing signed by the Parties.

7 57. This Settlement Agreement contains the entire agreement between the
8 Parties relating to the proposed Settlement and transaction contemplated herein, and all
9 prior or contemporaneous agreements, understandings, representations, and statements,
10 whether oral or written and whether by a party or such party's legal counsel, are merged
11 herein. No rights hereunder may be waived except in writing.

12 58. This Settlement Agreement shall be binding upon and inure to the benefit of
13 the Parties hereto and their respective heirs, trustees, executors, administrators, successors,
14 and assigns.

15 59. The Parties hereto represent, covenant, and warrant that they have not directly
16 or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber
17 to any person or entity any portion of any liability, claim, demand, action, cause of action or
18 rights released and discharged by this Settlement Agreement.

19 60. Except with respect to Class Notice obligations and Defendants' obligations
20 with respect to the paragraph 42, above, Class Counsel and counsel for Defendants agree
21 not to issue any press release or otherwise publicize the Settlement or any of the terms
22 contained in this Settlement Agreement.

23 61. The Parties agree that the terms and conditions of this Settlement
24 Agreement are the result of arm's-length negotiations between the Parties, and that this
25 Settlement Agreement shall not be construed in favor of or against any of the Parties by
26 reason of their participation in the drafting of this Settlement Agreement.

27 62. Headings are inserted as a matter of convenience and for reference,
28 and in no way define, limit, extend, or describe the scope of this Settlement Agreement

1 or any of its provisions.

2 63. Pursuant to California Code of Civil Procedure Section 664.6, and
3 California Rules of Court, rule 3.679(h), the Court shall retain jurisdiction of the Action to
4 implement the Settlement and enforce this Settlement Agreement.

5 64. This Settlement Agreement shall be subject to and governed by the laws of
6 the State of California and subject to the continuing jurisdiction of the Court.

7 65. Should any provision of this Settlement Agreement, or any portion thereof,
8 be declared or be determined to be illegal, invalid, void, or otherwise unenforceable, such
9 invalidity shall not affect the enforceability of the remaining terms hereof.

10 66. This Settlement Agreement may be executed in counterparts, and when each
11 party has signed and delivered at least one such counterpart, each counterpart shall be
12 deemed an original, and, when taken together with other signed counterparts, shall
13 constitute one Settlement Agreement, which shall be binding upon and effective as to
14 the Parties. For purposes of this Settlement Agreement, a facsimile or email signature
15 shall be as valid and enforceable as an original.

16 67. It is agreed that, because the members of the Settlement Class are numerous,
17 it is impossible or impractical to have each Class Member execute this Settlement
18 Agreement. The Class Notice, attached hereto as Exhibit D, will advise all Class Members
19 of the binding nature of the release provided herein and such shall have the same force and
20 effect as if this Settlement Agreement were executed by each Class Member.

21 68. Whenever this Settlement Agreement requires or contemplates that one
22 Party shall or may give notice to the other, notice shall be provided by facsimile, email
23 and/or next day (excluding Sunday) express delivery service as follows:

24 If to Plaintiffs, then to:

25 LAWYERS FOR JUSTICE, PC
26 Edwin Aiwarzian
27 edwin@LFJPC.com
28 410 West Arden Avenue, Suite 203
Glendale, California 91203
Facsimile: (818) 265-1021

LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

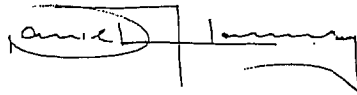
If to Defendants, then to:

VON BEHREN & HUNTER, LLP
Andrew R. Hunter
ahunter@vbhlaw.com
2041 Rosecrans Ave., Suite 367
El Segundo, California 90245
Facsimile: (310) 615-3006

SO STIPULATED AND AGREED.

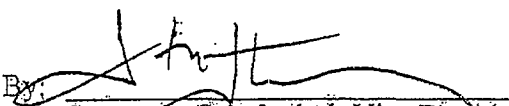
Dated: July 9, 2013

DANIEL FLANNERY

By: 
Daniel Flannery, Plaintiff

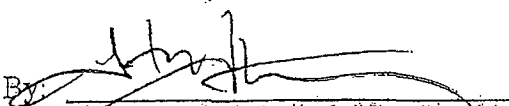
Dated: July 5, 2013

MCCORMICK & SCHMICK'S SEAFOOD
RESTAURANTS, INC.

