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Attorneys for Individual and Representative Plaintiff Aleta Lilly

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ALETA LILLY, on behalf of herself and all others similarly situated,

Plaintiff,

vs.

CONAGRA FOODS, INC., a Delaware corporation

Defendant.

Case No. CV12-0225-RGK (SHx)

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT PURSUANT TO FED. R. CIV. P. 23(B)(2); MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Date: September 8, 2014
Time: 9:00 a.m.
Courtroom: 850-Roybal
Judge: Hon. R. Gary Klausner

NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT PURSUANT TO FED. R. CIV. P. 23(B)(2)

PLEASE TAKE NOTICE that on September 8, 2014 at 9:00 a.m., or as soon thereafter as the matter may be heard, in Courtroom 850 of the United States District Courthouse, 255 East Temple Street, Los Angeles, California, 90012-3332, before the Honorable R. Gary Klausner, Plaintiff Aleta Lilly ("Plaintiff") will, and hereby does, move the Court for an Order Granting Preliminary Approval of Class Action Settlement Pursuant to Fed. R. Civ. P. 23(b)(2). The Motion is based upon this Notice of Motion, the accompanying Memorandum of Points and Authorities, the Declaration of Rosemary M. Rivas, the pleadings and all documents on file in this action, and such other matters as may be presented at or before the hearing.

DATED: August 1, 2014

Respectfully submitted,

FINKELSTEIN THOMPSON LLP

By: /s/ Rosemary M. Rivas
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Attorneys for Individual and Representative Plaintiff Aleta Lilly

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Plaintiff Aleta Lilly ("Plaintiff"), on behalf of herself and the proposed Settlement Class she represents, hereby moves for preliminary approval of the Stipulation of Settlement and Release ("Settlement" or "Settlement Agreement") she reached with Defendant ConAgra Foods, Inc. The Settlement Agreement is attached as Exhibit 1 to the accompanying Declaration of Rosemary M. Rivas ("Rivas Decl."). In connection with this motion, Plaintiff also seeks class certification for settlement purposes only, and an order appointing her as the Class Representative and her counsel, Finkelstein Thompson LLP, as Class Counsel.

On January 10, 2012, Plaintiff filed this proposed class action suit (the "Action") alleging that ConAgra committed unlawful and unfair business practices by failing to disclose that total amount of sodium in the Nutrition Fact Labels of its David® Sunflower Seeds in violation of California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* ("UCL"). Specifically, Plaintiff alleged that Defendant disclosed the sodium for the kernels in the Nutrition Facts Panel, but not the sodium for the shells' coating. On other packages, Defendant disclosed the sodium for the shells' coating outside the Nutrition Facts Panel. Plaintiff also alleged that Defendant's conduct constitutes false advertising and deceptive practices in violation of the UCL, the False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.* ("FAL"), and the Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.* ("CLRA"). Defendant has consistently denied Plaintiff's allegations.

After more than two years of hard-fought litigation, including appellate practice and extensive written discovery, Plaintiff and Defendant reached the Settlement with the assistance of the Honorable Wayne D. Brazil (Ret.), a well-respected JAMS mediator with experience resolving class action suits. The Settlement was negotiated by lawyers with significant experience in class action procedure and food labeling claims.

Accordingly, the proposed Settlement merits preliminary approval. Plaintiff respectfully requests that the Court grant this motion.

II. PROCEDURAL SUMMARY

Defendant moved to dismiss the Action on February 27, 2012, on the grounds that Plaintiff's claims were preempted by 21 U.S.C. § 343-1 and that as a matter of law, reasonable consumers were not likely to be deceived by its practices. (ECF No. 17). Plaintiff opposed the motion on the grounds that her claims were not preempted because they were identical to federal food labeling laws and that reasonable consumers were likely to be deceived by its practices. (ECF No. 20).

The Court granted the motion to dismiss the Action on April 19, 2012 (ECF No. 29) and Plaintiff filed an appeal to the Ninth Circuit. The Ninth Circuit held that Plaintiff's claims were not preempted and remanded the case back to the District Court.

After the case was remanded to the District Court on March 17, 2014, the Parties engaged in extensive discovery. Rivas Decl. ¶ 6. Among other things, Plaintiff deposed Defendant regarding a number of topics, including the product labels used from January 2008 through the present. *Id.* Plaintiff also met and conferred with Defendant over the production of documents which resulted in Defendant's producing pricing information; sales data; consumer studies; and consumer call logs, among other things. *Id.*

Pursuant to the Court's order, Plaintiff filed her motion for class certification on April 28, 2014 and Defendant filed an opposition brief thereto on June 27, 2014. (ECF Nos. 47, 79). During the course of the briefing on the motion for class certification, Plaintiff also filed a motion to amend the complaint, which the Court granted. (ECF Nos. 68, 84). In light of the Court's order granting Plaintiff leave to amend the complaint, the Court gave Plaintiff the option of filing an amended motion for class certification on July 7, 2014. (ECF No. 86) Plaintiff filed her amended motion for class certification on July 7, 2014, which Defendant vigorously opposed again. (ECF Nos. 93, 106)

On July 8, 2014, the parties participated in a mediation before the Honorable Wayne D. Brazil (Ret.). Rivas Decl. ¶ 8. With Judge Brazil's assistance, the parties reached the proposed Settlement. *Id.*

III. TERMS OF THE PROPOSED SETTLEMENT

A. The Class Definition

For settlement purposes only, the Parties have agreed to the certification of an injunctive relief only class pursuant to Fed. R. Civ. P. 23(b)(2) defined as follows:

> All persons in the United States who bought, for personal use only, David® Sunflower Seeds from the period of January 10, 2008 to the Effective Date (defined as the first day after the Final Order and Judgment is entered by the District Court). Excluded from the Settlement Class are Defendant, its officers, directors, or employees, the legal representatives, heirs, successors, and assigns of Defendant, any entity in which Defendant has a controlling interest; and any judge to whom this case is assigned, his or her immediate family, and his or her staff ("Settlement Class").

B. Class Benefits – Stipulated Injunction

Since the inception of the case, Defendant has denied Plaintiff's allegations and continues to deny them to this day. To resolve the Action, Defendant has agreed to a stipulated injunction for as long as the Federal Food and Drug Administration requires only single serving nutritional information to be contained in the Nutrition Facts Panel. The terms of the injunction are:

1. Defendant shall effect relabeling of all David® Sunflower Seeds products so that the Nutrition Facts Panel discloses the total sodium content for both the kernels and the shells' coating. Defendant will no longer place the sodium of the kernels and the shells' coating outside the Nutrition Facts Panel on products sold in the United States. Sodium disclosures for both the kernels and the shells' coating in David® Sunflower Seeds sold in the United States shall be stated in the Nutrition Facts Panel in the sodium declaration.

2. Defendant shall effect relabeling of all Nutrition Facts Panels on its website pages at www.davidseeds.com relating to David® Sunflower Seeds products to disclose the sodium content for the kernel and the shells' coating. Sodium disclosures for both the kernels and the shells' coating shall be stated in the sodium declaration of the Nutrition Facts Panel on David® Sunflower Seeds.

3. Defendant shall comply with all aspects of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. §§ 301, *et seq.* and regulations promulgated pursuant thereto, and with all aspects of the Sherman Food, Drug and Cosmetic Law, that relate to the required disclosure of sodium in the sunflower seeds.

4. Defendant shall effectuate the changes set forth in Paragraphs (1)-(3) by January 31, 2015, and provide Plaintiff with a declaration by January 31, 2015 setting forth compliance with the above obligations and shall maintain records necessary to demonstrate compliance with the same.

5. Defendant is not required to remove or recall any David® Sunflower Seeds in market, inventory or elsewhere; nor is ConAgra required to discontinue the use of, or destroy, any packaging inventory in existence prior to final approval of this Settlement Agreement. Instead, Defendant shall not print any David® Sunflower Seed labels after January 31, 2015 that do not comply with Paragraphs (1)-(3), above. However, Defendant may, now or after January 31, 2015, exhaust all existing packaging inventory and thereafter sell and distribute David® Sunflower Seeds bearing labeling printed on or before the Final Approval Date, without violating the terms of this agreement.

6. Plaintiff and all members of the Settlement Class shall be forever enjoined from filing any action seeking injunctive relief pursuant to Rule 23(b)(2),

individually or otherwise, against Defendant alleging that the sodium disclosure of David® Sunflower Seeds fails to comply with state or federal law or regulations in effect on the Effective Date (defined as the first day after the Final Order and Judgment is entered by the District Court).

Settlement Agreement, ¶ 3.

C. Plaintiff's Enforcement of the Stipulated Injunction

Plaintiff's Counsel is authorized to enforce the terms of the Settlement to ensure that Defendant complies with the terms of the Stipulated Injunction. Settlement Agreement, ¶ 13.

D. Class Notice

Since the Settlement Agreement provides for injunctive relief only and requires no release of any monetary claims by any member of the Settlement Class, the Parties agree that notice and opt-out rights are not necessary. Settlement Agreement, ¶ 2.

E. Release

Only Plaintiff's individual claims for monetary relief are released. Settlement Agreement, ¶ 2. Class members, however, are bound to the terms of the Stipulated Injunction. *Id.*

F. Attorneys' Fees and Costs

Since the fall of 2011, Plaintiff's Counsel, Finkelstein Thompson LLP, has worked on the case on a purely contingency basis. Defendant has agreed to pay the total sum of $550,000.00 to Finkelstein Thompson LLP for any and all Plaintiff's attorneys' fees and costs, subject to Court approval. Settlement Agreement, ¶ 4.

G. Payment to Class Representative

In exchange for the release of her individual claims and for her efforts in prosecuting the matter on behalf of the Settlement Class, Defendant has agreed to pay Plaintiff an amount not to exceed $5,000.00, subject to Court Approval. Settlement Agreement, ¶ 5.

IV. CLASS CERTIFICATION OF THE SETTLEMENT CLASS IS APPROPRIATE

A. Class Certification Standards

The party seeking class certification bears the burden of showing that each of Rule 23(a)'s requirements and at least one of the requirements of Rule 23(b) are met. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1022 (9th Cir.1998); *Wal–Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2548 (2011). To certify a class under Rule 23(a), the court must find: (1) numerosity, (2) common questions of law or fact, (3) that the named plaintiff's claims are typical of the claims of the class, and (4) that the named plaintiff and plaintiff's counsel can adequately protect the interests of the class. *Amchem v. Windsor*, 521 U.S. 591, 613 (1997); *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1186 (9th Cir. 2001). In addition, the case must fit into one or more of the categories set forth in Rule 23(b). Fed. R. Civ. P. 23(b); *Freedman v. Louisiana-Pacific Corp.*, 922 F. Supp. 377, 398 (D. Or. 1996). As shown below, this case meets the requirements of Fed. R. Civ. P. 23(a) and (b)(2).

1. The Requirements of Rule 23(a) are Satisfied.

Each of the four basic prerequisites enumerated in Rule 23 of the Federal Rules of Civil Procedure – numerosity, commonality, typicality and adequacy – is satisfied in this case.

a. The Class is so Numerous that Joinder of all Members is Impracticable.

Here, the parties agree that the Settlement Class satisfies the numerosity requirement. While the exact number of class members is undetermined, ConAgra sold millions of individual units. This is sufficient to satisfy the numerosity requirement.

b. There are Questions of Law and Fact Common to the Class

Commonality requires the plaintiff to demonstrate that the class members 'have suffered the same injury.'" *Wal–Mart Stores, Inc.,* 131 S. Ct. at 2551. The commonality requirement has been construed permissively. *Hanlon*, 150 F.3d at 1019. "All questions

of fact and law need not be common to satisfy the rule. The existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class." *Id.*; 7A CHARLES ALAN WRIGHT, ARTHUR R. MILLER, & MARY KAY KANE, FED. PRAC. & PROC. § 1763 (2d ed. 1986) ("It is important to note that this provision does not require that all the questions of law and fact raised by the dispute be common."). Indeed, for the commonality requirement to be met, a ***single*** issue common to the proposed class is sufficient. *Wal–Mart Stores, Inc.*, 131 S. Ct. at 2556; *In re THQ, Inc. Sec. Litig.*, Case No. CV 00-1783 AHM, 2002 WL 1832145, at *3 (C.D. Cal. Mar. 22, 2002). Here, Plaintiff's and the Class members' claims significantly depend on a common issue: whether ConAgra violated California law by understating the sodium in the Nutrition Facts Panel of its Products. Other questions common to Plaintiff and all Class members are whether reasonable consumers are likely to be deceived by and the measure of restitution to which they are entitled. These legal questions are common to the proposed Class and are sufficient to meet the commonality requirement.

c. The Claims of the Representative Plaintiff Are Typical of the Claims of the Class

Rule 23(a)(3) requires the representative party to have claims that are "typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). The purpose of the "typicality" requirement of Rule 23(a)(3) is to ensure that the named representative's interests "align" with those of the class. *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). "Under the rule's permissive standards, representative claims are 'typical' if they are reasonably co-extensive with those of absent class members; they need not be substantially identical." *Hanlon*, 150 F.3d at 1020. Thus, typicality is satisfied as long as the named plaintiff's claims stem from the "same event, practice, or course of conduct that forms the basis of the class claims and is based upon the same legal or remedial theory." *Jordan v. Cnty. of L.A.*, 669 F.2d 1311, 1321 (9th Cir. 1982) (reversed on other grounds). Plaintiff's claims in this case are typical of those of the

Class because she, like Class members, alleges that she bought misbranded Sunflower Seeds that should not have been available for purchase, and for which it was illegal for Defendant to sell and deliver in California.

d. The Representative Plaintiff and Her Counsel Will Fairly and Adequately Protect the Interest of the Class

Finally, Rule 23(a)(4) requires that the class representative "fairly and adequately protect the interests of the class." The Ninth Circuit has established a two-prong test for this requirement: "(1) Do the representative plaintiffs and their counsel have any conflicts of interest with other class members, and (2) will the representative plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003). As noted above, Plaintiff's and each Class member's claims arise under the same legal theories. Thus, Plaintiff's interests align perfectly with the interests of absent Class members, and no conflict is anticipated. *Beck-Ellman v. Kaz USA, Inc.*, 283 F.R.D. 558, 567 (S.D. Cal. 2012); *In re Ferrero Litig.*, 278 F.R.D. 552, 559 (S.D. Cal. 2011). Plaintiff has also shown her desire and ability to monitor her counsel and participate in vigorous prosecution of the case. Plaintiff reviewed the operative complaints before filing, provided information to counsel, has appeared for deposition and at all times was prepared to go to trial on this matter. Rivas Decl., at ¶ 11.

