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Plaintiff Dennis Petersen*

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

DENNIS PETERSEN, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

CJ AMERICA, INC.,

Defendant.

Case No. 14-CV-2570 DMS JLB

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: March 4, 2016
Time: 1:30pm
Judge: Hon. Dana M. Sabraw
Courtroom: 13A

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT

PLEASE TAKE NOTICE that on March 4, 2016 at 1:30p.m., or as soon thereafter as the matter may be heard, in Courtroom 13A, 13th Floor of the United States District Courthouse, 333 West Broadway, Suite 1310, San Diego, California, 92101, before the Honorable Dana M. Sabraw, Plaintiff Dennis Petersen ("Plaintiff") will, and hereby does, move the Court for an Order Granting Preliminary Approval of Class Action Settlement. 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: February 5, 2016

Respectfully submitted,

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17 **UNITED STATES DISTRICT COURT**

18 **SOUTHERN DISTRICT OF CALIFORNIA**

19 DENNIS PETERSEN, on behalf of
20 himself and all others similarly
21 situated,

22 Plaintiff,

23 v.

24 CJ AMERICA, INC.,
25 Defendant.

Case No. 14-CV-2570 DMS JLB

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Plaintiff Dennis Petersen (“Plaintiff”), on behalf of himself and the proposed Class he seeks to represent, hereby moves¹ for preliminary approval of the Superseding Stipulation of Settlement (“Settlement” or “Agreement”) he reached with Defendant CJ America, Inc. (“Defendant” or “CJ”).²

On October 28, 2014, Plaintiff filed this proposed class action lawsuit (the “Action”) alleging that CJ committed unlawful, fraudulent, and unfair business practices by falsely labeling certain of its Annie Chun’s branded prepackaged food products as having “NO MSG ADDED” (the “Subject Products” or “Products”).³ Specifically, Plaintiff alleged that CJ misled him by using the phrase “NO MSG ADDED” on the labels when the products contained several ingredients that have

¹ Unless otherwise stated, capitalized terms have the same meaning as in the Agreement, attached as Exhibit 6 to the Declaration of Rosemary M. Rivas (or “Rivas Declaration” or “Rivas Decl.”) filed in support of this motion.

² In an order dated December 16, 2015 (Dkt No. 44), the Court denied Plaintiff’s initial motion for preliminary approval for two reasons: (1) the Court did not believe that the motion set forth facts evidencing contacts between Defendant and California, or contacts between the marketing and labeling decisions at issue in this action and California, sufficient to support certification of a nationwide class for settlement purposes, and (2) the Court did not believe, based on the evidence before it, that the charitable organizations to which the Residual Fund (if any) would be distributed satisfied Ninth Circuit standards. (*Id.* at 8-9, 12.) This motion addresses the Court’s concerns, sets forth the Parties’ proposal to change their designated recipient of *cy prè*s funds to Consumers Union, and is filed concurrently with a declaration from Defendant setting forth facts regarding the connections between the claims at issue in this action and CJ and the state of California.

³ The Subject Products means the following products sold by CJ during the Class Period under Annie Chun’s Noodle Bowl, Soup Bowl, and Ramen House product lines that were labeled “NO MSG ADDED”: Chinese Chicken Soup Bowl, Hot & Sour Soup Bowl, Korean Kimchi Soup Bowl, Miso Soup Bowl, Thai Tom Yum Soup Bowl, Udon Soup Bowl, Vietnamese Pho, Garlic Scallion Noodle Bowl, Korean Sweet Chili Noodle Bowl, Kung Pao Noodle Bowl, Pad Thai Noodle Bowl, Peanut Sesame Noodle Bowl, Teriyaki Noodle Bowl, Soy Ginger Ramen, Spicy Chicken Ramen, and Spring Vegetable Ramen. Agreement ¶ 35.

1 MSG. Plaintiff alleged causes of action for false advertising and deceptive
 2 practices in violation of California's Unfair Competition Law, Cal. Bus. & Prof.
 3 Code §§ 17200, *et seq.* ("UCL"), the False Advertising Law, Cal. Bus. & Prof.
 4 Code §§ 17500, *et seq.* ("FAL"), the Consumers Legal Remedies Act, Cal. Civ.
 5 Code §§ 1750, *et seq.* ("CLRA"), and for breach of express warranty, Cal. Com.
 6 Code § 2313. Defendant consistently denied that it did anything wrong or
 7 unlawful, or that Plaintiff's claims may be asserted on a classwide basis, and asserts
 8 that the labels at issue were truthful and not misleading.