By: 
Steven L. Scheinthal, Vice President

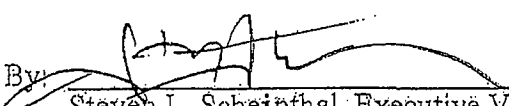
Dated: July 5, 2013

MCCORMICK & SCHMICK RESTAURANT
CORP.

By: 
Steven L. Scheinthal, Vice President

Dated: July 5, 2013

LANDRY'S, INC.

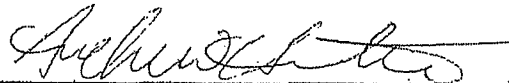
By: 
Steven L. Scheinthal, Executive Vice
President and General Counsel

LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203

1 APPROVED AS TO FORM:

2 Dated: July 5, 2013

VON BEHREN & HUNTER LLP
Andrew R. Hunter
Carol B. Lewis

3
4
5 By: 
6 Andrew R. Hunter
7 Attorneys for Defendants MCCORMICK &
8 SCHMICK'S SEAFOOD RESTAURANTS, INC.,
9 MCCORMICK & SCHMICK RESTAURANT
CORP., AND LANDRY'S, INC., erroneously sued as
LANDRY'S RESTAURANTS, INC.

10 Dated: July 8, 2013

LAWYERS for JUSTICE, PC
Edwin Aiwazian

11
12 SHENKMAN & HUGHES
Kevin Shenkman


13
14 By: 
15 Edwin Aiwazian
16 Attorneys for Plaintiff DANIEL PLANNERY and the
17 Proposed Settlement Class
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

1 Kevin Shenkman (SBN 223315)
2 Mary Ruth Hughes (SBN 222662)
3 **SHENKMAN & HUGHES**
4 28905 Wight Road
Malibu, California 90265
Telephone: (310) 457-0970

5 Edwin Aiwarzian (SBN 232943)
6 Arby Aiwarzian (SBN 269827)
7 Jill L. Parker (SBN 274230)
8 Maria F. Nickerson (SBN 274225)
9 **LAWYERS for JUSTICE, PC**
410 West Arden Avenue, Suite 203
Glendale, California 91203
Telephone: (818) 265-1020

Attorneys for Plaintiff and the Proposed Settlement Class

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF LOS ANGELES**

13
14 DANIEL FLANNERY; individually, and on
15 behalf of other members of the general
public similarly situated;

16 Plaintiff,

17 vs.

18 MCCORMICK & SCHMICK'S SEAFOOD
19 RESTAURANTS, INC., an unknown
business entity; MCCORMICK &
20 SCHMICK RESTAURANT CORP., an
unknown business entity; LANDRY'S
21 RESTAURANTS, INC.; an unknown
business entity; LANDRY'S, INC.; an
22 unknown business entity; and DOES 1
through 100, inclusive,

23 Defendants.
24
25
26
27
28

Case No.: BC487942

Honorable Lee Smalley Edmon
Department D322

CLASS ACTION

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT AND FINAL
APPROVAL OF ATTORNEYS' FEES,
COSTS AND INCENTIVE AWARD
AND JUDGMENT THEREON**

HEARING DATE: TBD
HEARING TIME: TBD
HEARING DEPT.: 322

**[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND FINAL APPROVAL OF
ATTORNEYS' FEES, COSTS AND INCENTIVE AWARD AND ENTERING JUDGMENT THEREON**

1 On or about July __, 2013, Plaintiff Daniel Flannery ("Plaintiff"), individually
2 and on behalf of the Settlement Class, and Defendants McCormick & Schmick's
3 Seafood Restaurants, Inc., McCormick & Schmick Restaurant Corp., and Landry's, Inc.,
4 erroneously sued as Landry's Restaurants, Inc. (collectively, "Defendants") (together
5 with Plaintiff, the "Parties") entered into a class action settlement (the "Settlement"), the
6 terms and conditions of which are set forth in the Stipulation of Class Action Settlement
7 between Plaintiff and Defendants (the "Agreement"). This matter having come before
8 the Court on [DATE] for the Final Approval Hearing on Plaintiff's Motion for Final
9 Approval of Class Action Settlement and Plaintiff's Motion for Final Approval of
10 Attorneys' Fees, Costs, and Incentive Award, due and adequate notice having been
11 given to Class Members as required by the Court's Preliminary Approval Order dated
12 [DATE], and the Court, having considered all the papers filed and proceedings herein,
13 having received no objections to the Settlement, having determined that the Settlement is
14 fair, adequate and reasonable, and otherwise being fully informed, **hereby ORDERS as**
15 **follows:**