In addition, Plaintiff's counsel, Finkelstein Thompson LLP ("FT"), is more than adequate and should be appointed as Class Counsel. Class counsel must have the ability to fairly and adequately represent the interests of the Class. *See* Fed. R. Civ. P. 23(g)(1)(B). Here, Plaintiff has retained experienced legal counsel to represent the Class, as set forth in her counsel's resume. Rivas Decl., Exh. 2. As of the filing of this motion, FT has vigorously litigated this matter, including, but not limited to, drafting and filing the complaints, opposing Defendant's motion to dismiss, successfully defeating Defendant's arguments in the Ninth Circuit Court of Appeal, and obtaining discovery.

Based on FT's performance to date, and its commitment to this litigation, together with Plaintiff, they will continue to fairly and adequately represent the Class.

2. The Requirements of Rule 23(b)(2) are Satisfied.

Under Rule 23(b)(2), a class action is properly certified where the party against whom relief is sought "has acted or refused to act on grounds that apply generally to the class, so that injunctive relief . . . is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). Setting forth a minimal standard, for a Rule 23(b)(2) class to be certified, "[i]t is sufficient if class members complain of a pattern or practice that is generally applicable to the class as a whole. Even if some class members have not been injured by the challenged practice[.]" *Walters v. Reno*, 145 F.3d 1032, 1047 (9th Cir. 1998). Further, "Although common issues must predominate for class certification under Rule 23(b)(3), no such requirement exists under 23(b)(2)." *Id.* As shown above, Plaintiff, on behalf of herself and the proposed Class, complains of standard and uniform illegal practices that are generally applicable to the class as a whole. Moreover, Defendant has maintained that it has fully complied with all applicable laws with regard to the labeling of its David® Sunflower Seeds. Accordingly, Rule 23(b)(2) certification is appropriate. *See Ries v. Ariz. Bev. USA, LLC*, 287 F.R.D. 523, 542 (N.D. Cal. 2012)(granting class certification for injunctive relief claims related to beverages falsely advertised as "all natural").

3. The Settlement Class is Ascertainable

There is no explicit requirement in Rule 23 about the class definition. Nevertheless, courts have held that a class must be ascertainable before proceeding. "The requirement of an ascertainable class is met as long as the class can be defined through objective criteria." *Forcellati v. Hyland*, Case No. CV 12-1983-GHK, 2014 U.S. Dist. LEXIS 50600, at *13 (C.D. Cal. April 9, 2014); *Keegan v. Am. Hon. Co., Inc.*, 284 F.R.D. 504, 521 (C.D. Cal. 2012). "A class is sufficiently ascertainable if 'the proposed class definition allows prospective plaintiffs to determine whether they are class members with a potential right to recover.'" *Forcellati,* 2014 U.S. Dist. LEXIS

50600, at *13 (quoting *Parkinson v. Hyundai Motor Am.*, 258 F.R.D. 580, 593-94 (C.D. Cal. 2008)).

As in *Forcellati,* Plaintiff has defined the proposed class on objective criteria: the purchase of David® Sunflower Seeds within a prescribed time period. *Id.* at *13; *see also McCrary v. Elations Co.*, Case No. EDCV 13-00242 JGB, 2014 U.S. Dist. LEXIS 8443, at *25 (C.D. Cal. Jan. 13, 2014) (class ascertainable because it clearly defined membership by providing a description of the offending product and the eligible dates of purchase); *Ries*, 287 F.R.D. at 535, ascertainability satisfied where class members may self identify themselves as purchasing ice tea with "natural" on the label during the class period); *Astiana v. Kashi Co.,* 291 F.R.D. 493, 500 (S.D. Cal. 2013); *Ebin v. Kangadis Foods, Inc.*, Case No. 13 CIV. 2311 JSR, 2014 WL 737960, at *5 (S.D.N.Y. Feb. 24, 2014) (certifying class of persons in the United States who bought olive oil products packed before March 1, 2013).

Here, the proposed Settlement Class is ascertainable because it clearly defines membership based on the purchase of David® Sunflower Seeds during a specific time period. Given that all the requirements for settlement purposes certification are met under Rule 23(a) and 23(b)(2), class certification should be granted.

V. PRELIMINARY APPROVAL IS APPROPRIATE

A. The Settlement Approval Process

The law favors settlement, particularly in class actions and complex cases where substantial resources can be conserved by avoiding the time, costs and rigors of prolonged litigation. *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976); CONTE & NEWBERG, NEWBERG ON CLASS ACTIONS § 11.41 (4th ed. 2002) ("By their very nature, because of the uncertainties of outcome, difficulties of proof, length of litigation, class action suits lend themselves readily to compromise.").

Where, as here, the parties propose to resolve the claims of a certified class through settlement, they must obtain the court's approval. Fed. R. Civ. Proc. 23(e)(1)(A). The

typical process for approving class action settlements is described in the FEDERAL JUDICIAL CENTER, MANUAL FOR COMPLEX LITIGATION §§ 21.632-.635(4th ed. 2004): (1) preliminary approval of the proposed settlement at an informal hearing; (2) dissemination of mailed and/or published notice of the settlement to all affected class members; and (3) A "formal fairness hearing," or final approval hearing, at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement is presented. *Id.* This procedure, commonly employed by federal courts, serves the dual function of safeguarding class members' procedural due process rights and enabling the court to fulfill its role as the guardian of class members' interests.

Plaintiff asks that the Court grant preliminary approval of the proposed Settlement. At this stage, the Court "must make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms and must direct the preparation of notice of the certification, proposed settlement, and date of the final fairness hearing." MANUAL FOR COMPLEX LITIGATION § 21.632. The Court should grant preliminary approval if the settlement has no obvious deficiencies and "falls within the range of possible approval." NEWBERG ON CLASS ACTIONS § 11.25.

At the next stage of the approval process, the formal fairness hearing, courts consider arguments in favor of and in opposition to the settlement. According to the Ninth Circuit, the fairness hearing should not be turned into a "trial or rehearsal for trial on the merits." *Officers for Justice v. Civil Serv. Com'n of City and County of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982). "Neither the trial court nor this court is to reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute . . . ." *Id.* Rather, the inquiry ". . . must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable, and adequate to all concerned." *Id.*

B. The Proposed Settlement is Presumptively Fair and Easily Meets the Requirements for Preliminary Approval

Courts generally employ a multi-prong test to determine whether preliminary approval is warranted. A proposed class action settlement is presumptively fair and should be preliminarily approved if the Court finds that: (1) the negotiations leading to the proposed settlement occurred at arm's length; (2) there was sufficient discovery in the litigation for the plaintiff to make an informed judgment on the merits of the claims; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objection. *Young v. Polo Retail,* Case No. C-02-4546 VRW, 2006 WL 3050861, at *5 (N.D. Cal. Oct. 25, 2006); *see also* NEWBERG ON CLASS ACTIONS § 11.41. The Settlement easily satisfies these requirements.

First, the negotiations leading to the Settlement were hard fought and overseen by Judge Wayne D. Brazil (Ret.). Rivas Decl. ¶ 8. Given the extensive motion practice on Defendant's Rule 12(b)(6) motion, the appeal before the Ninth Circuit, and the extensive briefing on class certification, both parties were able to articulate the strengths of their claims and defenses and the weaknesses of each other's position, ultimately reaching the Settlement after weighing the facts and the applicable law and the risks of continued litigation. Rivas Decl. ¶¶ 9-10. These facts support a presumption of fairness. NEWBERG ON CLASS ACTIONS § 11.41.

Second, the Parties had ample discovery to make an informed judgment on the claims. Defendant took Plaintiff's deposition to gauge her credibility and learn the detailed facts of her case, while Plaintiff also deposed a witness designated by Defendant to testify on its behalf regarding a number of topics, including the labels used from January 2008 through the present, among other things. Rivas Decl. ¶ 6. Plaintiff also obtained and reviewed Defendant's product labels, print advertising, consumer studies, and consumer call logs, among other things. *Id.*

Third, the law firm Finkelstein Thompson LLP is highly experienced in class action litigation involving claims for violations of California's consumer protection

statutes. Rivas Decl., Exh. 2 (firm resume). As reflected on the firm's resume, Finkelstein Thompson has been appointed as sole lead or co-lead class counsel in a number of other class action cases, including claims for false advertising against some of the most resourceful corporations in the country, including Allergan and Naked Juice. On the other side, Defendant is represented by McGuireWoods LLP, a national defense firm with lawyers experienced in class action procedure.

In light of the factors discussed above, the proposed Settlement merits preliminary approval.

VI. SINCE THE SETTLEMENT PROVIDES FOR INJUNCTIVE RELIEF ONLY, AND SETTLEMENT CLASS MEMBERS DO NOT RELEASE ANY MONETARY CLAIMS, NO NOTICE IS REQUIRED

Generally, class members are entitled to receive the "best notice practicable" under the circumstances. *Burns v. Elrod*, 757 F.2d 151 (7th Cir. 1985). In a class action settled pursuant to Rule 23(b)(2) providing only for injunctive relief, however, notice is not required. Fed.R. Civ. Proc. 23(c)(2)(A) (stating that under Rule 23(b)(2) the court "***may*** direct appropriate notice to the class") (emphasis added). This is especially true where the settlement expressly preserves the individual rights of class members to pursue monetary claims against the defendant. *Jermyn v. Best Buy Stores*, Case No. 08 Civ. 214, 2012 U.S. Dist. LEXIS 90289, at *32 (S.D. N.Y. June 27, 2012) ("Because this injunctive relief settlement specifically preserves and does not release the class members' monetary claims, notice to the class members is not required"); *Foti, et al. v. NCO Financial Systems, Inc.,* Case No. 04 Civ. 00707, 2008 U.S. Dist. LEXIS 16511, at *14 (S.D. N.Y. Feb. 19, 2008) ("Because the Agreement explicitly preserves the individual rights of class members to pursue statutory damages against the defendant, and because the relief in this Rule 23(b)(2) class is injunctive in nature, notice was not required."); *Green v. Am. Express Co.,* 200 F.R.D. 211, 212-13 (S.D. N.Y. 2001) (no notice is required under several circumstances, such as "when the settlement provides for only injunctive relief, and therefore, there is no potential for the named plaintiffs to benefit at the expense of the

rest of the class, . . . when there is no evidence of collusion between the parties, and . . . when the cost of notice would risk eviscerating the settlement agreement.").

Here, the Settlement Agreement expressly preserves the rights of the Settlement Class to bring claims for monetary relief against the Defendant. Settlement Agreement ¶ 2. Additionally, since Defendant does not sell its products directly to consumers, the Parties agree that notice is cost prohibitive. Accordingly, no notice should be required.

VII. CONCLUSION

For the reasons set forth above, Plaintiff requests that this Court enter the accompanying [Proposed] Order Granting Preliminary Approval of Class Action Settlement Pursuant to Fed. R. Civ. Proc. 23(b)(2) which: (1) approves the Settlement; (2) certifies this Action as a Class Action for settlement purposes; (3) appoints Plaintiff Aleta Lilly as Class Representative and the firm of Finkelstein Thompson LLP as Class Counsel; and (4) sets a date of November 10, 2014 at 9:00 for the final approval hearing

DATED: August 1, 2014

Respectfully submitted,

FINKELSTEIN THOMPSON LLP

By: /s/ *Rosemary M. Rivas*

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Attorneys for Individual and Representative Plaintiff Aleta Lilly

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ALETA LILLY, on behalf of herself and all others similarly situated,

Plaintiff,

vs.

CONAGRA FOODS, INC., a Delaware corporation

Defendant.

Case No. CV12-0225-RGK (SHx)

DECLARATION OF ROSEMARY M. RIVAS IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT PURSUANT TO FED. R. CIV. P. 23(B)(2)

Date: September 8, 2014
Time: 9:00 a.m.
Courtroom: 850-Roybal
Judge: Hon. R. Gary Klausner

I, Rosemary M. Rivas, declare as follows:

1. I am an attorney licensed to practice by the State of California, and a partner with the law firm of Finkelstein Thompson LLP. I am counsel of record for Plaintiff Aleta Lilly ("Plaintiff"), the named plaintiff in the titled action, *Lilly v. ConAgra Foods, Inc.*, Case No. CV12-0225-RGK (SHX).

2. I have been the attorney primarily responsible for this case since its inception. Therefore, I have personal knowledge of the matters set forth herein, based on my active participation in the prosecution and settlement of the case and my firm's business records, and, if called as a witness, could and would competently testify thereto.

3. I submit this declaration in support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement Pursuant to Fed. R. Civ. P. 23(b)(2).

4. Finkelstein Thompson LLP filed this case in January 10, 2014 after conducting an extensive investigation regarding the facts and the law governing food labeling. Defendant moved to dismiss on February 27, 2012, on the grounds that Plaintiff's claims were preempted by 21 U.S.C. § 343-1 and that as a matter of law, reasonable consumers were not likely to be deceived by its practices. Plaintiff opposed the motion on the grounds that her claims were not preempted because they were identical to federal food labeling laws and that reasonable consumers were likely to be deceived by its practices.

5. The Court granted the motion to dismiss the Action on April 19, 2012 and Plaintiff filed an appeal to the Ninth Circuit. The Ninth Circuit held that Plaintiff's claims were not preempted and remanded the case back to the district court.

6. After the case was remanded on March 17, 2014, the Parties engaged in extensive discovery. Among other things, my firm deposed a witness designated by Defendant as the person most knowledgeable to testify on its behalf regarding a

number of topics, including the product labels used from January 2008 through the present. Plaintiff also met and conferred with Defendant over the production of documents which resulted in Defendant producing pricing information; sales data; consumer studies; and consumer call logs, among other things. Additionally, my firm drafted interrogatories to which Defendant responded to.

7. Pursuant to the Court's order, Plaintiff filed her motion for class certification on April 28, 2014 and Defendant filed an opposition brief thereto on June 27, 2014. During the course of the briefing on the motion for class certification, Plaintiff also filed a motion to amend the complaint, which the Court granted. In light of the Court's order granting Plaintiff leave to amend the complaint, the Court gave Plaintiff the option of filing an amended motion for class certification on July 7, 2014. Plaintiff filed an amended motion for class certification on July 7, 2014, which Defendant opposed again.

8. On July 8, 2014, I participated in a mediation with Defendant and its lawyers from McGuireWoods LLLP to try to resolve the case. Ms. Lilly was available by telephone. The mediation was supervised by the Honorable Wayne D. Brazil (Ret.). With Judge Brazil's assistance, the parties reached a settlement after a protracted, extensive, and hard-fought mediation.

9. Before engaging in the negotiations, the parties had conducted a significant amount of discovery, and so we understood the risks of proceeding through trial. We also were very familiar with the authority involving litigation of false advertising for consumer food products.

10. As a result of our strong understanding of the law and facts, and after extensive negotiations, the Parties reached the proposed Settlement. I believe the Settlement is fair, reasonable and adequate and should be granted preliminary approval.