9 After partially prevailing on CJ's motion to dismiss and obtaining discovery
 10 from CJ, Plaintiff and CJ attended two hard-fought settlement conferences overseen
 11 by the Honorable Magistrate Judge Burkhardt and ultimately reached a settlement
 12 agreement in principle, which was later memorialized in an initial stipulation of
 13 settlement executed on October 30, 2015.

14 In light of the Court's order of December 16, 2015, the Parties modified the
 15 original agreement and designated Consumers Union as a *cy prè*s beneficiary, as set
 16 forth in the superseding Agreement.

17 The Parties believe the terms of the superseding Agreement are fair,
 18 reasonable and adequate and should be granted preliminary approval. Accordingly,
 19 Plaintiff respectfully requests that the Court grant this motion.⁴

20 **II. PROCEDURAL SUMMARY**

21 Plaintiff filed the Complaint on October 28, 2014 alleging causes of action
 22 for violations of California's UCL, FAL, CLRA, and for breach of California's
 23 express warranty law. Dkt. No. 1, ¶¶ 5, 39-67. Plaintiff sought restitution and
 24 injunctive relief in the form of an order requiring Defendant to (1) cease the alleged
 25 unlawful marketing of the Subject Products, and (2) implement a corrective
 26 advertising campaign. *Id.*

27 ⁴ Defendant does not oppose Plaintiff's motion for preliminary approval and intends
 28 to file a notice of non-opposition concurrently with the filing of this motion.

1 On February 11, 2015, Defendant moved to dismiss Plaintiff's Complaint on
2 several grounds. Dkt. No. 10. Plaintiff vigorously opposed the motion and filed his
3 opposition brief on March 20, 2015, which Defendant replied to on April 3, 2015.
4 Dkt. Nos. 15-16. On May 18, 2015, the Court granted Defendant's motion to strike
5 Plaintiff's request for injunctive relief, and denied the motion to dismiss as to the
6 remaining arguments. Dkt. No. 19.

7 Defendant filed an answer to the complaint on June 1, 2015. Dkt. No. 20.
8 The Parties then stipulated to the filing of an amended complaint, which Judge
9 Sabraw granted. Dkt. No. 30. Plaintiff filed the First Amended Complaint on
10 August 18, 2015 which: alleged a claim for damages under the CLRA; alleged
11 supplemental facts surrounding Plaintiff's purchase of Annie Chun's Udon Soup
12 Bowl and his interest in purchasing it in the future; alleged, in the alternative, a
13 California class; and clarified that Plaintiff intends to seek declaratory/injunctive
14 relief certification under Rule 23(b)(2) and issue certification under Rule 23(c)(4),
15 in addition to certification under Rule 23(b)(3). Dkt. No. 32.

16 The Parties agreed to participate in a settlement conference with Magistrate
17 Judge Burkhardt and prepared detailed settlement conference statements. On
18 August 14, 2015, the Parties attended an all-day settlement with Magistrate Judge
19 Burkhardt. Rivas Decl. at ¶ 11. They were unable to reach a resolution, however,
20 the Parties returned to participate in a second in-person settlement conference on
21 August 18, 2015, after which they were able to reach the material terms of a class
22 action settlement later memorialized in the first agreement. *See id.*; Dkt. No. 33.
23 The Parties filed a Notice of Settlement on August 31, 2015. Dkt No. 35.

24 Thereafter, the Parties began negotiating the written terms of the Agreement,
25 attached as Exhibit 6 to the Rivas Declaration. The Parties also interviewed a
26 number of potential claims administrators and worked on developing a notice
27 program. Rivas Decl. ¶ 14. The Parties executed the original Agreement and
28 related documents on October 30, 2015 and Plaintiff filed a motion for preliminary

1 approval on that date. (Dkt No. 41.)⁵

2 In light of the Court's December 16, 2015 order, the Parties further met and
3 conferred and executed a superseding Agreement by selecting Consumers Union as
4 the sole *cy près* recipient. Plaintiff filed this motion thereafter.