18 1. All terms used herein shall have the same meaning as given them in the
19 Agreement.

20 2. The Court has jurisdiction over the subject matter of this proceeding and
21 over all Parties to this proceeding, including all Class Members.

22 3. The Court hereby unconditionally certifies the Settlement Class, as set
23 forth in the Settlement, for purposes of this settlement only.

24 4. Proving of Notice, directed to the Class Members as set forth in the
25 Preliminary Approval Order has been completed in conformity with the Preliminary
26 Approval Order, including the best notice practicable under the circumstances. The
27 Notice provided due and adequate notice of the proceedings and of the matters set forth
28 in the Preliminary Approval Order, including the proposed Settlement as set forth in the

1 Agreement. The Notice provided adequate and appropriate notice to all persons entitled
2 to such notice, and therefore fully satisfied the requirements of due process. All
3 Settlement Class Members and all Released Claims are covered by and included within
4 the Settlement and within this Final Approval Order.

5 5. The Court finds that the Settlement has been reached as a result of
6 intensive, serious, and non-collusive arms-length negotiations and the Settlement was
7 entered into in good faith. The Court further finds that the Settlement is fair, reasonable,
8 and adequate, and that Plaintiff has satisfied the standards and applicable requirements
9 for final approval of this class action Settlement under California law.

10 6. The Court hereby approves the Settlement as set forth in the Agreement
11 and directs the parties to effectuate the Settlement according to the terms set forth in the
12 Agreement. In granting final approval of the Agreement, the Court considered the
13 nature of the claims, the amounts and kinds of benefits paid in settlement, the allocation
14 of settlement proceeds among the Settlement Class Members, and the fact that a
15 settlement represents a compromise of the parties' respective positions rather than the
16 result of a finding of liability at trial. Additionally, the Court finds that the terms of the
17 Agreement have no obvious deficiencies and do not improperly grant preferential
18 treatment to any individual Settlement Class Member.

19 7. As of the date of this Final Approval Order, except as to such rights or
20 claims that may be created by the Settlement, each and every Released Claim of each
21 Settlement Class Member who did not timely submit a valid opt-out request is and shall
22 be deemed to be conclusively released as against the Released Parties (as those terms are
23 defined in the Agreement).

24 8. Neither the Settlement nor any of the terms set forth in the Agreement
25 constitute an admission by Defendants, or any of the other Released Parties, of liability
26 to the Settlement Class Representative or any other Settlement Class Member, nor does
27 this Final Approval Order constitute a finding by the Court of the validity of any of the
28

1 claims alleged in the Lawsuit, or of any liability of Defendants or any of the other
2 Released Parties.

3 9. The Court hereby finds the Settlement provided for in the Agreement to be
4 fair, reasonable and adequate.

5 10. The Court hereby confirms Kevin Shenkman, Esq. and Mary Ruth
6 Hughes, Esq. of Shenkman & Hughes and Edwin Aiwazian, Esq., and Arby Aiwazian,
7 Esq., of Lawyers for Justice, P.C. as Class Counsel.

8 11. Pursuant to the terms of the Agreement, and the authorities, evidence, and
9 argument set forth in Class Counsel's application, an award of attorneys' fees and costs
10 in the amount of \$_____, as final payment for and complete satisfaction of any and
11 all attorneys' fees and costs incurred by and/or owed to Class Counsel is hereby granted.
12 The Court finds that Class Counsel's request falls within the range of reasonableness and
13 that the result achieved justifies the award. The payment of fees and costs to Class
14 Counsel shall be made in accordance with the terms of the Agreement and pursuant to
15 the agreements between Class Counsel.