11. Plaintiff Aleta Lilly has also shown her desire and ability to monitor her counsel and participate in vigorous prosecution of the case. Plaintiff reviewed the operative complaints before filing, provided information to counsel, has appeared for deposition and at all times was prepared to go to trial on this matter. Ms. Lilly has also monitored the litigation for over two years by keeping in contact with my firm by telephone and in person meetings. She has also taken time off from work to devote time to this case. Ms. Lilly also supports the proposed Settlement.

12. Attached hereto as **Exhibit 1** is a true and correct copy of the Stipulation of Settlement and Release.

13. Attached hereto as **Exhibit 2** is a true and correct copy of the firm resume of the law firm Finkelstein Thompson LLP.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 1st day of August 2014, at San Francisco, California.

/s/ Rosemary M. Rivas
Rosemary M. Rivas

EXHIBIT 1

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ALETA LILLY, on behalf of herself and all others similarly situated, Plaintiff, vs. CONAGRA FOODS, INC., a Delaware corporation, Defendant.	Case No. 2:12-cv-00225-RGK (SHx) STIPULATION OF SETTLEMENT AND RELEASE

This Stipulation of Settlement and Release ("Settlement Agreement") is made and entered into between Plaintiff Aleta Lilly, on behalf of herself and all others similarly situated, and Defendant ConAgra Foods, Inc. (collectively, the "Parties"), pursuant to Rule 23 of the Federal Rules of Civil Procedure, subject to court approval in the action titled, *Aleta Lilly, et al. v. ConAgra Foods, Inc.*, Case No. 2:12-cv-00225-RGK (SHx) (hereinafter, the "Action").

RECITALS

WHEREAS, on January 10, 2012, Plaintiff Aleta Lilly ("Plaintiff") filed the Action against Defendant ConAgra Foods, Inc. ("ConAgra" or "Defendant") for alleged violations of the Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* ("UCL"), the California False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.* ("FAL"), and the Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.* ("CLRA");

WHEREAS, Plaintiff alleged in the Action that Defendant understated the sodium in the Nutrition Facts Panel of certain of its David® Sunflower Seeds by not expressly disclosing the sodium on shells or by not disclosing that sodium as prominently as it did the sodium on the edible sunflower seed kernels;

WHEREAS, Defendant denied, and continues to deny all allegations against it;

WHEREAS, Defendant filed a motion to dismiss the Action on February 27, 2012, on the grounds that Plaintiff's claims were preempted by 21 U.S.C. § 343-1 and that as a matter of law, reasonable consumers were not likely to be deceived by its practices;

WHEREAS, Plaintiff opposed the motion on the grounds that her claims were not preempted because they were identical to federal food labeling laws and that reasonable consumers were likely to be deceived by its practices;

WHEREAS, the Honorable R. Gary Klausner ("District Court") granted the motion to dismiss the Action on April 19, 2012 and Plaintiff filed an appeal to the Ninth Circuit;

WHEREAS, the Ninth Circuit reversed the District Court's order dismissing the Action with prejudice and held that Plaintiff's claims were not preempted;

WHEREAS, after the case was remanded to the District Court on March 17, 2014, the Parties engaged in extensive written discovery, including the exchange of documents and the depositions of Plaintiff and Defendant;

WHEREAS, Plaintiff filed a motion for class certification on April 28, 2014 and Defendant filed an opposition brief thereto on May 27, 2014;

WHEREAS, pursuant to the District Court's June 23, 2014 order, Plaintiff filed an amended motion for class certification on July 7, 2014 and Defendant filed an opposition brief thereto on July 14, 2014;

WHEREAS, on July 8, 2014 the Parties attended a full-day of mediation with Judge Wayne Brazil (Ret.) a well-respected mediator with JAMS who has had prior experience in mediating class actions;

WHEREAS, after arm's length negotiations supervised by Judge Brazil, the Parties have agreed to resolve the Action, subject to the final approval of the District Court;

WHEREAS, Plaintiff and Plaintiff's Counsel understand and acknowledge that Defendant admits no fault or liability and that Defendant expressly denies any fault or liability in connection with these claims and that Defendant has agreed to settle this matter only to avoid the expense, inconvenience and uncertainty of further litigation, on the following terms:

SETTLEMENT TERMS

1. For settlement purposes only, Plaintiff Aleta Lilly and Defendant ConAgra Foods, Inc. agree to the certification of a mandatory injunctive relief only settlement class pursuant to Federal Rules of Civil Procedure 23(b)(2) without the requirement to "opt in" and without the ability to "opt out" (the "Settlement Class").

A. The Settlement Class shall be defined as follows:

> All persons in the United States who bought, for personal use only, David® Sunflower Seeds from the period of January 10, 2008 to the Effective Date. Excluded from the Settlement Class are Defendant, its officers, directors, or employees, the legal representatives, heirs, successors, and assigns of Defendant, any entity in which Defendant has a controlling interest; and any judge

to whom this case is assigned, his or her immediate family, and his or her staff ("Settlement Class").

B. Plaintiff and Plaintiff's Counsel agree that Defendant does not admit, concede, suggest or agree that class certification is proper outside of the terms and conditions expressly set forth herein. Plaintiff and Plaintiff's Counsel agree that they will not argue that Defendant's willingness to settle the Action on these terms makes class certification proper should this settlement not obtain final judicial Approval and any further litigation of Plaintiff's Amended Motion for Class Certification occur.

2. This Settlement Agreement releases only the rights of the Settlement Class to seek injunctive relief concerning Defendant's compliance with the governing state and federal laws and regulations in effect as of the Effective Date concerning disclosure of sodium content of David® Sunflower Seeds. As the Settlement Agreement provides for injunctive relief only and requires no release of any monetary remedies or other equitable relief by any member of the Settlement Class, the Parties agree that notice and opt-out rights are not necessary. The Parties also agree that notice would be cost prohibitive. In the event that the District Court believes that notice is necessary, each Party shall have the unilateral option to withdraw from this Settlement Agreement, without prejudice.

3. In exchange for the release set forth below, and for other good and valuable consideration, ConAgra agrees to a Stipulated Injunction for as long as the Federal Food and Drug Administration requires only single serving nutritional information to be contained in the Nutrition Facts Panel. The terms of the injunction shall be that:

A. Defendant shall effect relabeling of all David® Sunflower Seeds products so that the Nutrition Facts Panel discloses the total sodium content for both the kernels and the shells' coating. Defendant will no longer place the sodium of the kernels and the shells' coating outside the Nutrition Facts Panel on products sold in the United States. Sodium disclosures for both the kernels and the shells' coating in David® Sunflower Seeds sold in the United States shall be stated in the Nutrition Facts Panel in the sodium declaration.

B. Defendant shall effect relabeling of all Nutrition Facts Panels on its website pages at www.davidseeds.com relating to David® Sunflower Seeds products to disclose the sodium content for the kernel and the shells' coating. Sodium disclosures for both the kernels and the shells' coating shall be stated in the sodium declaration of the Nutrition Facts Panel on David® Sunflower Seeds.

C. Defendant shall comply with all aspects of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. §§ 301, *et seq.* and regulations promulgated pursuant thereto, and with all aspects of the Sherman Food, Drug and Cosmetic Law, that relate to the required disclosure of sodium in the sunflower seeds.

D. Defendant shall effectuate the changes set forth in Paragraph 3(A)-(C) by January 31, 2015, and provide Plaintiff with a declaration by January 31, 2015 setting forth compliance with the above obligations and shall maintain records necessary to demonstrate compliance with the same.

E. Defendant is not required to remove or recall any David® Sunflower Seeds in market, inventory or elsewhere; nor is ConAgra required to discontinue the use of, or destroy, any packaging inventory in existence prior to final approval of this Settlement Agreement. Instead, Defendant shall not print any David® Sunflower Seed labels after January 31, 2015 that do not comply with Paragraphs 3(A)-(B), above. However, Defendant may, now or after January 31, 2015, exhaust all existing packaging inventory and thereafter sell and distribute David® Sunflower Seeds bearing labeling printed on or before the Final Approval Date, without violating the terms of this agreement.

F. Plaintiff and all members of the Settlement Class shall be forever enjoined from filing any action seeking injunctive relief individually or pursuant to Rule 23(b)(2), against Defendant alleging that the sodium disclosure of David® Sunflower Seeds fails to comply with state or federal law or regulations in effect on the Effective Date.

G. Plaintiff, individually and on behalf of the Settlement Class, and Plaintiff's Counsel, acknowledge the adequacy of the injunctive relieve set forth above and accept the same in exchange for the Release set forth herein.

4. To the extent approved by the District Court, Defendant agrees to pay the total sum of $550,000.00 to Finkelstein Thompson LLP ("Plaintiff's Counsel") for any and all Plaintiff's attorneys' fees and costs ("Attorneys' Fee and Expense Payment"). Plaintiff will file motions for preliminary and final approval of the injunctive relief class action settlement with the Court which will not request or seek in excess of the total sum of $550,000.00 for the payment of attorney's fees and costs. Defendant agrees not to oppose Plaintiff's motion for payment of attorneys' fees and costs not to exceed $550,000.00.

5. To the extent approved by the District Court, Defendant agrees to pay the total sum of $5,000.00 to Plaintiff Aleta Lilly for her services as a named plaintiff on behalf of the Settlement Class and in exchange for the release of her individual claims as provided for in Paragraphs 7-9. Plaintiff acknowledges that she has suffered no bodily injury or related pecuniary losses of any sort as a result of Defendant's acts and omissions which she alleged in the Action.

6. To the extent approved by the District Court, Defendant agrees to pay the Attorneys' Fee and Expense Payment to Finkelstein Thompson LLP and the $5,000.00 payment to Plaintiff Aleta Lilly, as finally approved by the District Court, within 10 calendar days following the date the District Court's final order approving such payments is entered. Plaintiff's Counsel will provide a written letter of undertaking to Defendant confirming the obligation that, in the event that there is an appeal and all or any portion of the Attorneys' Fee and Expense Payment or

$5,000.00 payment are not finally approved upon appeal, Plaintiff's Counsel shall return any unapproved portion to Defendant, within ten days of any such appellate decision.

7. In consideration of the Stipulated Injunctive Relief, the Attorney Fee and Expense Payment to Plaintiff's Counsel, and the payment of $5,000.00 to Plaintiff and other good and valuable consideration, and on the Effective Date (defined as the first day after the Final Order and Judgment is entered by the District Court), the Parties, and each of them, on behalf of themselves and their representatives, agents, successors, and heirs, do hereby release and forever discharge each other party hereto, and each of their past, present and future directors, officers, partners, owners, principals, employees, affiliates, agents, predecessors, successors, insurers, shareholders, clients and attorneys (hereafter collectively "Released Parties") from any and all causes of action, suits, claims, liens, demands, judgments, indebtedness, costs, damages, obligations, attorneys' fees (except as provided for in this Agreement), losses, claims, controversies, liabilities, demands, and all other legal responsibilities in any form or nature: (a) that arose or accrued at any time prior to the Effective Date arising out of or in any way related to: (i) the manufacture, sale, distribution, labeling or advertising of Defendant's David® Sunflower Seeds, and/or (ii) Defendant's compliance with state or federal labeling laws and regulations (including but not limited to the Federal Food, Drug, and Cosmetic Act, U.S. Food and Drug Administration regulations, and/or the California Sherman Food, Drug, and Cosmetic Law) relating to David® Sunflower Seeds, and/or (iii) the claims that were or could have been asserted in the Action, and/or (b) whose underlying or relevant facts occurred at any time prior to the Effective Date, and arose out of or are in any way related to the foregoing items in subparagraph (a) (collectively the "Released Claims").

8. Further, and in consideration of the Stipulated Injunctive Relief, the Attorney Fee and Expense Payment to Plaintiff's Counsel and the payment of $5,000.00 to Plaintiff and other good and valuable consideration, and on the Effective Date, the Plaintiff, and the Settlement Class she represents, do hereby release and forever discharge and agree to hold harmless Defendant, and each of its Released Parties from injunctive relief causes of action related to compliance with state, and federal laws and regulations in effect as of the Effective Date regarding the sodium disclosure of David® Sunflower Seeds.

9. Further, and in consideration of the Stipulated Injunctive Relief, the Attorney Fee and Expense Payment to Plaintiff's Counsel the payment of $5,000.00 to Plaintiff and other good and valuable consideration, the Plaintiff agrees to dismiss with prejudice any individual claims that remain pending following District Court approval, and all other claims without prejudice.

10. Plaintiff and Defendant hereto hereby confirm that they have been advised or and understand, and knowingly and specifically waives their rights under California Civil Code Section 1542 which provides as follows:

> 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 or her settlement with the debtor.

11. The Parties hereby acknowledge that they have denied the claims made against the other, and this Settlement Agreement is entered into with the understanding that it is the result of a compromise of disputed claims and shall never at any time for any purpose be considered an admission of the truth of any of the allegations, claims, or contentions made by any party against any of the other parties, the validity of which each party expressly denies. This Settlement Agreement is the product of negotiation and preparation by and among the parties hereto and their respective attorneys. The parties, therefore, expressly acknowledge and agree that this Settlement Agreement shall not be deemed prepared or drafted by one party or another, or his or her attorneys, and will be construed accordingly.

12. The performance of this Settlement Agreement is expressly contingent upon entry of an order preliminarily approving this Settlement Agreement and a Final Order and Judgment approving this Settlement Agreement substantially in the form of Exhibits A and B attached hereto. "Final Order and Judgment" means the order entered by the Court approving this Settlement Agreement as fair, reasonable, and adequate and in the best interests of the Class as a whole, and making such other findings and determinations as the Court deems necessary and appropriate to effectuate the terms of this Settlement Agreement, without modifying any of the terms of this Settlement Agreement. Without affecting the finality of Final Order and Judgment, the Court shall retain exclusive and continuing jurisdiction as to all matters relating to the implementation, administration, consummation, enforcement and interpretation of the Settlement Agreement, including the Releases contained therein, and any other matters related or ancillary to the foregoing; and over all Parties hereto, including the Released Parties, for the purpose of enforcing and administering the Settlement Agreement and this action until each and every act agreed to be performed by the Parties has been performed pursuant to the Settlement Agreement.

13. Plaintiff's Counsel shall be solely authorized to enforce and defend the terms of this Settlement Agreement.

14. 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 taking such other action as reasonably may be necessary to implement the terms of this settlement, including the Defendant's provision of any notice that may be required under 28 U.S.C. § 1715 except that Defendant will bear 100% of the costs of such notice. The Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by this settlement and any other efforts that may become necessary by order of the District Court, or otherwise, to effectuate this settlement and the terms set forth herein, as soon as practicable after execution of this Settlement Agreement. Plaintiff's counsel and Defendant's counsel shall jointly take all necessary steps to secure the Court's final approval of this settlement, entry of an order preliminarily approving this Settlement Agreement, and issuance of a Final Order and Judgment approving this Settlement Agreement.