5 **III. TERMS OF THE PROPOSED SETTLEMENT**

6 **A. Monetary Consideration: A \$1,500,000 Common Fund**

7 Under the terms of the Agreement, CJ's total financial commitment of one
8 million five hundred thousand dollars (\$1,500,000.00) will be paid in cash
9 ("Settlement Fund") for the benefit of the Class defined as: all persons⁶ in the U.S.
10 and its territories who purchased at retail one or more of the Subject Products
11 during the Class Period.⁷ Agreement ¶¶ 8, 42.

12 The Settlement Fund will be used to make cash payments to Class Members,
13 pay all costs of notice and settlement administration, any award of Attorneys' Fees
14 and Expenses and Plaintiff's Incentive Award as approved by the Court. *Id.* ¶ 42.
15 Defendant is not entitled to a reversion of any of the Settlement Fund. *Id.* ¶ 44.

16 **B. Plan of Allocation**

17 To receive a cash payment, Class Members must complete and timely submit
18 a short Claim Form. Agreement ¶ 43 and Exh. C. The Claim Form may be
19

20 ⁵ After Plaintiff filed his initial motion for preliminary approval, on November 9,
21 2015, Angeion Group issued notice of the Parties' proposed class action settlement
22 pursuant to 28 U.S.C. § 1715(b). To comply with the Court's request (Dkt No. 44
23 at p. 14 n.5-6), the Parties intend to re-issue notice of this settlement pursuant to
24 Section 1715(b) promptly after the filing of this Motion and submit a declaration
25 from Angeion Group attesting to the issuance of notice pursuant to Section 1715(b).

26 ⁶ Specifically excluded from the Class are: (a) CJ's employees, principals, officers,
27 directors, agents, affiliated entities legal representatives, successors and assigns; (b)
28 the judges to whom the Action has been or is assigned and any members of their
immediate families; (c) those who purchased the Subject Products for the purpose
of re-sale; and (d) all persons who have filed a timely Request for Exclusion from
the Class. Agreement ¶ 8.

⁷ "Class Period" means the period from November 19, 2012 up to and including the
date on which the Court enters the Preliminary Approval Order. Agreement ¶ 11.

submitted by U.S. Mail or via the Settlement Website at
 www.noMSGaddedsettlement.com through a user-friendly online process. *See Id.*
 ¶¶ 50, 65.

Class Members are eligible to receive \$1.50 per Subject Product purchased,
 up to a maximum of ten (10) products (i.e., \$15.00 in cash) without Proof of
 Purchase. *Id.* ¶ 43. This \$15.00 maximum does not apply to Class Members with
 Proofs of Purchase, who will be eligible to receive \$1.50 for each Subject Product
 for which they submit valid Proof of Purchase during the Class Period. *Id.* Proof
 of Purchase includes, but is not limited to, receipts, Annie Chun’s packaging or
 other documentation from a third-party commercial source reasonably establishing
 the purchase during the Class Period of one or more of the Subject Products. *Id.* ¶
 25. Packaging, including bar codes or UPCs, shall constitute Proof of Purchase
 only if the Subject Product(s) claimed to have been purchased by the Class Member
 can be identified from the packaging submitted. *Id.*

C. Cy Près Provisions

In the event the entire amount of the Settlement Fund is not used after the
 payment of the Settlement Administration Expenses, Plaintiff’s Incentive Award,
 Attorneys’ Fees and Expenses, and settlement benefits to Class Members who have
 submitted timely and valid Claim Forms, Angeion will distribute 100% of the
 Residual Fund, subject to Court approval, to Consumers Union.

After reviewing the Court’s December 16, 2015 Order, which raised
 concerns with the Parties’ prior designated *cy près* recipients (Dkt No. 44 at p. 12-
 13), the Parties carefully selected a new recipient—Consumers Union—a non-profit
 organization that fully complies with Ninth Circuit standards, including those
 standards articulated in *Lane v. Facebook, Inc.*, 696 F.3d 811, 820 (9th Cir. 2012),
 and *Dennis v. Kellogg*, 697 F.3d 858 (9th Cir. 2012). Specifically, this *cy près*
 beneficiary shares a “driving nexus” with the plaintiff class, as required by *Kellogg*.
 697 F.3d at 865. As also required by *Kellogg*, “an award to Consumers Union

1 would also “guided by (1) the objectives of the underlying statute(s) and (2) the
 2 interests of the silent class members” and would not benefit a group ““too remote
 3 from the plaintiff class.”” *Id.* (citations omitted).