16 12. The Court also hereby approves Plaintiff Daniel Flannery as the
17 Settlement Class Representative and orders payment to Plaintiff for his service as a
18 named Plaintiff the sum of \$_____. The payment of the Settlement Class
19 Representative's service payments shall be made in accordance with the terms of the
20 Agreement.

21 13. The Court hereby authorizes and directs the Settlement Administrator,
22 Kurtzman Carson Consultants ("KCC"), to distribute the appropriate comp cards to all
23 of the Settlement Class Members who have submitted timely and valid claims in
24 accordance with the terms of the Agreement.

25 14. The Court further approves the payment of \$_____ to KCC for the
26 costs of administering the Settlement as set forth in the Agreement. The payment
27 authorized by this paragraph shall be made in accordance with the terms of the
28 Agreement.

EXHIBIT B

SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES
DANIEL FLANNERY, et al. v. McCORMICK & SCHMICK'S RESTAURANT CORP., et al., Case No. BC487942

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

If you purchased a menu item containing "Kobe beef" at a McCormick & Schmick's restaurant in California between July 10, 2008 and July 15, 2012, you may be entitled to receive a \$10 or \$15 comp card good for the purchase of any food or beverage item at any McCormick & Schmick's restaurant located in the State of California.

Your Legal Rights May Be Affected.

To obtain more information about the proposed settlement, please visit:

www.kobeaction.com

EXHIBIT C

KOBE STYLE KRAVING?

Try our American Kobe Style Beef Burger -
for just \$15.95.

Have you enjoyed one of our
Kobe Beef menu items
between July 10, 2008 and July 15, 2012?
If you have, you might be eligible for
a Complimentary Dinner card.

To find out more about whether you
are eligible for the card, visit www.mccormickandschmicks.com

MCCORMICK & SCHMICKS™

SEAFOOD & STEAKS

EXHIBIT D

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES
Daniel Flannery, et al. v. McCormick & Schmick's Seafood Restaurants, Inc., et al., Case No. BC487942

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

If you are a California based consumer who was exposed to McCormick & Schmick's online and/or in store menus, and who purchased any menu item that was advertised to contain "Kobe" beef at or from a McCormick & Schmick's restaurant located in the State of California between July 10, 2008 and July 15, 2012,

Your Legal Rights May Be Affected.

On _____, the Court in this action granted preliminary approval of a proposed settlement as set forth in the Stipulation of Class Action Settlement ("Settlement Agreement"). The Court in this action authorized the publication of this notice because your rights may be affected by the legal proceedings in this action. If the proposed settlement of this action is granted final approval by the Court, you may be entitled to a comp card valued at either \$15.00 or \$10.00 good for the purchase of any food or beverage items at any McCormick & Schmick's restaurant located in the State of California.

This Notice informs you of the proposed settlement, its terms, and your rights to participate in the proposed settlement, object to the terms of the proposed settlement, or opt-out of the proposed settlement. This Notice also explains how you can obtain more information about the proposed settlement.

The Plaintiff, his attorneys, and the attorneys for Defendants McCormick & Schmick's Seafood Restaurants, McCormick & Schmick Restaurant Corp., and Landry's Inc. (collectively "Defendants") believe that the proposed settlement is fair, adequate, reasonable, and in the best interest of the Settlement Class.

**PLEASE READ THIS ENTIRE NOTICE CAREFULLY.
YOUR RIGHTS MAY BE AFFECTED
BY THE PROPOSED SETTLEMENT DESCRIBED IN THIS NOTICE**

On July 10, 2012, Plaintiff filed the above-entitled class action complaint on behalf of himself and all other members of the general public similarly situated against Defendants (the "Action") alleging false advertising and unfair business practices in violation of California Business and Professions Code §§ 17500 et seq. and §§ 17200 et seq., as well as violations of the Consumers Legal Remedies Act, codified at California Civil Code §§ 1750 et seq. Plaintiff also alleged that Defendants' actions constitute fraud, intentional misrepresentation, and negligent misrepresentation.