15. If the District Court fails to issue an order preliminarily approving the Settlement Agreement and/or the Final Order and Judgment, this Settlement Agreement is terminated. If this Settlement Agreement, the order preliminarily approving the Settlement Agreement and/or Final Order and Judgment approving this Settlement Agreement is vacated, materially modified, or reversed, in whole or part, this Settlement Agreement will be deemed terminated, unless the

Parties, in their sole discretion within thirty (30) days of receipt of such ruling, provide written notice to Plaintiff's Counsel and Defendant's counsel of their intent to proceed with the Settlement Agreement as modified by the court or on appeal. If this Settlement Agreement is not preliminarily or finally approved by the District Court, then the parties will resume the litigation of the case without prejudice to its procedural status as of July 8, 2014. If this Settlement Agreement is terminated pursuant to this section, it will have no force or effect whatsoever, shall be null and void, and the Settlement Agreement, negotiations leading to the Settlement Agreement and the terms of the Settlement Agreement will not be admissible as evidence for any purpose in the resumed litigation.

16. Released Parties agree and covenant not to sue each other with respect to any released claims or causes of action, or otherwise to assist others in doing so, and agree to be forever barred from doing so, in any law or court or equity, or in any forum.

17. This Settlement Agreement is admissible and subject to disclosure for purposes of enforcing this Settlement Agreement or as otherwise permitted by law.

18. Upon the execution of this Settlement Agreement, the Parties agree to stipulate to continue all currently pending cut-off dates, deadlines, motions and trial dates until after the calculated date for the hearing on final approval of the settlement so as to preserve all rights of the parties.

19. This Settlement Agreement may not be changed, modified or amended except in writing signed by Plaintiff; Plaintiff's counsel, Defendant and Defendant's counsel, subject to court approval, if required.

20. Any person executing this Settlement Agreement or any such related document on behalf of a corporate signatory hereby warrants and promises for the benefit of all parties hereto that such person has been duly authorized by such corporation to execute this Settlement Agreement or any such related document.

21. Defendant has the right to seek relief from the court limiting or eliminating its obligations under the stipulated injunction described above, based upon any change in the applicable law.

22. In entering this Settlement Agreement, each party has relied upon the advice of the party's own attorneys of choice, and has not relied upon any representation of law or fact by any other party hereto. It is further acknowledged that the terms of this Settlement Agreement are contractual and are not a mere recital, have been completely read and explained by said attorneys, and that those terms are fully understood and voluntarily accepted.

23. This Settlement Agreement, including all agreements attached hereto, supersedes any and all prior agreements, and it constitutes the entire understanding between and among the parties with regard to the matters herein set forth. There are no representations, warranties, agreements, nor undertakings, written or oral, between or among the parties hereto, relating to the subject matter of this Settlement Agreement which are not fully expressed, herein.

24. This Settlement Agreement is made and executed in the State of California and it is agreed that this Settlement Agreement shall be interpreted in accordance with and governed in all respects by the laws of the State of California. It is further agreed that this Settlement Agreement may be signed in counterpart, and that facsimiles will be deemed originals.

We, the undersigned, have read the foregoing Settlement Agreement and Release and acknowledge our understanding and agreement to the contents thereof.

Dated: 7/31/14

Plaintiff Aleta Lilly

Dated: 7/31/14

Counsel for Plaintiff Aleta Lilly

Dated: 7/30/14

Representative for Defendant ConAgra Foods, Inc.

Dated: 7/30/14

Counsel for Defendant ConAgra Foods, Inc.

JAMES F. NEALE

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EXHIBIT A

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ALETA LILLY, on behalf of herself and all others similarly situated,

Plaintiff,

vs.

CONAGRA FOODS, INC., a Delaware corporation

Defendant.

Case No. CV12-0225-RGK (SHx)

[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL

KLAUSNER, Judge:

The matter before the Court is Parties' Joint Motion for Preliminary Approval of Class Action Settlement.

BACKGROUND

On January 10, 2010, Plaintiff initiated this action by filing a complaint in the United States District Court for the Central District of California (the "Action"). (ECF No. 1). Plaintiff brought the complaint on behalf of herself and all others similarly situated. (*Id.* at 8). Plaintiff alleged in the Action that Defendant understated the sodium in the Nutrition Facts Panel of certain of its David® Sunflower Seeds by not expressly disclosing the sodium on shells or by not disclosing that sodium as prominently as it did the sodium on the edible sunflower seed kernels, which violated the Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* ("UCL"), the California False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.* ("FAL"), and the Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.* ("CLRA"). (*Id.*).

Defendant filed a motion to dismiss the Action on February 27, 2012, on the grounds that Plaintiff's claims were preempted by 21 U.S.C. § 343-1 and that as a matter of law, reasonable consumers were not likely to be deceived by its practices. (ECF No. 17). Plaintiff opposed the motion on the grounds that her claims were not preempted because they were identical to federal food labeling laws and that reasonable consumers were likely to be deceived by its practice. (ECF No. 20). The Honorable R. Gary Klausner ("District Court") granted the motion to dismiss the Action with prejudice on April 19, 2012. (ECF No. 29). Plaintiff appealed to the Ninth Circuit and the Ninth Circuit reversed and remanded the District Court decision, holding that Plaintiff's claims were not preempted. (ECF No. 34).

After engaging in extensive written discovery, Plaintiff filed a motion for class certification on April 28, 2014 and Defendant filed an opposition brief thereto on May 27, 2014. (ECF Nos. 47, 79). Pursuant to the District Court's June 23, 2014 order (ECF

No. 86), Plaintiff filed an amended motion for class certification on July 7, 2014 and Defendant filed an opposition brief thereto on July 14, 2014. (ECF Nos. 93, 106).

On July 8, 2014, the Parties attended a full-day of mediation with Judge Wayne D. Brazil (Ret.) a well-respected mediator with JAMS who has had prior experience in mediating class actions. After arm's length negotiations supervised by Judge Brazil, the Parties have agreed to resolve the Action, subject to the final approval of the District Court. On August 1, 2014, the parties filed the joint motion for preliminary approval of class action settlement.

TERMS OF PROPOSED SETTLEMENT

1. Class Definition

The proposed settlement class consists of:

All persons in the United States who bought, for personal use only, David® Sunflower Seeds from the period of January 10, 2008 to the Effective Date (defined as the first day after the Final Order and Judgment is entered by the District Court). Excluded from the Settlement Class are Defendant, its officers, directors, or employees, the legal representatives, heirs, successors, and assigns of Defendant, any entity in which Defendant has a controlling interest; and any judge to whom this case is assigned, his or her immediate family, and his or her staff ("Settlement Class").

2. Class Benefits – Stipulated Injunction

Defendant agrees to a stipulated injunction for as long as the Federal Food and Drug Administration requires only single serving nutritional information to be contained in the Nutrition Facts Panel. The terms of the injunction are:

A. Defendant shall effect relabeling of all David® Sunflower Seeds products so that the Nutrition Facts Panel discloses the total sodium content for both the kernels and the shells' coating. Defendant will no longer place the sodium of the kernels and the shells' coating outside the Nutrition Facts Panel on products sold in the United States. Sodium disclosures for both the kernels and the shells' coating in David® Sunflower Seeds sold in the United States shall be stated in the Nutrition Facts Panel in the sodium declaration.

B. Defendant shall effect relabeling of all Nutrition Facts Panels on its website pages at www.davidseeds.com relating to David® Sunflower Seeds products to

disclose the sodium content for the kernel and the shells' coating. Sodium disclosures for both the kernels and the shells' coating shall be stated in the sodium declaration of the Nutrition Facts Panel on David® Sunflower Seeds.

C. Defendant shall comply with all aspects of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. §§ 301, *et seq*. and regulations promulgated pursuant thereto, and with all aspects of the Sherman Food, Drug and Cosmetic Law, that relate to the required disclosure of sodium in the sunflower seeds.

D. Defendant shall effectuate the changes set forth in Paragraph 3(A)-(C) by January 31, 2015, and provide Plaintiff with a declaration by January 31, 2015 setting forth compliance with the above obligations and shall maintain records necessary to demonstrate compliance with the same.

E. Defendant is not required to remove or recall any David® Sunflower Seeds in market, inventory or elsewhere; nor is ConAgra required to discontinue the use of, or destroy, any packaging inventory in existence prior to final approval of this Settlement Agreement. Instead, Defendant shall not print any David® Sunflower Seed labels after January 31, 2015 that do not comply with Paragraphs 3(A)-(B), above. However, Defendant may, now or after January 31, 2015, exhaust all existing packaging inventory and thereafter sell and distribute David® Sunflower Seeds bearing labeling printed on or before the Final Approval Date, without violating the terms of this agreement.

F. Plaintiff and all members of the Settlement Class shall be forever enjoined from filing any action seeking injunctive relief pursuant to Rule 23(b)(2), individually or otherwise, against Defendant alleging that the sodium disclosure of David® Sunflower Seeds fails to comply with state or federal law or regulations in effect on the Effective Date (defined as the first day after the Final Order and Judgment is entered by the District Court).

G. Plaintiff, individually and on behalf of the Settlement Class, and Plaintiff's Counsel, acknowledge the adequacy of the injunctive relieve set forth above and accept the same in exchange for the Release set forth herein.

3. Class Notice

"As the Settlement Agreement provides for injunctive relief only and requires no release of any monetary remedies or other equitable relief by any member of the

Settlement Class, the Parties agree that notice and opt-out rights are not necessary." (Settlement Agreement, ¶ 2).

4. Release

The only claims for monetary relief being released are those of Plaintiff, individually. (*Id.*, ¶ 2). Class members, however, are bound to the terms of the Stipulated Injunction. *Id.*

5. Attorneys' Fees and Costs

Since the inception of this lawsuit, Plaintiff's Counsel, Finkelstein Thompson LLP, has worked on the case on a purely contingency basis. Defendant agrees to pay "the total sum of $550,000.00 to Finkelstein Thompson LLP ('Plaintiff's Counsel') for any and all Plaintiff's attorney'' fees and costs ('Attorneys' Fee and Expense Payment')," which is subject to Court approval. (*Id.*, ¶ 4).

5. Payment to Class Representative

Defendant agrees to pay an incentive award of $5,000 to Plaintiff Aleta Lilly "for her services as a named plaintiff on behalf of the Settlement Class and in exchange for the release of her individual claims." (*Id.*, ¶ 5).

DISCUSSION

"Voluntary conciliation and settlement are the preferred means of dispute resolution in complex class action litigation." *Smith v. CRST Van Expedited, Inc.*, 10-CV-1116-IEG (WMC), 2013 WL 163293, at *2 (S.D. Cal. Jan. 4, 2013) (citing *Officers for Justice v. Civil Serv. Comm'n of City & County of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982)). "In a class action, however, any settlement must be approved by the court to ensure that class counsel and the named plaintiffs do not place their own interests above those of the absent class members." *Dennis v. Kellog Co.*, 697 F.3d 858, 861 (9th Cir. 2012); *see also* Fed. R. Civ. P. 23(e) ("The claims, issues, or defenses of a certified class may be settled . . . only with the court's approval."). "[C]ourt approval of a class action settlement involves a two-step process—preliminary approval, followed by final approval of the settlement." *In re M.L. Stern Overtime Litig.*, 07-CV-

0118-BTM (JMA), 2009 WL 995864, at *3 (S.D. Cal. Apr. 13, 2009) (citing *MANUAL FOR COMPLEX LITIGATION (FOURTH)* § 21.632 (2004)).

In this case, the Court is at the first step—preliminary approval. This "initial decision to approve or reject a settlement proposal is committed to the sound discretion of the trial judge." *Officers for Justice*, 688 F.2d at 625. The "Court need not review the settlement in detail at this juncture; instead, preliminary approval is appropriate so long as the proposed settlement falls within the range of possible judicial approval." *In re M.L. Stern Overtime Litig.*, 2009 WL 995864, at *3 (internal quotation marks and citation omitted). However, even at this preliminary stage, "a district court may not simply rubber stamp stipulated settlements." *Kakani v. Oracle Corp.*, C 06-06493 WHA, 2007 WL 1793774, at *1 (N.D. Cal. June 19, 2007). In order to grant preliminary approval, the Court must "ratify both the propriety of the certification and the fairness of the settlement." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011).

Propriety of Certification

Plaintiff seeks certification of a settlement class under Federal Rule of Civil Procedure 23(b)(2). "A plaintiff seeking class certification must affirmatively demonstrate that it meets the four requirements of Rule 23(a) and at least one of the requirements of Rule 23(b)." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613–14 (1997). Rule 23(a) outlines four requirements: numerosity, commonality, typicality, and adequacy of representation. Fed. R. Civ. P. 23(a). "In addition to these prerequisites, a plaintiff must satisfy one of the prongs of 23(b) in order to maintain a class action." *Goldkorn v. County of San Bernardino*, EDCV 06-707-VAP (OPx), 2012 WL 476279, at *4 (C.D. Cal. Feb. 13, 2012). "Where . . . a plaintiff moves for class certification under Rule 23(b)(2), the plaintiff must prove [that] the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." *Id.*; Fed. R. Civ. P. 23(b)(2).

A proposed class must be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). This "does not mean that joinder must be impossible, but rather means only that the court must find that the difficulty or inconvenience of joining all members of the class makes class litigation desirable." *In re Itel Sec. Litig.*, 89 F.R.D. 104, 111 (N.D. Cal. 1981). "[T]he class need not be so ascertainable that every potential member can be identified at the commencement of the action. As long as the general outlines of the membership of the class are determinable at the outset of the litigation, a class will be deemed to exist." *O'Connor v. Boeing N. Am., Inc.*, 184 F.R.D. 311, 319 (C.D. Cal. 1998). "Where the number of class members exceeds forty, and particularly where class members number in excess of one hundred, the numerosity requirement will generally be found to be met." *In re Itel Sec. Litig.*, 89 F.R.D. at 111. In this case, while the exact number of class members is undetermined, Defendant sold thousands of the Products during the relevant time period. The Court finds that "the difficulty or inconvenience of joining all members of the class makes class litigation desirable." *In re Itel. Sec. Litigation*, 89 F.R.D. at 111. The numerosity requirement has been satisfied.

A class has sufficient commonality if "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). "Commonality requires the plaintiff to demonstrate that the class members have suffered the same injury." *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011) (internal quotation marks and citation omitted). In this case, the questions of law or fact common to all the class members include: (1) whether ConAgra violated the law by understating the sodium in the Nutrition Facts of its Products; and (2) whether Plaintiff and all Class members are likely to be deceived by and the measure of restitution to which they are entitled. The commonality requirement has been satisfied.