4 The mission and activities of Consumers Union further the objectives of the
 5 underlying statutes in this case: the CLRA, FAL and UCL. “As California courts
 6 have stated, ‘[t]he UCL is designed to preserve fair competition among business
 7 competitors and protect the public from nefarious and unscrupulous business
 8 practices,’ and the purpose of the CLRA is similarly ‘to protect consumers against
 9 unfair and deceptive business practices[.]’” *Id.* at 866 (citations omitted); *see also*
 10 *Anunziato v. eMachines, Inc.*, 402 F. Supp. 2d 1133, 1137 (C.D. Cal. Nov. 10,
 11 2005) (“The goal of both the UCL and the FAL is the protection of consumers.”).

12 As set forth in the Declaration of Elisa Odabashian (“Odabashian Decl.”),
 13 Consumers Union is the policy and action division of the Consumer Reports
 14 publication. Odabashian Decl., Exh. 3 at ¶ 2 (attached to Rivas Decl.). Together
 15 with Consumer Reports and Consumerist, Consumers Union seeks to empower
 16 consumers as they navigate their way through an increasingly complex
 17 marketplace. *Id.* The organization has a long history of working to educate and
 18 protect consumers in the marketplace. *Id.* at ¶ 3. Importantly, Consumers Union
 19 has long been on the cutting edge of advocating for transparency, honesty and
 20 accuracy in product labeling, and specifically food product labeling, and is tireless
 21 in its efforts on behalf of its only constituency—the public. *See, e.g., Id.* at ¶¶ 3-5.
 22 Accordingly, Consumers Union has extensive consumer protection and advocacy
 23 experience within the field of food labeling and advertising. *Id.* For example,
 24 Consumers Union has been working to educate consumers and lawmakers about (1)
 25 “green” claims on food product labels, (2) food labeling laws that could clarify the
 26 terms “healthy” and “natural,” (3) unexpected “junk” foods and potentially
 27 misleading food labeling claims, (4) hidden sources of sodium in food products,
 28 and (5) the need for transparency in “organic” and GMO labeling. *Id.* at ¶ 5. Thus,

1 Consumers Union can direct any *cy prè*s award received pursuant to forward its
2 work in the food labeling and advertising field.

3 Consumers Union has advocates and content providers working throughout
4 the United States. *Id.* at ¶ 6. Therefore, Consumers Union can ensure that *cy prè*s
5 funded consumer protection services reach a broad spectrum of consumers
6 throughout the United States. *Id.* Accordingly, directing *cy prè*s funds to
7 Consumers Union presents a unique opportunity to contribute funds to an
8 organization working directly on the issues relevant to this action and on behalf of
9 all proposed class members. *Id.*

10 Indeed, Consumers Union has been finally approved as a *cy prè*s recipient in
11 other false advertising class action settlements involving food products. *See Miller*
12 *v. Ghirardelli Chocolate Co.*, 2015 U.S. Dist. LEXIS 20725 (N.D. Cal 2015) (order
13 by Magistrate Judge Laurel Beeler approving Consumers Union as a *cy prè*s
14 recipient); *see also* Amended Order Granting Motion for Final Settlement
15 Approval, Attorneys' Fees, and Incentive Award, *Dennis v. Kellogg Co.*, Case No.
16 09-CV-1786-L, Dkt. No. 141 at page 3 (S.D. Cal. Nov. 14, 2013) (order by Judge
17 M. James Lorenz approving Consumers Union as a *cy prè*s recipient) (attached as
18 exhibit 5 to the Rivas Declaration).

19 **D. Non-monetary Consideration**

20 Although Defendant has denied, and continues to deny, Plaintiff's allegations
21 of false advertising, as a compromise and to resolve this matter, Defendant
22 nevertheless has agreed to take certain significant measures over the next three
23 years. According to the terms of the Agreement, Defendant will: for a period of
24 three years after the Effective Date, not order and/or print labels or package with a
25 label bearing the phrase "NO MSG ADDED," and will otherwise not market and/or
26 advertise Subject Products shipped to distributors and/or retail customers after the
27 Effective Date as "NO MSG ADDED." Agreement ¶ 45.