Plaintiff alleged that "Kobe" beef is only available from Japan, and that the term "Kobe" signifies that beef comes from the "Wagyu" bloodline of cattle which are isolated in the Kobe region of Japan and that the beef comes from cattle slaughtered within the Kobe region of Japan. Plaintiff further alleged that the United States Department of Agriculture had banned importation of beef and cattle from Japan since approximately May 2010. Plaintiff further alleged that the menu items at Defendants' McCormick & Schmick's restaurants that purport to contain "Kobe" beef do not actually contain "Kobe" beef. Plaintiff further alleged that Defendants' in store and online menu items have misled consumers into believing that their menu items which purport to contain "Kobe" beef offered at McCormick & Schmick's restaurants do in fact contain "Kobe" beef. Defendants denied and continue to deny all of Plaintiff's allegations, and further deny that the Action is appropriate for class treatment for any purpose other than settlement.

As used herein, "Subject Food Product" shall mean any menu item at Defendants' restaurants described as containing "Kobe" beef including, without limitation, "Kobe Beef Sliders" or "Kobe Burgers."

For settlement purposes only, the parties agree that there shall be a certified "Settlement Class," defined as follows:

All California based consumers who were exposed to Defendants' online and/or in store menus, and who purchased a Subject Food Product (or any menu item that was advertised to contain "Kobe" beef on Defendants' online and/or in store menus) at or from a Defendants' restaurant located in the State of California at any time from July 10, 2008 through July 15, 2012 (the "Class Period").

A proposed settlement of the Lawsuit has been reached and has been preliminarily approved by the Court. The Court must give final approval of the proposed settlement before the benefits of the proposed settlement will be made available. If the Court approves the proposed settlement at the Final Approval Hearing scheduled for _____, 2013, then the proposed settlement will bind all Settlement Class members who have not excluded themselves from the proposed settlement. This means that all Settlement Class members who have not excluded themselves from the proposed settlement will release all claims and causes of action arising from or relating to the claims that were made in the Lawsuit. On the other hand, if the Court does not approve the proposed settlement, the Settlement Agreement will have no effect or precedential value in any subsequent proceedings in the Lawsuit or in any other litigation, and the case will proceed as if no settlement had been attempted. There can be no assurance that if the proposed settlement is not approved and the

Lawsuit resumes that the Settlement Class members will recover more than is provided for under the proposed settlement, or will recover anything at all.

2. What Am I Entitled To From This Proposed Settlement?

Settlement Class members are entitled to either a Fifteen Dollar (\$15.00) or a Ten Dollar (\$10.00) comp card good for the purchase of any food or beverage item at any McCormick & Schmick's restaurant located in the State of California.

In order to receive a comp card, you must accurately complete and sign a claim form ("Claim Form") under penalty of perjury under the laws of the State of California, and return the Claim Form to the Settlement Administrator by no later than _____, 2013. Claim Forms are available to download and print from www.kobeclaimaction.com. The timeliness of a Claim Form submitted by mail will be determined by a valid postmark.

You are entitled to a Fifteen Dollar (\$15.00) comp card if you mail the following documents to the Settlement Administrator by no later than _____, 2013:

- (i) a McCormick & Schmick's sales receipt, a credit card receipt or a credit card statement showing that you purchased a meal in excess of \$15.00 at any McCormick & Schmick's restaurant in the State of California at any time between July 10, 2008 and July 15, 2012 (hereinafter, a "Qualifying Receipt"), and
- (ii) a Claim Form, signed under penalty of perjury under the laws of the State of California, attesting that you purchased and consumed a Subject Food Product on the date shown on the Qualifying Receipt submitted with the Claim Form.

If you do not have a Qualifying Receipt, you are entitled to a Ten Dollar (\$10.00) comp card if you mail to the Settlement Administrator by no later than _____, 2013 a Claim Form, signed under penalty of perjury under the laws of the State of California, attesting that you purchased a meal in excess of \$15.00 at any McCormick & Schmick's restaurant in the State of California on a date between July 10, 2008 and July 15, 2012, and that you purchased and consumed a Subject Food Product on that date.

Defendants also agree to change the description of the Subject Food Products on Defendants' menus from "Kobe beef" to "American Kobe Style" beef. Defendants shall forbear from using the term "Kobe beef" on Defendant's menus, and will refer to Subject Food Products as "American Kobe Style" beef.