The typicality requirement is met if "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). "For typicality to be met, the named plaintiffs' claims need not be identical to those of the

putative class members. Instead, the plaintiffs' claims need only be 'reasonably coextensive with the claims of the putative class.'" *Johnson v. Shaffer*, 12-CV-1059 KJM AC, 2013 WL 5934156, at *11 (E.D. Cal. Nov. 1, 2013) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)). In this case, Plaintiff and the class have been subjected to identical alleged violations of law by Defendant. The typicality requirement has been satisfied.

Adequacy of representation requires that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "In order for plaintiffs to adequately represent the putative class members, they must demonstrate, first, that they do not possess any conflicts of interest with the class members and, second, that both plaintiffs and their counsel will work to 'prosecute the action vigorously' with respect to the entire class." *Johnson*, 2013 WL 5934156, at *12 (quoting *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003)). The adequacy requirement has been satisfied. The Court finds that the Rule 23(a) requirements have been met.

Under Rule 23(b)(2), Plaintiff must demonstrate that "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). Rule 23(b)(2) is satisfied where "[t]he injunctive relief sought by plaintiff[] would apply to the class as a whole" and "the claims in th[e] suit would not entitle named or unnamed class members to any form of individualized injunctive relief." *Johnson*, 2013 WL 5934156, at *13.

In this case, the terms of the injunction in the settlement provide that:

(a) Defendant shall effect relabeling of all David® Sunflower Seeds products so that the Nutrition Facts Panel discloses the total sodium content for both the kernels and the shells' coating. Defendant will no longer place the sodium of the kernels and the shells' coating outside the Nutrition Facts Panel on products sold in the United States. Sodium disclosures for both the kernels and the shells' coating in David® Sunflower

Seeds sold in the United States shall be stated in the Nutrition Facts Panel in the sodium declaration;

(b) Defendant shall effect relabeling of all Nutrition Facts Panels on its website pages at www.davidseeds.com relating to David® Sunflower Seeds products to disclose the sodium content for the kernel and the shells' coating. Sodium disclosures for both the kernels and the shells' coating shall be stated in the sodium declaration of the Nutrition Facts Panel on David® Sunflower Seeds;

(c) Defendant shall comply with all aspects of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. §§ 301, et seq. and regulations promulgated pursuant thereto, and with all aspects of the Sherman Food, Drug and Cosmetic Law, that relate to the required disclosure of sodium in the sunflower seeds;

(d) Defendant shall effectuate the changes set forth in (a)-(c) by January 31, 2015, and provide Plaintiff with a declaration by January 31, 2015 setting forth compliance with the above obligations and shall maintain records necessary to demonstrate compliance with the same; and

(e) Defendant shall not print any David® Sunflower Seed labels after January 31, 2015 that do not comply with the changes set forth in (a)-(c).

This injunctive relief sought by Plaintiff "appl[ies] to the class as a whole" and Plaintiff's claims do not "entitle named or unnamed class members to any form of individualized injunctive relief." *Johnson*, 2013 WL 5934156, at *13. The Court finds that the requirements of Rule 23(b)(2) have been met.

The Court grants certification of the proposed settlement class for settlement purposes under Rule 23(b)(2). The Court appoints Plaintiff Aleta Lilly as the class representative.

"A court that certifies a class must appoint class counsel." Fed. R. Civ. P. 23. "When [an] applicant seeks appointment as class counsel, the court may appoint that applicant only if the applicant is adequate under Rule 23(g)(1) and (4). *Id.* Under Rule 23(g), "the Court must consider: (i) the work counsel has done in identifying or

investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class. . . . Finally, class counsel must fairly and adequately represent the interests of the class." *In re China Intelligent Lighting and Elec., Inc. Sec. Litig.*, CV 11-2768 PSG (SSx), 2013WL 5789237, at *3 (C.D. Cal. Oct. 25, 2013) (internal quotation marks and citation omitted); Fed. R.Civ. P. 23 (g).

Plaintiff seeks appointment of Finkelstein Thompson LLP as class counsel. Proposed class counsel has investigated the facts available to counsel and the applicable law, and has litigated this case vigorously, including on appeal. Proposed class counsel has extensive experience in consumer class action litigation. Proposed class counsel has worked on various complex matters and has a history of success in similar mislabeling cases. The Court appoints Finkelstein Thompson LLP as Class Counsel.

Fairness of the Proposed Settlement

Rule 23(e) provides that a court may approve a settlement "only after a hearing and on finding that it is fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). The Court must "review[] the substance of the settlement . . . to ensure that it is 'fair, adequate, and free of collusion.'" *Lane v. Facebook*, 696 F.3d 811, 819 (9th Cir. 2012) (quoting *Hanlon*, 150 F.3d at 1027). The Court is "not to reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute, nor is the proposed settlement to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." *Smith*, 2013 WL 163293, at *2 (internal quotation marks and citation omitted). "In making this appraisal, courts have broad discretion to consider a range of factors such as [1] the strength of the plaintiff's case; [2] the risk, expense, complexity, and likely duration of further litigation; [3] the risk of maintaining class action status throughout the trial; [4] the amount offered in settlement; [5] the extent of discovery completed and the stage of the proceedings; [6] the experience and views of counsel; [7] the presence of a government participant; and [8] the reaction

of the class members to the proposed settlement." *Id.* at *2–3 (internal quotation marks and citation omitted) (finding the proposed settlement "fair, adequate, and free of collusion" on the grounds that "the settlement is the product of arms-length negotiations by experienced counsel before a respected mediator, reached after and in light of years of litigation and ample discovery into the asserted claims"). "[T]he Court need not conduct a full settlement fairness appraisal before granting preliminary approval; rather the proposed settlement need only fall within 'the range of possible approval.'" *Dennis v. Kellogg, Co.*, 09-cv-1786-IEG(WMC), 2013 WL 1883071, at *4 (S.D. Cal. May 3, 2013) (quoting *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D. Cal. 2008)). "Essentially, the court is only concerned with whether the proposed settlement discloses grounds to doubt its fairness or other obvious deficiencies such as unduly preferential treatment of class representatives or segments of the class, or excessive compensation of attorneys." *Id.* (internal quotation marks and citation omitted).

In this case, the procedure for reaching the settlement was fair and reasonable and the settlement was the product of arm's length negotiations. *See Smith*, 2013 WL 163293, at *3. The settlement was reached with the assistance of Hon. Wayne D. Brazil (Ret.). Although the settlement does not include monetary relief for the class, it stops Defendant's allegedly unlawful practices, bars Defendant from similar practices in the future, and does not prevent the class members from seeking damages. A significant amount of litigation and discovery has been undertaken in prosecuting this action. *See Smith*, 2013 WL 163293, at *3. Further litigation would bring additional uncertainty, risk, and expense to the class. Plaintiff's counsel is experienced in handling class actions and the types of claims asserted in this action and considers it to be in the best interests of the class to enter into this settlement agreement. The Court finds that the settlement "fall[s] within the range of possible approval." *Dennis*, 2013 WL 1883071, at *4 (internal quotation marks and citation omitted). The Court grants preliminary approval of the class settlement.

Notice

When a class is certified under Rule 23(b)(2) and only provides for injunctive relief, no notice of class certification is required. *Kim*, 2012 WL 5948951, at *4. When certifying a class under Rule 23(b)(2), "the court may direct appropriate notice to the class." Fed. R. Civ. P. 23(c)(2)(A). In this case, the costs of attempting to identify the class members to provide notice of certification appear prohibitive to settlement. Generally, courts are required to "notice the class members of the proposed settlement." *In re M.L. Stern Overtime Litig.*, 2009 WL 995864, at *3. However, notice of class settlement under Rule 23 is only required if the settlement releases the monetary claims of the class. In this case, the settlement agreement does not release the monetary claims of the Class. Only Plaintiff Aleta Lilly's individual monetary claims and the class members' claims to injunctive relief are released by the settlement agreement. The Court exercises its discretion and does not direct notice here because the settlement does not alter the unnamed class members' legal rights to pursue monetary relief. *See Kim*, 2012 WL 5948951, at *4, 7.

CONCLUSION

IT IS HEREBY ORDERED that Plaintiff's Motion for Preliminary Approval of Class Action Settlement is GRANTED. The settlement class is certified for settlement purposes only under Rule 23(b)(2). The Court appoints Plaintiff Aleta Lilly as the Class Representative. The Court appoints Finkelstein Thompson LLP as Class Counsel. A hearing shall be held before this Court on _____, 2014 at ___ to determine whether the Court should grant final approval of the settlement and to determine the appropriateness of Plaintiff's attorneys' fees and costs and the incentive payment to the Class Representative. All papers in support of the final approval of the settlement shall be filed with the Court on or before ____, 2014.

DATED: _____

_____
Honorable Gary R. Klausner
UNITED STATES DISTRICT JUDGE

EXHIBIT B

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ALETA LILLY, on behalf of herself and all others similarly situated, Plaintiff, vs. CONAGRA FOODS, INC., a Delaware corporation Defendant.	Case No. CV12-0225-RGK (SHx) **[PROPOSED] FINAL ORDER AND JUDGMENT**

WHEREAS, Representative Plaintiff Aleta Lilly ("Plaintiff") on behalf of herself and all others similarly situated, and Defendant ConAgra Foods, Inc. ("Defendant" or "ConAgra") entered into a Stipulation of Settlement and Release, filed with the Court on August 1, 2014 (the "Settlement Agreement").

WHEREAS, on August 1, 2014, Plaintiff filed a Motion for Preliminary Approval of Class Action Settlement, and on ___, 2014, the Court held a hearing on Plaintiff's Motion for Preliminary Approval of Class Action Settlement.

WHEREAS, on ____, 2014, the Court entered the Preliminary Approval Order that, among other things, (a) certified pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure a settlement class defined as: "All persons in the United States who bought, for personal use only, David® Sunflower Seeds from the period of January 10, 2008 to the Effective Date (defined as the first day after the Final Order and Judgment is entered by the District Court). Excluded from the Settlement Class are Defendant, its officers, directors, or employees, the legal representatives, heirs, successors, and assigns of Defendant, any entity in which Defendant has a controlling interest; and any judge to whom this case is assigned, his or her immediate family, and his or her staff ('Settlement Class')," for the purposes of providing injunctive relief only and for settlement purposes; (b) appointed named Plaintiff Aleta Lilly as Class Representative for settlement purposes; (c) appointed Plaintiff's Counsel, Finkelstein Thompson LLP, as Class Counsel for settlement purposes; (d) preliminarily found that the Settlement Agreement appears sufficient, fair, reasonable and adequate, and contains no obvious deficiencies and the parties have entered into the Settlement Agreement in good faith, following arm's length negotiation between their respective counsel facilitated by an experienced retired Magistrate Judge mediator; and (e) set a Final Approval Hearing on ___, 2014, at ___ in Courtroom 850 of the Los Angeles Roybal Courthouse for the United States District Court, for the Central District of California.

WHEREAS, on ___, 2014, Plaintiff filed a Motion for Final Approval of Class Action Settlement, and a Motion For Approval of an Award of Attorneys' Fees and Costs to Class Counsel and an Incentive Award to the Class Representative Plaintiff.

WHEREAS, on ___, 2014, the Court issued an order granting the Motion for Final Approval of Class Action Settlement ("Final Approval Motion") and the Motion For Approval of an Award of Attorneys' Fees and Costs to Class Counsel and an Incentive Award to the Class Representative Plaintiff ("Motion for Attorneys' Fees"), filed by Plaintiff Aleta Lilly.

NOW, THEREFORE, having reviewed and considered the submission presented with respect to the settlement set forth in the Settlement Agreement and the record in these proceedings, having heard and considered the evidence presented by the parties, having determined that the settlement set forth in the Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Class, the application of Class Counsel for an award of fees and costs, and Plaintiff award separate from the issue of whether final approval should be given to settlement set forth in the Settlement Agreement, and good cause appearing therefore.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. The Settlement Agreement is hereby incorporated by reference into this Final Order and Judgment as if explicitly set forth herein and shall have the full force of an Order of this Court.

2. The Court has jurisdiction over the subject matter of this litigation, the parties, and all persons within the Class.

3. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, and this Court's Preliminary Approval Order, for the purposes of settling the claims against Defendant in accordance with the Settlement Agreement, the following persons are members of the Class: All persons in the United States who bought, for personal use only, David® Sunflower Seeds from the period of January 10, 2008 to the Effective Date (defined as the first day

after the Final Order and Judgment is entered by the District Court). Excluded from the Settlement Class are Defendant, its officers, directors, or employees, the legal representatives, heirs, successors, and assigns of Defendant, any entity in which Defendant has a controlling interest; and any judge to whom this case is assigned, his or her immediate family, and his or her staff.

4. The Court finds that Plaintiff and Class Counsel fairly and adequately represented the interests of Class members in connection with the settlement set forth in the Settlement Agreement. The Court also finds no objections to the settlement.

5. The Court finds the settlement, providing injunctive relief only and requiring no release of monetary claims by any Class member, set forth in the Settlement Agreement is in all respects, fair, adequate, reasonable, proper, and in the best interests of the Class, and is hereby approved.

6. Plaintiff's Motion for Final Approval of Class Action Settlement is hereby granted. The settlement is approved and found to be, in all respects, fair, reasonable, adequate and in the best interests of the Class pursuant to Rule 23(e) of the Federal Rules of Civil Procedure. Specifically, the Court finds that final approval of the settlement is warranted in light of the following factors:

i. The strength of Plaintiff's case;

ii. The risk, expense, complexity, and likely duration of further litigation;

iii. The risk of maintaining class action status throughout trial;

iv. The amount offered in settlement;

v. The extent of discovery completed and the stage of the proceedings; and

vi. The experience and views of counsel.

Churchill Village, L.L.C. v. Gen. Elec., 361 F.3d 566, 575-76 (9th Cir. 2004); citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). The Court further finds that the settlement is the product of good faith negotiations at arm's length, conducted with the assistance and under the supervision of an experienced and independent mediator, the

Honorable Wayne D. Brazil (Ret.), after thorough factual and legal investigation, and is not the product of fraud or collusion. *See Officers for Justice v. Civil Servo Comm'n of the City and County of San Francisco*, 688 F.2d 615,625 (9th Cir. 1982). The parties are directed to consummate the Settlement Agreement in accordance with its terms.