1 **E. Dissemination of Notice to the Settlement Class**

2 Class Members' contact information is not available for direct, individual
3 notice because they purchased the Products from third party retailers and not
4 directly from the Defendant. The Parties, however, retained Angeion Group, a
5 company specializing in notice plan design and implementation, to assist them.
6 Agreement ¶ 46.

7 Over the course of several weeks since meeting with Judge Burkhardt, the
8 Parties worked diligently to develop a robust notice program utilizing *Cooking*
9 *Light*, a national consumer publication, and Internet ad networks. Rivas Decl. ¶ 12;
10 Agreement ¶¶ 48 - 49. The Summary Notice will be published in *Cooking Light*
11 magazine. Agreement ¶ 48. Additionally, there will be Internet advertising, such
12 as banner ads, which will contain links to the Settlement Website
13 (www.noMSGaddedsettlement.com). *Id.* ¶ 49. The Long Form Notice will be
14 made available on the Settlement Website and to those requesting a hard copy from
15 the Settlement Administrator. *Id.* ¶ 47. The notice program will reach
16 approximately 70.2% of the estimated number of Class Members with an average
17 frequency of three (3) times. Agreement Exh. G ¶ 16. This means that 70.2% of
18 the targeted audience will be exposed to the Notice messaging, on average, three
19 different times. *Id.*

20 The Summary Notice will also refer Class Members to the Settlement
21 Website, which will make available the Long Notice, Claim Form, Agreement, and
22 other relevant Court documents. Agreement ¶¶ 48, 50 & Exh. F. The Settlement
23 Administrator will also establish a toll-free number that will provide Settlement-
24 related information. *Id.* ¶ 51. Plaintiff's Counsel also will place links to the
25 Settlement Website on the respective homepages of their websites.

26 **F. Incentive Award and Attorneys' Fees and Costs**

27 Plaintiff's Counsel will apply for an Incentive Award for Mr. Petersen in an
28 amount not to exceed \$5,000.00 (to be paid from the Settlement Fund), which

Defendant does not oppose. Agreement ¶ 53. Plaintiff's Counsel believe the award is appropriate and recognizes Plaintiff's efforts during the Action that resulted in the Settlement, including retaining counsel; reviewing and authorizing the filing of the complaint; responding to discovery; attending two in-person settlement conferences with his lawyers, defense counsel, and Judge Burkhardt; reviewing the proposed Settlement; and keeping abreast of the litigation.

For the past year, Class Counsel, Finkelstein Thompson LLP and Glancy Prongay & Murray LLP, have worked on this case on a purely contingency basis. Plaintiff's Counsel will apply to the Court for an award of attorneys' fees in an amount not to exceed \$375,000.00 (the benchmark of 25% of the Settlement Fund), and for reimbursement of costs and expenses in an amount not to exceed \$5,000.00. Agreement ¶ 54. The Attorneys' Fees and Expense Award will be paid from the Settlement Fund. *Id.* at ¶ 42.

G. Release Provisions

If the Court grants final approval of the proposed Settlement, Class Members will be deemed to have released Defendant and the Released Parties of all claims that were asserted or could have reasonably been asserted in the Action and that relate to the "NO MSG ADDED" representation or MSG content of the Subject Products. *Id.* at ¶ 26. Claims for personal injury are not released. *Id.*

IV. CERTIFICATION OF THE SETTLEMENT CLASS IS APPROPRIATE

Provisional Class certification is appropriate in part because Defendant consents to class certification solely in the context of this settlement. See Agreement ¶¶ 85-87; *see also generally* The Rutter Group, California Practice Guide: Federal Civil Procedure Before Trial, California & Ninth Circuit Edition (2015), Ch. 10-C at § 10:787 (noting that courts generally permit parties to stipulate that a defined class be conditionally certified for settlement purposes because it facilitates settlement).

1 Because the parties have reached agreement regarding class certification in
 2 the context of this settlement, the Court may enter an order provisionally certifying
 3 the class for settlement purposes. *See, e.g., Alvarado Partners, L.P. v. Mehta*, 723
 4 F. Supp. 540, 546 (D.C. Colo. 1989) (holding that conditional class certification for
 5 settlement purposes may be ordered in appropriate cases to foster such benefits as
 6 early settlement and reduced attorney's fees and costs). This will allow notice of
 7 the proposed settlement to issue, so class members can be informed of the existence
 8 and terms of the proposed settlement, of their right to be heard on its fairness, of
 9 their right to opt out, and of the date, time and place of the fairness hearing. SEE
 10 FEDERAL JUDICIAL CENTER, MANUAL FOR COMPLEX LITIGATION (4th ed. 2004) at
 11 §§ 21.632, 21.633 (hereafter, "MANUAL").