3. How Can I Receive The Benefits Of The Proposed Settlement?

To participate in the proposed settlement, you must accurately complete and sign a Claim Form under penalty of perjury, and return a Qualifying Receipt and/or the Claim Form to the Settlement Administrator by no later than _____, 2013. The timeliness of Claim Forms submitted by mail will be determined by valid postmark.

You must use your comp card for the purchase of food or beverage items at any McCormick & Schmick's restaurant located in the State of California after they are mailed by the Settlement Administrator. Purchasing a food or beverage item is a condition precedent to your entitlement to any settlement funds, and you shall have no property interest in any funds remaining due to unused comp cards.

4. Can I Exclude Myself From The Proposed Settlement?

Yes. You have the right to opt-out of the settlement. To opt out, you must complete and submit an opt-out form made available on www.kobeaclassaction.com on or before _____, 2013. This form shall require you to (a) provide your full name and address, (b) attest that you purchased a meal in excess of \$15.00 at an McCormick & Schmick's restaurant in the State of California on a date between July 10, 2008 and July 15, 2012 and that you purchased and consumed a Subject Food Product on that date, and (c) check a box stating that you wish to opt-out of the Settlement. If you opt-out, you must send your opt out form via U.S. Mail to the Settlement Administrator at the physical address provided on the Settlement Administrator's website.

Requests to opt-out that do not include all required information, or that are not submitted on a timely basis, will be deemed null, void and ineffective. If you submit a valid and timely request to opt-out of the Settlement, you will not participate in the Settlement, nor will you be bound by the terms of the Settlement, if it is approved. The timeliness of requests to opt-out submitted by mail will be determined by valid postmark.

5. Can I Object To The Proposed Settlement?

Yes. You have the right to object to the proposed settlement if you do not opt-out of the proposed settlement. If you elect to opt-out of the proposed settlement, you may not object to the settlement. Settlement Class members who object to the Settlement will still be bound by the terms of the Settlement if approved by the Court. To object, you must complete and submit an objection form available on www.kobeaclassaction.com, or such similar website URL as may be used, on or before _____, 2013. This form shall require you to provide your full name and address and to check a box stating that you object to the Settlement. Settlement Class members who object to the Settlement must also send via U.S. Mail to the Settlement Administrator at the address provided on its website a Claim Form signed under penalty of perjury, evidencing their purchase of a Subject Food Product from one of McCormick & Schmick's restaurants in California during the Class Period.

If you fail to object in the manner specified above, you shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement Agreement, or any aspect of the proposed settlement, including, without limitation, the fairness, reasonableness or adequacy of the proposed settlement, or any award of attorneys' fees or reimbursement of costs and expenses. If you submit a timely written

statement of objection, you will have a right to appear at the Final Approval Hearing scheduled for _____, 2013 in order to have your objections heard by the Court.

6. What Happens If I Do Nothing?

If you do nothing (meaning you do not exclude yourself from, or object to, the proposed settlement), you will be entitled to the benefits of the Settlement described in Sections 2 and 3 of this Notice, and you will be subject to the Release described in Section 7 below.

7. What Rights Am I Giving Up?

Upon the final approval by the Court of this Settlement Agreement and the class action settlement, and except as to such rights or claims as may be created by this proposed settlement, each Settlement Class member (other than those who timely opt-out), including Plaintiff and their respective successors, assigns, legatees, heirs, and personal representatives, fully, finally, and forever release and discharge Defendants, and each of them, including their respective parents, subsidiaries, sister corporations and affiliates, owners, officers, directors, employees, agents, representatives, attorneys, insurers, successors, assigns, and all persons acting by, through, under or in concert with them, or any of them ("Released Parties"), from any and all claims, debts, liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorneys' fees, damages, actions or causes of action of whatever kind or nature, which were alleged, or which could have been alleged based on the facts and claims alleged, in the Action.