7. ConAgra is ordered to comply with the following injunction for as long as the Federal Food and Drug Administration requires only single serving nutritional information to be contained in the Nutrition Facts Panel: (a) Defendant shall effect relabeling of all David® Sunflower Seeds products so that the Nutrition Facts Panel discloses the total sodium content for both the kernels and the shells' coating. Defendant will no longer place the sodium of the kernels and the shells' coating outside the Nutrition Facts Panel on products sold in the United States. Sodium disclosures for both the kernels and the shells' coating in David® Sunflower Seeds sold in the United States shall be stated in the Nutrition Facts Panel in the sodium declaration; (b) Defendant shall effect relabeling of all Nutrition Facts Panels on its website pages at www.davidseeds.com relating to David® Sunflower Seeds products to disclose the sodium content for the kernel and the shells' coating. Sodium disclosures for both the kernels and the shells' coating shall be stated in the sodium declaration of the Nutrition Facts Panel on David® Sunflower Seeds; (c) Defendant shall comply with all aspects of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. §§ 301, et seq. and regulations promulgated pursuant thereto, and with all aspects of the Sherman Food, Drug and Cosmetic Law, that relate to the required disclosure of sodium in the sunflower seeds; (d) Defendant shall effectuate the changes set forth in (a)-(c) by January 31, 2015, and provide Plaintiff with a declaration by January 31, 2015 setting forth compliance with the above obligations and shall maintain records necessary to demonstrate compliance with the same; and (e) Defendant shall not print any David® Sunflower Seed labels after January 31, 2015 that do not comply with the changes set forth in (a)-(c).

8. Plaintiff and all members of the Settlement Class shall be and hereby are forever enjoined from filing any action seeking injunctive relief pursuant to Rule

23(b)(2), individually or otherwise, against Defendant alleging that the sodium disclosure of David® Sunflower Seeds fails to comply with state or federal law or regulations in effect on the Effective Date (defined as the first day after the Final Order and Judgment is entered by the District Court).

9. The Court hereby awards and orders ConAgra to pay Class Counsel $_____ in total for attorneys' fees and costs payable to Finkelstein Thompson LLP. The Court hereby further awards and orders ConAgra to pay an amount of $_____ to the Plaintiff Aleta Lilly. These payments are to be paid in accordance with the terms of the Settlement Agreement.

10. This litigation is dismissed with prejudice and, except as provided herein or in the Settlement Agreement, without costs. The Court finds that there is no just reason for delay and expressly directs Judgment and immediate entry of the Judgment by the Clerk. IT IS SO ORDERED.

DATED: _____

_____
Honorable Gary R. Klausner
UNITED STATES DISTRICT JUDGE

EXHIBIT 2

FINKELSTEIN THOMPSON LLP

FIRM RESUME
2014

1077 30th Street, NW, Suite 150 · Washington, DC 20007

505 Montgomery Street, Suite 300 · San Francisco, CA 94111

FINKELSTEIN THOMPSON LLP

FINKELSTEIN THOMPSON LLP ("the firm"), is a complex litigation firm, with offices in Washington, D.C. and San Francisco, CA, focusing primarily on suits involving antitrust violations, fraud and crime in the banking, securities and commodities industries, and consumer fraud.

By concentrating exclusively on litigation, rather than a generalized transactional practice, the firm avoids the conflicts of interest, both actual and philosophical, that can arise from multi-faceted representation, and is able to offer the kind of hard-hitting approach that modern complex litigation demands. Since 1993, the firm has served in a leadership position in cases that have recovered many hundreds of millions of dollars for investors and consumers.

Because the outcome of litigation is often dependent on the strength of expert testimony, the firm has developed strong working relationships with nationally prominent outside consultants in the areas of securities, commodities, antitrust, banking, consumer fraud, marketing and economics.

HISTORY

The firm was founded in March 1977 by Burton H. Finkelstein and Douglas G. Thompson, Jr. The firm's offices are located in Georgetown and in San Francisco in the Financial District.

EXPERIENCE

The firm is involved in class action litigation in federal and state courts nationwide. It has developed a reputation for successful and thorough representation of class clients against many of the largest and most powerful companies in the country. As part of our efforts to serve our clients' interests in the most effective and efficient manner possible, the firm has established ongoing relationships with other class action law firms whose size, location or expertise complement our own. We are proud to have won judgments and negotiated settlements that have recovered an aggregate of over one billion dollars for class members.

Douglas G. Thompson, Jr., one of the founding and named partners of the firm, has prosecuted and defended complex civil and criminal matters for over forty years. The other partners and associates have extensive experience in a variety of complex litigation fields. The firm has practiced before the Securities and Exchange Commission, Commodity Futures Trading Commission, Federal Trade Commission, Federal Communications Commission, U.S. Copyright Office, New York Stock Exchange, Chicago Board of Trade, National Association of Securities Dealers, National Futures Association, Financial Industry Regulatory Authority and in various state and federal trial and appellate courts across the country, in civil and criminal enforcement matters and in private damage litigation. The firm has considerable expertise and experience in defending and prosecuting complex financial class action claims.

SECURITIES & COMMODITIES CLASS ACTION LITIGATION

Since its inception in 1977, the firm's securities litigation practice has extended across a wide range of shareholders' securities litigation, from accounting fraud, allegations of insider trading, proxy statement fights, and minority shareholder rights being violated, to cases alleging misstatements in prospectuses. The firm has litigated substantive federal issues under the Securities Act of 1933, the Securities Exchange Act of 1934, the Reform Act of 1995, tenders offers under the Williams Act, derivative suits under State and Federal law, and unfair business practices claims.

Our clients have included institutional investors, pension funds, high-net worth individuals and retail investors. While few class action securities suits go to trial, substantial skill and experience is required to investigate, prepare, and litigate the underlying claims to successful resolution. The firm enjoys a national reputation for high-quality and successful recoveries for our clients.

The firm also selectively prosecutes actions pursuant to the Commodity Exchange Act regarding market manipulations involving commodity futures and options. To date, the firm has enjoyed considerable success in these matters, which are recognized as some of the most difficult causes of action to successfully pursue.

SETTLED REPRESENTATIVE SECURITIES AND COMMODITIES CLASS ACTION CASES

1. In re Merrill Lynch & Co., Inc. Research Reports Litigation, MDL 1484 (S.D.N.Y.) – Executive Committee member; Lead Counsel in six of the underlying actions; $125 million settlement achieved.

2. In re Natural Gas Commodity Litigation, No. 03cv6186 (S.D.N.Y.) – Co-Lead Counsel; over $100 million achieved in settlements.

3. PaineWebber Securities Litigation, No. 94cv8547 (S.D.N.Y) – Executive Committee member; $200 million settlement achieved.

4. Freeland v. Iridium World Communications, Ltd., No. 99cv1002 (D.D.C.) – Liaison Counsel and Executive Committee member; $47.5 million settlement achieved.

5. Prudential Securities Litigation, MDL 1005 (S.D.N.Y.) – Executive Committee member & Co-Chair of Settlement Committee; $150 million settlement achieved.

6. Kidder Peabody Securities Litigation, No. 94cv3954 (S.D.N.Y.) – Executive Committee member; $19 million settlement achieved.

7. Rudolph vs. UT Starcom, et al, No. 3:07-CV-04578-SI (N.D.Ca.) – The firm serves as sole Lead Counsel in a securities fraud class action against UT Starcom

and certain officers in connection alleged illegal backdating of executive stock options. $9.5 million settlement achieved

8. Holly Glenn v. Polk Audio, Inc., No. 99cv4768 (Md. Cir. – Baltimore) – Co-lead Counsel; $4.8 million settlement achieved (an increase of nearly 50% of shareholder buyout value).

9. Grecian v. Meade Instruments, Inc., No. 06cv908 (C.D. Cal.) – Sole Lead Counsel on behalf of shareholders claiming securities fraud violations related to alleged illegal backdating of executive stock options. Settlement achieved for $3 million and corporate governance changes.

ANTITRUST CLASS ACTION LITIGATION

Federal and state antitrust laws are primarily concerned with protecting the economy and promoting competition between businesses by preventing (i) collusion among competitors that might result in restraints on competition in a given industry or market, and (ii) anti-competitive conduct by a particular entity who holds monopoly power in a given industry or market.

The firm is involved in several cases on behalf of individuals and businesses that have been injured by the anti-competitive behavior of other companies. These cases involve allegations such as market manipulation, monopolization, price-fixing, and predatory practices. Below is a sample of the cases in which we have been intensively involved:

SETTLED REPRESENTATIVE ANTITRUST CLASS ACTION CASES

1. In re Relafen Antitrust Litigation, No. 01cv12239 (D. Mass.) – Executive Committee member in federal direct purchaser case, settlement achieved - $175 million.

2. Heliotrope General, Inc. v. Sumitomo Corporation, et al., Master Case No. 701679 (Cal. Super. - San Diego) – Co-Lead Counsel; multiple settlements achieved totaling $87.35 million.

3. In re Warfarin Sodium Antitrust Litigation, MDL 1232 (D. Del.) – Discovery Committee member and Co-lead Counsel in state case; settlement achieved in the companion national case - $44.5 million.

4. Ryan Rodriguez v. West Publishing Corp. and Kaplan, Inc., No. CV-05-3222 R(MCx) (Cal. Central District Court) – An antitrust class action where FT LLP served as one of three law firms alleging nationwide national antitrust violations. $49 million settlement finally approved.

5. In re Reformulated Gasoline (RFG) Antitrust and Patent Litigation, No. 05cv1671 (C.D. Cal.) – Co-Lead Counsel in a certified class action lawsuit that alleges antitrust and common law violations which resulted in increased prices for RFG for purchasers. $48 million settlement achieved

CONSUMER CLASS ACTION LITIGATION

In federal and state courts throughout the country, the firm represents consumers who have been injured or defrauded. Our cases involve individuals or classes of individuals who have been physically or economically damaged by the wrongdoing of others. Some of our cases seek to obtain financial relief, medical monitoring, injunctions and revised notification for classes of plaintiffs. Some of the cases we have brought include:

SETTLED REPRESENTATIVE SECURITY BREACH CLASS ACTION CASES

1. In Re TJX Companies Retail Security Breach Litigation, MDL 1838 (D. Mass.) Counsel in class action lawsuit alleging statutory and common law violations that resulted in a security breach of consumers' debit and credit card information. $200 million settlement achieved.

2. Lockwood v. Certegy Check Serv., Inc., No. 8:07-cv-01434-SDM-TGW (M.D. Fla.) Counsel in class action lawsuit alleging common law violations that resulted in a security breach of consumers' personal and financial information. Available benefits made to Settlement Class Members of over $500 million.

3. In re Countrywide Financial Corp. Customer Data Security, MDL 1998 (W.D. Ky.) Co-lead counsel in class action lawsuit alleging violations of common law, the California Business and Professions Code, and the Fair Credit Report Act, for data breach involving consumers' personal and financial information. Settlement resulted in a credit monitoring protection package for the class, the creation of an identity theft reimbursement fund of $5 million, and the creation of an expense reimbursement fund for class members of $1.5 million to compensate class members for actions taken as a result of the data breach.

SETTLED REPRESENTATIVE CONSUMER CLASS ACTION CASES

1. Gael M. Carter, et al. v. Associates Financial Services Co., Inc., et al., No. 96cv4652 (Tex. Dist. – Dallas County) – The firm played a pivotal role in pursuing the claims of millions of class members in a number of suits in states across the country against The Associates n/k/a Citifinancial, alleging consumer fraud relating to home equity and personal loan terms. Settlements achieved in the state, federal and companion FTC cases totaling $240 million.

2. Cavan et al. v. Sears Roebuck & Co. and Whirlpool Corp., No. 04CH10354 (Ill. Circuit Court - Cook County) – Co-Lead counsel for consumer class action based upon the sale of Calypso® washing machines. Nationwide settlement reached and approved by the Court.

3. In re Diet Drugs Products Liability Litigation, MDL 1203 (E.D. Pa.). Co-Chair of the Non-PMC litigation group prosecuting class certification of claims not

advanced by Plaintiffs' Management Committee.

4. Schulte v. Fifth Third Bank, 1:09-cv-06655 (N.D. Ill.) – Co-lead counsel in a consumer class action alleging re-sequencing of consumer banking transactions in highest to lowest order with intention of maximizing overdraft fee revenue. Nationwide settlement resulted in a settlement fund of $9.5 million and injunctive relief valued at over $100 million. First re-sequencing/overdraft fee settlement in the nation where bank agreed to terminate high to low re-sequencing as part of relief to the class.

ONGOING REPRESENTATIVE SECURITY BREACH CLASS ACTION CASES

1. Richardson, et al. v. Tricare Management Activity, et al., 1:11-cv-01961 (D.D.C.) Law suit alleging violations of the federal Privacy Act as a result of a security breach of insureds' personal and health information.

ONGOING REPRESENTATIVE CONSUMER CLASS ACTION CASES

1. In re Avandia Marketing, Sales Practices and Products Liability Litigation, MDL 1871 (E.D. Pa.) - FT serves as a member of the Plaintiffs Steering Committee and Co-Chair of the Class Action Sub-Committee. The suit alleges that SmithKline Beecham Corporation d/b/a GlaxoSmithKline used marketing schemes to deliberately conceal and affirmatively misrepresent the significant heart attack or heart-disease related risks associated with the use of the Avandia, Avandamet and Avandaryl – medications used to treat Type II diabetes.

2. In re Darvocet, Darvon and Propoxyphene Products Liability Litigation., MDL 2226 (E.D.Ky.)- FT serves as a member of the Plaintiffs Steering Committee. The suit alleges that brand and generic manufacturers of the pain killer deliberately concealed and misrepresented significant cardiac risks associated with the use of the drug.

ONGOING REPRESENTATIVE THIRD-PARTY PAYOR CLASS ACTION CASES

1. United Benefit Fund v. GlaxoSmithKline LLC, MDL 1871 (E.D. Pa.)- the firm serves a member of the Plaintiffs' Steering Committee, Co-Chairs the Class Action Sub-Committee, and is counsel of record for a third-party payor class action alleging that GSK created, monitored and/or controlled various marketing firms, physicians and ghostwriters to promote and disseminate – through sponsored events and publications – misleading messages about safety and efficacy relating to the use of Avandia.

FALSE CLAIMS ACT LITIGATION

The firm maintains an active practice under the Federal False Claims Act (also known as "*qui tam*" litigation). Through representation of whistleblowers who have independent knowledge of government contract fraud, the firm seeks to secure the return of millions of dollars to federal and state treasuries. The firm has investigated and filed *qui tam* claims in connection with the student loan industry.

BURTON H. FINKELSTEIN
Partner
(1937-2013)

BURTON H. FINKELSTEIN practiced securities litigation for more than forty years, first with the Securities and Exchange Commission, and then in private practice. At the SEC, he was special trial counsel and an Assistant Director of the Enforcement Division, where he was in charge of the administrative, civil and criminal litigation nationwide enforcement program. In 1970, he joined the New York firm of Phillips, Nizer, Benjamin, Krim & Ballon and was a partner in their Washington, D.C. office until 1977, when he and Mr. Thompson formed the firm now known as FINKELSTEIN THOMPSON LLP.

In private practice, Mr. Finkelstein participated in more than twenty securities fraud trials in cities throughout the United States, representing broker-dealers, principals and securities salesmen, attorneys, accountants, publicly and privately held companies and officers and directors of such companies. He also represented companies and individuals in SEC investigations, and served as special counsel to public companies in conducting internal investigations.