12 For settlement purposes only, Plaintiff requests that the Court provisionally
 13 certify the following settlement Class proposed pursuant to Rule 23 of the Federal
 14 Rules of Civil Procedure:

15 All persons in the United States and United States Territories who purchased
 16 at retail one or more of the Subject Products during the Class Period.
 17 Specifically excluded from the Class are: (a) CJ its employees, principals,
 18 officers, directors, agents, affiliated entities legal representatives, successors
 19 and assigns; (b) the judges to whom the Action has been or is assigned and
 20 any members of their immediate families; (c) those who purchased the
 Subject Products for the purpose of re-sale; and (d) all persons who have
 filed a timely Request for Exclusion from the Class.

21 Because it meets all the requirements of Rule 23 as explained below, this
 22 Class should be certified for settlement purposes.

23 **A. The Class Satisfies the Numerosity Requirement**

24 Rule 23(a)(1) requires that "the class [be] so numerous that joinder of all
 25 members is impracticable." *Id.* Numerosity is undisputed. Plaintiff alleges, and
 26 discovery confirmed, that thousands of Defendant's Products were sold nationwide
 27 during the Class Period. Although Plaintiff does not know the precise numbers of
 28 Class Members, Defendant sells the Products at over 50 different retail stores across

the country (www.anniechun.com/stores?state=80), which supports numerosity.

B. The Class Satisfies the Commonality Requirement

Rule 23(a)(2) requires that “there [be] questions of law or fact common to the class.” *Id.* “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). This means that the class members’ claims “must depend on a common contention . . . of such a nature that it is capable of classwide resolution – which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Id.* This requirement is also satisfied.

The commonality requirement is met for the Class because the claims of all Class Members arise from the same contention, namely, that Defendant misleadingly labeled its Products as “NO MSG ADDED” even though they contained ingredients with MSG. Thus, the determination of whether the Defendant’s advertising is or is not misleading will resolve a central issue on a class wide basis in “one stroke.”

C. Plaintiff Meets the Typicality Requirement

Rule 23(a)(3) requires that “the claims or defenses of the representative parties are typical of the claims or defenses of the class.” This requirement is also satisfied.

Courts consistently find that the typicality requirement is met if the claims arise from a common course of conduct. Typicality does not require the claims to be substantially identical. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998). Rather, the Ninth Circuit has found typicality if the requisite claims “‘share a common issue of law or fact’ . . . and are ‘sufficiently parallel to insure a vigorous and full presentation of all claims for relief.’” *Cal. Rural Legal Assistance, Inc. v. Legal Servs. Corp.*, 917 F.2d 1171, 1175 (9th Cir. 1990) (citations omitted), *amended*, 937 F.2d 465 (9th Cir. 1991).

1 Plaintiff, like other Class Members, bought Defendant's Products based upon
 2 identical, written representations displayed on the labeling that the Products had
 3 "NO MSG ADDED." Because Plaintiff is a member of the proposed Class, and
 4 asserts consumer fraud claims on behalf of himself and all Class Members based
 5 upon Defendant's uniform conduct and series of identical misrepresentations, his
 6 claims are typical of the Class.

7 **D. The Plaintiff Satisfies the Adequacy Requirement**

8 Rule 23(a)(4) requires that "the representative parties will fairly and
 9 adequately protect the interests of the class." "Resolution of two questions
 10 determines legal adequacy: (1) do the named plaintiff and their counsel have any
 11 conflicts of interest with other class members, and (2) will the named plaintiff and
 12 their counsel prosecute the action vigorously on behalf of the class?" *Hanlon*, 150
 13 F.3d at 1020.

14 There are no conflicts of interest alleged or that could possibly exist here.
 15 Plaintiff seeks the exact same remedy as all Class Members: namely, relief to
 16 address the claims that Defendant misrepresented and misbranded its Products for
 17 purposes of enticing individuals to buy its Products when in fact they contained
 18 ingredients with MSG. Plaintiff's interests therefore, are perfectly aligned with the
 19 interests of the Class.