In order to achieve a full and complete release of Defendants and the Released Parties, Plaintiff, the Settlement Class and each member thereof (other than those that timely opt-out), and each of their respective successors, assigns, legatees, heirs, and personal representatives, acknowledge that this Settlement Agreement is intended to include in its effect all causes of action and allegations which were alleged, or which could have been alleged based on the facts and claims alleged, in the Action, including any claims that the Settlement Class, and the individual members thereof, do not know or suspect to exist in their favor. Consequently, with regard to the causes of action which were alleged, or which could have been alleged based on the facts and claims alleged, in the Action, the Settlement Class, and each individual member thereof (other than those who timely opt-out), waive all rights and benefits afforded by California Civil Code Section 1542, or any other similar provision under federal or state law, and do so understanding the significance of that waiver. Section 1542 provides:

"A general release does not extend to 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 settlement with the debtor."

8. Who Is The Settlement Class Representative?

The Court has appointed Plaintiff Daniel Flannery as "Settlement Class Representative" to represent the Settlement Class. The Court will be asked to grant final approval of an incentive award in an amount not to exceed \$2,000, to be paid by Defendants to compensate him for his efforts in bringing and assisting with the prosecution of the Lawsuit on behalf of the Settlement Class.

9. How Will The Attorneys' Fees For The Settlement Class Be Paid?

You are not personally responsible for any portion of the Settlement Class Counsel's or Defendants' attorneys' fees and costs. All payments for the Settlement Class Counsel's attorneys' fees and costs will be paid by Defendants. Settlement Class Counsel has actively litigated this matter since July 10, 2012. In this case, Settlement Class Counsel will request an award of \$90,000 for attorneys' fees and costs.

Settlement Class Counsel will apply to the court for approval of their attorneys' fees and costs at the Final Approval Hearing scheduled for _____, 2013. The actual amount awarded will be determined by the Court to ensure that the amount of attorneys' fees and costs is reasonable.

10. When and Where is the Final Settlement Approval Hearing?

The "Final Settlement Approval Hearing" has been scheduled for _____, 2013 at _____ [am/pm] before the Honorable Lee Smalley Edmon presiding in Department 322 of the Los Angeles Superior Court located at 600 S. Commonwealth Avenue, Los Angeles, California 90005, at which time the Court will determine: (1) whether the proposed settlement should be approved as fair, reasonable and adequate to the Settlement Class; (2) whether the application of Settlement Class Counsel for an award of attorneys' fees and expenses should be approved and in what amount; (3) whether the application for an enhancement award for the Settlement Class Representative should be approved and in what amount; and (4) whether a proposed Final Approval Order should be entered as recommended to the Court.

You Are Not Required To Attend The Final Settlement Approval Hearing.

You are welcome to attend the Final Settlement Approval Hearing, at your own expense. You may request permission to speak to the Court at the Final Settlement Approval Hearing. You may hire your own attorney at your own expense to speak at the Final Settlement Approval Hearing.

If you want to speak at the Final Settlement Approval Hearing, you must ask the Court for permission. To do so, send a letter to the Court (at the address set forth above) with a copy to the Settlement Administrator at the addresses set forth in Section 11 of this Notice no later than _____, 2013 requesting permission to speak at the Final Settlement Approval Hearing. Such letter should be signed and should contain a brief statement of the position that you wish to put before the Court at the Final Settlement Approval Hearing and the basis for that position. The Court may, or may not, grant the request.

II. Where Can I Get Additional Information?

This Notice provides only a summary of the matters relating to the proposed settlement. The Settlement Agreement and all other pleadings and papers filed in the Lawsuit are available for inspection and copying during regular business hours from 8:30 a.m. to 4:30 p.m., Monday through Friday, at the Los Angeles County Superior Court, Records Department, located at 600 S. Commonwealth Avenue, Los Angeles, California 90005. You may also contact the Settlement Administrator by calling toll-free or by email at:

Kurtzman Carson Consultants
75 Rowland Way, Suite 250
Novato, CA 94945
Telephone: (866) 381-9100
E-mail: info@kccllc.com

You may also contact Settlement Class Counsel as follows:

Kevin Shenkman, Esq.
Mary Ruth Hughes, Esq.
Shenkman & Hughes
28905 Wight Road
Malibu, CA 90265
Telephone: (310) 457-0970

Edwin Aiwazian, Esq.
Edwin@LFJPC.Com
LAWYERS for JUSTICE, PC
410 West Arden Ave, Suite 203
Glendale, CA 91203
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PLEASE DO NOT CONTACT THE COURT WITH QUESTIONS ABOUT THE PROPOSED SETTLEMENT.