Mr. Finkelstein earned a B.B.A. degree in accounting from City College of New York in 1959 and an L.L.B. degree from the University of Pennsylvania in 1962. After military service and a brief stint as law clerk to the General Counsel of the Federal Power Commission, he began his securities litigation career as trial counsel at the SEC's Washington Regional Office.

Mr. Finkelstein appeared as a panelist in securities litigation and enforcement seminars for the Practicing Law Institute, New York Law Journal and the American Law Institute - American Bar Association (ALI-ABA). He was an adjunct professor of law at Georgetown University Law School from 1979 to 1998. His course was entitled "Securities and Financial Frauds - Enforcement and Litigation."

Mr. Finkelstein practiced in the Washington, D.C. office.

DOUGLAS G. THOMPSON, JR.
Partner

DOUGLAS G. THOMPSON, JR. has specialized in administrative and civil trial and appellate litigation in private practice for over twenty years. His practice has been concentrated in the areas of securities, commodities, banking, communications, and other complex business and financial transactions. Mr. Thompson has represented clients in federal court and before the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Federal Trade Commission, the Federal Communications Commission, the Copyright Royalty Tribunal, and the Criminal Division of the Department of Justice. Over the past several years, Mr. Thompson has litigated securities and commodities claims in failed savings and loan cases on behalf of the RTC and FDIC. As lead counsel for the FDIC, Mr. Thompson recently won a jury verdict of more than $1 million after a lengthy trial involving commodities fraud issues.

Mr. Thompson received his A.B. and M.A. degrees in economics from Stanford University and his J.D. degree from Stanford Law School in 1969. He taught at the Stanford Law School in 1969-70 and clerked for Judge Ben. C. Duniway of the United States Court of Appeals, Ninth Circuit, in 1970-71. Following his clerkship, Mr. Thompson joined the law firm of Wilmer, Cutler & Pickering, Washington, D.C., where he was a litigator in communications and securities law. In 1977, he joined with Mr. Finkelstein in the formation of the firm now known as FINKELSTEIN THOMPSON LLP.

Mr. Thompson is a member of the bar of the District of Columbia and the State of California and of several federal district and appellate courts.

Mr. Thompson practices in the Washington, D.C. office.

L. KENDALL SATTERFIELD
Partner

KENDALL SATTERFIELD joined FINKELSTEIN THOMPSON LLP in 1985. Mr. Satterfield practices in the fields of both antitrust and consumer fraud class action litigation. Additionally, he has represented private clients and federal banking agencies in civil and administrative litigation involving securities and commodities fraud, federal banking law and accountant malpractice. Mr. Satterfield also represents Canadian broadcasters and television production companies in matters involving cable television copyright royalties before the United States Copyright Office and has practiced before the Federal Communications Commission.

Mr. Satterfield is a 1981 graduate of Ohio Northern University where he received a Bachelor of Sciences degree with Highest Honors in Business Administration. He then attended Emory University where he received his Juris Doctor in 1984. He is a member of the District of Columbia and Georgia Bars.

Mr. Satterfield practices in the Washington, D.C. office.

MILA F. BARTOS
Partner

MILA F. BARTOS has been with FINKELSTEIN THOMPSON LLP since January 1995. Ms. Bartos practices in the fields of both antitrust litigation and consumer fraud class action cases, including adulterated and toxic products. She is a 1990 graduate of the University of Wisconsin - Madison where she received a joint Bachelor of Arts degree in English and Communications. Ms. Bartos then attended the American University Washington College of Law where she received her Juris Doctor in 1993. At American University, Ms. Bartos was a co-founder of the *American University Journal of Gender and Law* and was a member of the Editorial Board.

Ms. Bartos is the author of the article, "Law Firm Collaboration Via Extranets" published in the Law Library Resource Xchange. She is also an active member of the Chairman's Council of the Appleseed Foundation. Ms. Bartos is a member of the Maryland and District of Columbia Bars.

Ms. Bartos practices in the Washington, D.C. office.

ROSEMARY M. RIVAS
Partner

ROSEMARY M. RIVAS joined FINKELSTEIN THOMPSON LLP in October 2006 and practices in the fields of antitrust, consumer fraud, and securities litigation. Before joining Finkelstein Thompson LLP, she worked at a San Francisco based law firm representing consumers in class action litigation. Ms. Rivas graduated from San Francisco State University in 1997 and received a Bachelor of Arts in Political Science. She received her Juris Doctorate from the University of California, Hastings College of Law in 2000. While in law school, Ms. Rivas served as the Senior Note Editor for the Hastings Constitutional Law Quarterly and was honored with the American Jurisprudence Award in Wills and Trusts.

In 2009, 2010, and 2011, Ms. Rivas was selected as a *Rising Star* by Law & Politics Magazine which recognizes the best lawyers 40 years old or under or in practice for ten years or less. Ms. Rivas is court-appointed interim co-lead class counsel in *In Re Facebook PPC Advertising Litigation*, Case No. C 09-03043 JF (N.D. Cal.) and also serves in a leadership capacity in a number of other complex cases, including *In Re DirecTV Early Cancellation Fee Litigation*, Case No. 09-MDL-2093 AG (C.D. Cal.).

Ms. Rivas is a member of the California bar and is admitted to practice in the Central, Eastern, Northern, and Southern U.S. District Courts of California. Ms. Rivas is also admitted to practice before the Ninth Circuit Court of Appeals. Previously, she served as a Board Member and Diversity Director of the Barristers Club of the San Francisco Bar Association.

Ms. Rivas practices in the firm's San Francisco office.

MICHAEL G. McLELLAN
Partner

MICHAEL G. McLELLAN joined FINKELSTEIN THOMPSON LLP in May 2004. Mr. McLellan practices in the fields of securities, antitrust and consumer fraud litigation. He is a 1996 graduate of the University of South Carolina, where he received a Bachelor of Arts degree in English. Mr. McLellan also attended the University of South Carolina School of Law, where he received his Juris Doctor in 2003. During law school, Mr. McLellan served as Articles Editor for the South Carolina Law Review and was awarded membership in the Order of the Wig and Robe. Upon graduation, Mr. McLellan attended the American University Washington College of Law, where he received an LL.M. in Law and Government, magna cum laude in 2004. While pursuing his LL.M. degree, Mr. McLellan worked as an intern for the Securities and Exchange Commission in the Division of Enforcement and volunteered as a Constitutional Law teacher at Ballou Stay High School. He additionally worked as an independent researcher for the Association of Corporate Counsel.

Mr. McLellan is a member of the South Carolina and District of Columbia bars, and practices in the Washington, D.C. office.

ROSALEE B. C. THOMAS
Associate

ROSALEE THOMAS has been associated with FINKELSTEIN THOMPSON LLP since October 2006 and practices in the fields of antitrust, consumer fraud and securities litigation. Ms. Thomas graduated from Columbia University in 1999, where she studied Political Science. She received her Juris Doctorate from Georgetown Law in 2004 and was recognized as a Pro Bono Pledge Honoree. While in law school, Ms. Thomas participated in the Street Law Clinic and served as a student attorney with the D.C. Law Students in Court Clinical Program. Ms. Thomas also completed a clerkship at the U.S. Consumer Product Safety Commission.

Ms. Thomas is a member of the New York, New Jersey and District of Columbia bars and is admitted to practice in the United States District Court for the District Courts of New Jersey, Southern District of New York, and the District of Columbia.

Ms. Thomas practices in the Washington, D.C. office.

EUGENE J. BENICK
Associate

EUGENE BENICK has been associated with FINKELSTEIN THOMPSON LLP since September 2008 and practices in the fields of antitrust, consumer fraud and securities litigation. He also served as a law clerk for the firm beginning in May 2007. Mr. Benick graduated *summa cum laud*e from The Richard Stockton College of New Jersey in 2005, where he received a Bachelor of Arts degree in Political Science. He attended the American University Washington College of Law and received his Juris Doctor cum laude in 2008.

While in law school, Mr. Benick interned at the United States District Court for the District of Columbia under the Honorable Royce C. Lamberth. He also clerked for the Environmental Protection Agency's Resource Conservation and Recovery Act Division and was a Summer Associate with the American International Group (AIG).

Prior to joining FT, Mr. Benick published an article in the Washington College of Law Business Law Brief titled, The Flood After the Storm: The Hurricane Katrina Homeowners' Insurance Litigation.

Mr. Benick is admitted to the Virginia and District of Columbia bars, and practices in the Washington, D.C. office.

THEODORE J. MacDONALD
Paralegal

THEODORE J. MacDONALD joined FINKELSTEIN THOMPSON LLP in May 2013. Mr. MacDonald received a Bachelor of Arts in Political Science from Dickinson College in 2012.

Prior to joining FT, he worked as an energy policy intern at the American Security Project.

Mr. MacDonald works in the Washington, D.C. office.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ALETA LILLY, on behalf of herself and all others similarly situated, Plaintiff, vs. CONAGRA FOODS, INC., a Delaware corporation Defendant.	Case No. CV12-0225-RGK (SHx) **[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL**

KLAUSNER, Judge:

The matter before the Court is Parties' Joint Motion for Preliminary Approval of Class Action Settlement.

BACKGROUND

On January 10, 2012, Plaintiff initiated this action by filing a complaint in the United States District Court for the Central District of California (the "Action"). (ECF No. 1). Plaintiff brought the complaint on behalf of herself and all others similarly situated. (*Id*. at 8). Plaintiff alleged in the Action that Defendant understated the sodium in the Nutrition Facts Panel of certain of its David® Sunflower Seeds by not expressly disclosing the sodium on shells or by not disclosing that sodium as prominently as it did the sodium on the edible sunflower seed kernels, which violated the Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq*. ("UCL"), the California False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq*. ("FAL"), and the Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq*. ("CLRA"). (*Id*.).

Defendant filed a motion to dismiss the Action on February 27, 2012, on the grounds that Plaintiff's claims were preempted by 21 U.S.C. § 343-1 and that as a matter of law, reasonable consumers were not likely to be deceived by its practices. (ECF No. 17). Plaintiff opposed the motion on the grounds that her claims were not preempted because they were identical to federal food labeling laws and that reasonable consumers were likely to be deceived by its practice. (ECF No. 20). The Court granted the motion to dismiss the Action with prejudice on April 19, 2012. (ECF No. 29). Plaintiff appealed to the Ninth Circuit and the Ninth Circuit reversed and remanded the District Court decision, holding that Plaintiff's claims were not preempted. (ECF No. 34).

After engaging in extensive written discovery, Plaintiff filed a motion for class certification on April 28, 2014 and Defendant filed an opposition brief thereto on May 27, 2014. (ECF Nos. 47, 79). Pursuant to the District Court's June 23, 2014 order (ECF No. 86), Plaintiff filed an amended motion for class certification on July 7, 2014 and Defendant filed an opposition brief thereto on July 14, 2014. (ECF Nos. 93, 106).

On July 8, 2014, the Parties attended a full-day of mediation with Judge Wayne D. Brazil (Ret.) a well-respected mediator with JAMS who has had prior experience in mediating class actions. After arm's length negotiations supervised by Judge Brazil, the Parties have agreed to resolve the Action, subject to the final approval of the District Court. On August 1, 2014, the parties filed the joint motion for preliminary approval of class action settlement.

TERMS OF PROPOSED SETTLEMENT

1. Class Definition

The proposed settlement class consists of:

> All persons in the United States who bought, for personal use only, David® Sunflower Seeds from the period of January 10, 2008 to the Effective Date (defined as the first day after the Final Order and Judgment is entered by the District Court). Excluded from the Settlement Class are Defendant, its officers, directors, or employees, the legal representatives, heirs, successors, and assigns of Defendant, any entity in which Defendant has a controlling interest; and any judge to whom this case is assigned, his or her immediate family, and his or her staff ("Settlement Class").

2. Class Benefits – Stipulated Injunction

Defendant agrees to a stipulated injunction for as long as the Federal Food and Drug Administration requires only single serving nutritional information to be contained in the Nutrition Facts Panel. The terms of the injunction are:

> A. Defendant shall effect relabeling of all David® Sunflower Seeds products so that the Nutrition Facts Panel discloses the total sodium content for both the kernels and the shells' coating. Defendant will no longer place the sodium of the kernels and the shells' coating outside the Nutrition Facts Panel on products sold in the United States. Sodium disclosures for both the kernels and the shells' coating in David® Sunflower Seeds sold in the United States shall be stated in the Nutrition Facts Panel in the sodium declaration.
>
> B. Defendant shall effect relabeling of all Nutrition Facts Panels on its website pages at www.davidseeds.com relating to David® Sunflower Seeds products to disclose the sodium content for the kernel and the shells' coating. Sodium

disclosures for both the kernels and the shells' coating shall be stated in the sodium declaration of the Nutrition Facts Panel on David® Sunflower Seeds.

C. Defendant shall comply with all aspects of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. §§ 301, *et seq*. and regulations promulgated pursuant thereto, and with all aspects of the Sherman Food, Drug and Cosmetic Law, that relate to the required disclosure of sodium in the sunflower seeds.

D. Defendant shall effectuate the changes set forth in Paragraph 3(A)-(C) by January 31, 2015, and provide Plaintiff with a declaration by January 31, 2015 setting forth compliance with the above obligations and shall maintain records necessary to demonstrate compliance with the same.

E. Defendant is not required to remove or recall any David® Sunflower Seeds in market, inventory or elsewhere; nor is ConAgra required to discontinue the use of, or destroy, any packaging inventory in existence prior to final approval of this Settlement Agreement. Instead, Defendant shall not print any David® Sunflower Seed labels after January 31, 2015 that do not comply with Paragraphs 3(A)-(B), above. However, Defendant may, now or after January 31, 2015, exhaust all existing packaging inventory and thereafter sell and distribute David® Sunflower Seeds bearing labeling printed on or before the Final Approval Date, without violating the terms of this agreement.

F. Plaintiff and all members of the Settlement Class shall be forever enjoined from filing any action seeking injunctive relief pursuant to Rule 23(b)(2), individually or otherwise, against Defendant alleging that the sodium disclosure of David® Sunflower Seeds fails to comply with state or federal law or regulations in effect on the Effective Date (defined as the first day after the Final Order and Judgment is entered by the District Court).

G. Plaintiff, individually and on behalf of the Settlement Class, and Plaintiff's Counsel, acknowledge the adequacy of the injunctive relieve set forth above and accept the same in exchange for the Release set forth herein.

3. Class Notice

"As the Settlement Agreement provides for injunctive relief only and requires no release of any monetary remedies or other equitable relief by any member of the

Settlement Class, the Parties agree that notice and opt-out rights are not necessary." (Settlement Agreement, ¶ 2).