20 The adequacy of Plaintiff and his counsel is evidenced by Plaintiff's counsel
 21 largely defeating Defendant's motion to dismiss, as well as the Superseding
 22 Settlement negotiated with Defendant, which provides for important relief to the
 23 Class and the public at large. Further, Plaintiff's counsel are highly experienced in
 24 class action litigation, and have been involved in many class action settlements and
 25 actions which further warrants preliminary approval of the Superseding Settlement.
 26 See Rivas Decl. ¶¶ 4-6, Exhs. 1 and 2.

27 **E. Plaintiff and Class Members are Ascertainable**

28 There is no explicit requirement in Rule 23 about the class definition.

1 Nevertheless, courts have held that a class must be ascertainable before proceeding.
 2 “The requirement of an ascertainable class is met as long as the class can be defined
 3 through objective criteria.” *Forcellati v. Hyland’s, Inc.*, 2014 WL 1410264, at *5
 4 (C.D. Cal. April 9, 2014); *Keegan v. Am. Honda Motor Co., Inc.*, 284 F.R.D. 504,
 5 521 (C.D. Cal. 2012); *see also Parkinson v. Hyundai Motor America*, 258 F.R.D.
 6 580, 593-94 (C.D. Cal. 2008) (A class is sufficiently ascertainable if “the proposed
 7 class definition allows prospective plaintiffs to determine whether they are class
 8 members with a potential right to recover.”).

9 In food product cases, district courts within the Ninth Circuit have repeatedly
 10 found that a proposed class is ascertainable when it is defined by the purchase of
 11 specific products during a specified time period. *See, e.g., McCrary v. Elations*
 12 *Co., LLC*, 2014 WL 1779243, at *9 (C.D. Cal. Jan. 13, 2014) (certifying class of
 13 people who bought Elations since January 28, 2009).⁸

14 As in the cases above, Plaintiff has defined the proposed Class on objective
 15 criteria: the purchase of the Subject Products within a prescribed time period,
 16 November 19, 2012 up to and including the date on which the Court enters the
 17 Preliminary Approval Order. Agreement ¶¶ 11, 35. Such objective criteria
 18 sufficiently meets the ascertainability requirement for this settlement class.

19
 20 ⁸ *See also, e.g., Forcellati*, 2014 WL 1410264, at *13 (certifying a class of persons
 21 who bought Hyland products on or after March 8, 2008); *Astiana v. Kashi Co.*, 291
 22 F.R.D. 493, 500 (S.D. Cal. 2013) (certifying class of people who bought Kashi
 23 products labeled as “all natural” during a specified time period); *Guido v. L’Oreal,*
 24 *USA, Inc.*, 2013 WL 3353857, at *19 (C.D. Cal. July 1, 2013) (ascertainability
 25 found where the class was defined as a consumer who purchased a specified hair
 26 product after a particular date), *aff’d*, 2014 U.S. Dist. LEXIS 165777, *41-43 (C.D.
 27 Cal. July 24, 2014); *Ebin v. Kangadis Foods, Inc.*, 2014 WL 737960, at *5
 28 (S.D.N.Y. Feb. 25, 2014) (certifying class of persons in the United States who
 bought olive oil products packed before March 1, 2013); *Zeisel v. Diamond Foods,*
Inc., 2011 WL 2221113, at *12 (N.D. Cal. June 7, 2011) (certifying class of
 consumers who bought Diamond shelled walnuts from a certain date to the
 present); *Chavez v. Blue Sky Natural Bev. Co.*, 268 F.R.D. 365 (N.D. Cal. 2010)
 (certifying class of consumers who bought Blue Sky beverages between specific
 period).

F. The Class Satisfies the Criteria of Rule 23(b)

To certify a class under Rule 23(b)(3), this Court must find that the questions of law or fact common to class members predominate over any questions affecting only individual members, and the class action is superior to other available methods for the fair and efficient adjudication of the controversy. Fed. R. Civ. P. 23(b)(3).

Both criteria are met in this case. The primary purpose behind Rule 23(b)(3) is the vindication of the rights of people who would not have the economic power or incentive to bring a wrongdoer into court to redress a wrong imposed on them.