4. Release

The only claims for monetary relief being released are those of Plaintiff, individually. (*Id.*, ¶ 2). Class members, however, are bound to the terms of the Stipulated Injunction. *Id.*

5. Attorneys' Fees and Costs

Since the inception of this lawsuit, Plaintiff's Counsel, Finkelstein Thompson LLP, has worked on the case on a purely contingency basis. Defendant agrees to pay "the total sum of $550,000.00 to Finkelstein Thompson LLP ('Plaintiff's Counsel') for any and all Plaintiff's attorney'' fees and costs ('Attorneys' Fee and Expense Payment')," which is subject to Court approval. (*Id.*, ¶ 4).

5. Payment to Class Representative

Defendant agrees to pay an incentive award of $5,000 to Plaintiff Aleta Lilly "for her services as a named plaintiff on behalf of the Settlement Class and in exchange for the release of her individual claims." (*Id.*, ¶ 5).

DISCUSSION

"Voluntary conciliation and settlement are the preferred means of dispute resolution in complex class action litigation." *Smith v. CRST Van Expedited, Inc.*, 10-CV-1116-IEG (WMC), 2013 WL 163293, at *2 (S.D. Cal. Jan. 4, 2013) (citing *Officers for Justice v. Civil Serv. Comm'n of City & County of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982)). "In a class action, however, any settlement must be approved by the court to ensure that class counsel and the named plaintiffs do not place their own interests above those of the absent class members." *Dennis v. Kellog Co.*, 697 F.3d 858, 861 (9th Cir. 2012); *see also* Fed. R. Civ. P. 23(e) ("The claims, issues, or defenses of a certified class may be settled . . . only with the court's approval."). "[C]ourt approval of a class action settlement involves a two-step process—preliminary approval, followed by final approval of the settlement." *In re M.L. Stern Overtime Litig.*, 07-CV-

0118-BTM (JMA), 2009 WL 995864, at *3 (S.D. Cal. Apr. 13, 2009) (citing *MANUAL FOR COMPLEX LITIGATION (FOURTH)* § 21.632 (2004)).

In this case, the Court is at the first step—preliminary approval. This "initial decision to approve or reject a settlement proposal is committed to the sound discretion of the trial judge." *Officers for Justice*, 688 F.2d at 625. The "Court need not review the settlement in detail at this juncture; instead, preliminary approval is appropriate so long as the proposed settlement falls within the range of possible judicial approval." *In re M.L. Stern Overtime Litig.*, 2009 WL 995864, at *3 (internal quotation marks and citation omitted). However, even at this preliminary stage, "a district court may not simply rubber stamp stipulated settlements." *Kakani v. Oracle Corp.*, C 06-06493 WHA, 2007 WL 1793774, at *1 (N.D. Cal. June 19, 2007). In order to grant preliminary approval, the Court must "ratify both the propriety of the certification and the fairness of the settlement." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011).

Propriety of Certification

Plaintiff seeks certification of a settlement class under Federal Rule of Civil Procedure 23(b)(2). "A plaintiff seeking class certification must affirmatively demonstrate that it meets the four requirements of Rule 23(a) and at least one of the requirements of Rule 23(b)." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613–14 (1997). Rule 23(a) outlines four requirements: numerosity, commonality, typicality, and adequacy of representation. Fed. R. Civ. P. 23(a). "In addition to these prerequisites, a plaintiff must satisfy one of the prongs of 23(b) in order to maintain a class action." *Goldkorn v. County of San Bernardino*, EDCV 06-707-VAP (OPx), 2012 WL 476279, at *4 (C.D. Cal. Feb. 13, 2012). "Where . . . a plaintiff moves for class certification under Rule 23(b)(2), the plaintiff must prove [that] the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." *Id.*; Fed. R. Civ. P. 23(b)(2).

A proposed class must be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). This "does not mean that joinder must be impossible, but rather means only that the court must find that the difficulty or inconvenience of joining all members of the class makes class litigation desirable." *In re Itel Sec. Litig.*, 89 F.R.D. 104, 111 (N.D. Cal. 1981). "[T]he class need not be so ascertainable that every potential member can be identified at the commencement of the action. As long as the general outlines of the membership of the class are determinable at the outset of the litigation, a class will be deemed to exist." *O'Connor v. Boeing N. Am., Inc.*, 184 F.R.D. 311, 319 (C.D. Cal. 1998). "Where the number of class members exceeds forty, and particularly where class members number in excess of one hundred, the numerosity requirement will generally be found to be met." *In re Itel Sec. Litig.*, 89 F.R.D. at 111. In this case, while the exact number of class members is undetermined, Defendant sold thousands of the products during the relevant time period. The Court finds that "the difficulty or inconvenience of joining all members of the class makes class litigation desirable." *In re Itel. Sec. Litigation*, 89 F.R.D. at 111. The numerosity requirement has been satisfied.

A class has sufficient commonality if "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). "Commonality requires the plaintiff to demonstrate that the class members have suffered the same injury." *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011) (internal quotation marks and citation omitted). In this case, the questions of law or fact common to all the class members include: (1) whether ConAgra violated the law by understating the sodium in the Nutrition Facts of its products; and (2) whether Plaintiff and all Class members are likely to be deceived by and the measure of restitution to which they are entitled. The commonality requirement has been satisfied.

The typicality requirement is met if "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). "For typicality to be met, the named plaintiffs' claims need not be identical to those of the

putative class members. Instead, the plaintiffs' claims need only be 'reasonably coextensive with the claims of the putative class.'" *Johnson v. Shaffer*, 12-CV-1059 KJM AC, 2013 WL 5934156, at *11 (E.D. Cal. Nov. 1, 2013) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)). In this case, Plaintiff and the class have been subjected to identical alleged violations of law by Defendant. The typicality requirement has been satisfied.

Adequacy of representation requires that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "In order for plaintiffs to adequately represent the putative class members, they must demonstrate, first, that they do not possess any conflicts of interest with the class members and, second, that both plaintiffs and their counsel will work to 'prosecute the action vigorously' with respect to the entire class." *Johnson*, 2013 WL 5934156, at *12 (quoting *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003)). The adequacy requirement has been satisfied. The Court finds that the Rule 23(a) requirements have been met.

Under Rule 23(b)(2), Plaintiff must demonstrate that "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). Rule 23(b)(2) is satisfied where "[t]he injunctive relief sought by plaintiff[] would apply to the class as a whole" and "the claims in th[e] suit would not entitle named or unnamed class members to any form of individualized injunctive relief." *Johnson*, 2013 WL 5934156, at *13.

In this case, the terms of the injunction in the settlement provide that:

(a) Defendant shall effect relabeling of all David® Sunflower Seeds products so that the Nutrition Facts Panel discloses the total sodium content for both the kernels and the shells' coating. Defendant will no longer place the sodium of the kernels and the shells' coating outside the Nutrition Facts Panel on products sold in the United States. Sodium disclosures for both the kernels and the shells' coating in David® Sunflower

Seeds sold in the United States shall be stated in the Nutrition Facts Panel in the sodium declaration;

(b) Defendant shall effect relabeling of all Nutrition Facts Panels on its website pages at www.davidseeds.com relating to David® Sunflower Seeds products to disclose the sodium content for the kernel and the shells' coating. Sodium disclosures for both the kernels and the shells' coating shall be stated in the sodium declaration of the Nutrition Facts Panel on David® Sunflower Seeds;

(c) Defendant shall comply with all aspects of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. §§ 301, et seq. and regulations promulgated pursuant thereto, and with all aspects of the Sherman Food, Drug and Cosmetic Law, that relate to the required disclosure of sodium in the sunflower seeds;

(d) Defendant shall effectuate the changes set forth in (a)-(c) by January 31, 2015, and provide Plaintiff with a declaration by January 31, 2015 setting forth compliance with the above obligations and shall maintain records necessary to demonstrate compliance with the same; and

(e) Defendant shall not print any David® Sunflower Seed labels after January 31, 2015 that do not comply with the changes set forth in (a)-(c).

This injunctive relief sought by Plaintiff "appl[ies] to the class as a whole" and Plaintiff's claims do not "entitle named or unnamed class members to any form of individualized injunctive relief." *Johnson*, 2013 WL 5934156, at *13. The Court finds that the requirements of Rule 23(b)(2) have been met.

The Court grants certification of the proposed settlement class for settlement purposes under Rule 23(b)(2). The Court appoints Plaintiff Aleta Lilly as the class representative.

"A court that certifies a class must appoint class counsel." Fed. R. Civ. P. 23. "When [an] applicant seeks appointment as class counsel, the court may appoint that applicant only if the applicant is adequate under Rule 23(g)(1) and (4). *Id.* Under Rule 23(g), "the Court must consider: (i) the work counsel has done in identifying or

investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class. . . . Finally, class counsel must fairly and adequately represent the interests of the class." *In re China Intelligent Lighting and Elec., Inc. Sec. Litig.*, CV 11-2768 PSG (SSx), 2013WL 5789237, at *3 (C.D. Cal. Oct. 25, 2013) (internal quotation marks and citation omitted); Fed. R.Civ. P. 23 (g).

Plaintiff seeks appointment of Finkelstein Thompson LLP as class counsel. Proposed class counsel has investigated the facts available to counsel and the applicable law, and has litigated this case vigorously, including on appeal. Proposed class counsel has extensive experience in consumer class action litigation. Proposed class counsel has worked on various complex matters and has a history of success in similar mislabeling cases. The Court appoints Finkelstein Thompson LLP as Class Counsel.

Fairness of the Proposed Settlement

Rule 23(e) provides that a court may approve a settlement "only after a hearing and on finding that it is fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). The Court must "review[] the substance of the settlement . . . to ensure that it is 'fair, adequate, and free of collusion.'" *Lane v. Facebook*, 696 F.3d 811, 819 (9th Cir. 2012) (quoting *Hanlon*, 150 F.3d at 1027). The Court is "not to reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute, nor is the proposed settlement to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." *Smith*, 2013 WL 163293, at *2 (internal quotation marks and citation omitted). "In making this appraisal, courts have broad discretion to consider a range of factors such as [1] the strength of the plaintiff's case; [2] the risk, expense, complexity, and likely duration of further litigation; [3] the risk of maintaining class action status throughout the trial; [4] the amount offered in settlement; [5] the extent of discovery completed and the stage of the proceedings; [6] the experience and views of counsel; [7] the presence of a government participant; and [8] the reaction

of the class members to the proposed settlement." *Id.* at *2–3 (internal quotation marks and citation omitted) (finding the proposed settlement "fair, adequate, and free of collusion" on the grounds that "the settlement is the product of arms-length negotiations by experienced counsel before a respected mediator, reached after and in light of years of litigation and ample discovery into the asserted claims"). "[T]he Court need not conduct a full settlement fairness appraisal before granting preliminary approval; rather the proposed settlement need only fall within 'the range of possible approval.'" *Dennis v. Kellogg, Co.*, 09-cv-1786-IEG (WMC), 2013 WL 1883071, at *4 (S.D. Cal. May 3, 2013) (quoting *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D. Cal. 2008)). "Essentially, the court is only concerned with whether the proposed settlement discloses grounds to doubt its fairness or other obvious deficiencies such as unduly preferential treatment of class representatives or segments of the class, or excessive compensation of attorneys." *Id.* (internal quotation marks and citation omitted).

In this case, the procedure for reaching the settlement was fair and reasonable and the settlement was the product of arm's length negotiations. *See Smith*, 2013 WL 163293, at *3. The settlement was reached with the assistance of Hon. Wayne D. Brazil (Ret.). Although the settlement does not include monetary relief for the class, it stops Defendant's allegedly unlawful practices, bars Defendant from similar practices in the future, and does not prevent the class members from seeking damages. A significant amount of litigation and discovery has been undertaken in prosecuting this action. *See Smith*, 2013 WL 163293, at *3. Further litigation would bring additional uncertainty, risk, and expense to the class. Plaintiff's counsel is experienced in handling class actions and the types of claims asserted in this action and considers it to be in the best interests of the class to enter into this settlement agreement. The Court finds that the settlement "fall[s] within the range of possible approval." *Dennis*, 2013 WL 1883071, at *4 (internal quotation marks and citation omitted). The Court grants preliminary approval of the class settlement.

Notice

When a class is certified under Rule 23(b)(2) and only provides for injunctive relief, no notice of class certification is required. *Kim v. Space Pencil, Inc.*, Case No. C 11-03796, 2012 U.S. Dist. LEXIS 169922, at *4 (N.D. Cal. Nov. 28, 2012). When certifying a class under Rule 23(b)(2), "the court may direct appropriate notice to the class." Fed. R. Civ. P. 23(c)(2)(A). In this case, the costs of attempting to identify the class members to provide notice of certification appear prohibitive to settlement. Generally, courts are required to "notice the class members of the proposed settlement." *In re M.L. Stern Overtime Litig.*, 2009 WL 995864, at *3. However, notice of class settlement under Rule 23 is only required if the settlement releases the monetary claims of the class. In this case, the settlement agreement does not release the monetary claims of the Class. Only Plaintiff Aleta Lilly's individual monetary claims and the class members' claims to injunctive relief are released by the settlement agreement. The Court exercises its discretion and does not direct notice here because the settlement does not alter the unnamed class members' legal rights to pursue monetary relief. *See Kim*, 2012 U.S. Dist. LEXIS 169922, at *4, 7.

CONCLUSION

IT IS HEREBY ORDERED that Plaintiff's Motion for Preliminary Approval of Class Action Settlement is GRANTED. The settlement class is certified for settlement purposes only under Rule 23(b)(2). The Court appoints Plaintiff Aleta Lilly as the Class Representative. The Court appoints Finkelstein Thompson LLP as Class Counsel. A hearing shall be held before this Court on November 10, 2014 at 9:00 a.m. to determine whether the Court should grant final approval of the settlement and to determine the appropriateness of Plaintiff's attorneys' fees and costs and the incentive payment to the Class Representative. All papers in support of the final approval of the settlement shall be filed with the Court on or before October 6, 2014.

DATED: _____

_____
Honorable Gary R. Klausner
UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ALETA LILLY, on behalf of herself and all others similarly situated,

Plaintiff,

vs.

CONAGRA FOODS, INC., a Delaware corporation

Defendant.

Case No. 12-cv-0225-RGK (SHx)

PROOF OF SERVICE

I, Anita Rivas, declare as follows:

I am employed by Finkelstein Thompson, 505 Montgomery, Street, Suite 300, San Francisco, California 94111. I am over the age of eighteen years and am not a party to this action. On August 01, 2014, I served the following document(s):

1. **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT PURSUANT TO FED. R. CIV. P. 23(B)(2); MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**

2. **DECLARATION OF ROSEMARY M. RIVAS IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT PURSUANT TO FED. R. CIV. P. 23(B)(2)**

3. **[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL**

[X] **BY CM/ECF**: I electronically submitted the foregoing to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all CM/ECF registrants.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed this 1st day of August 2014 at San Francisco, California.

Anita Rivas