1. Common Questions Predominate

“The predominance inquiry focuses on the relationship between the common and individual issues and tests whether the proposed class [is] sufficiently cohesive to warrant adjudication by representation.” *Vinole v. Countrywide Home Loans, Inc.*, 571 F.3d 935, 944 (9th Cir. 2009). The predominance inquiry considers whether “questions of law or fact common to the class will predominate over any questions affecting only individual members as the litigation progresses.” *Amgen Inc. v. Conn. Retirement Plans & Trust Funds*, 133 S. Ct. 1184, 1195 (2013).

“Thus, this requirement is essentially a heightened commonality inquiry: do the common legal and factual questions appear more significant than the individualized legal and factual questions?” *Thomas v. Baca*, 231 F.R.D. 397, 402 (C.D. Cal. 2005). This analysis starts with the underlying causes of action. *Erica P. John Fund, Inc. v. Halliburton Co.*, 133 S. Ct. 2179, 2184 (2011).

In analyzing whether common questions predominate, the Court must evaluate whether proving the elements of the claims can be done through common evidence applicable to the class as a whole, or whether proof will be overwhelmed with individual issues. *See Hanlon*, 150 F.3d at 1022. As the Supreme Court has noted, predominance is readily met in cases alleging consumer fraud. *Amchem Prods. v. Windsor*, 521 U.S. 591, 625 (1997).

The legal and factual issues central to each of Plaintiff’s claims are common

1 to all Class Members. Plaintiff's claims here center on two questions: (1) the
 2 alleged falsity of Defendant's representation "NO MSG ADDED," and (2) whether
 3 reasonable consumers were likely to be deceived. These common questions clearly
 4 predominate over individual questions because Defendant's alleged conduct
 5 affected all Class Members in the same manner as the mass products at issue were
 6 sold nationwide with the same alleged misrepresentation. This weighs in favor of
 7 finding the requirements of Rule 23(b)(3) satisfied. *Moshogiannis v. Security*
 8 *Consultants Group, Inc.*, 2012 WL 423860, at *4 (N.D. Cal. Feb. 8, 2012); *see also*
 9 *Sterling v. Velsicol Chem. Corp.* 855 F.2d 1188, 1196-97 (6th Cir. 1988). As one
 10 court noted in *Johns v. Bayer Corp.*, 280 F.R.D. 551, 557 (S.D. Cal. 2012), "these
 11 predominant questions are binary – advertisements were either misleading or not,
 12 and Bayer's prostate health claim is either true or false."

13 Under the California consumer protection laws at issue, whether consumers
 14 were likely to be deceived is an objective standard and most importantly, the focus
 15 is on the defendant's conduct, not the plaintiff's. *Williams v. Gerber*, 552 F.3d 934,
 16 938 (9th Cir. 2008); *Yokoyama v. Midland Nat'l Life Ins. Co.*, 594 F.3d 1087, 1089,
 17 1094 (9th Cir. 2010). Given the objective standard and focus on Defendant's
 18 conduct, common questions of law and fact predominate.

19 **2. A Class Action Is The Superior Method For The Fair And** 20 **Efficient Adjudication Of This Controversy**

21 This case also meets the second requirement of Rule 23(b)(3): that the class
 22 action be "superior to other available methods for the fair and efficient adjudication
 23 of the controversy." To determine the issue of "superiority," Rule 23(b)(3)
 24 enumerates the following factors for courts to consider: (A) [T]he interest of
 25 members of the class in individually controlling the prosecution . . . of separate
 26 actions; (B) the extent and nature of any litigation concerning the controversy
 27 already commenced by . . . members of the class; (C) the desirability . . . of
 28 concentrating the litigation of the claims in the particular forum; and (D) the

difficulties likely to be encountered in the management of a class action. Each of these factors counsels in favor of certifying the Class.

a. *The Individual Class Members' Interest in Controlling the Litigation*

First, there is little interest or incentive for Class Members to individually control the prosecution of separate actions. Each Class Member's individual claim is too small to justify the potential litigation costs that would be incurred by prosecuting these claims individually. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 809 (1985); *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands Inc.*, 244 F.3d 1152, 1163 (9th Cir. 2001); *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175–76 (9th Cir. 2010). Because the claims of each Class Member in this case are small and virtually identical, no one member of the Class would have a materially greater interest in controlling the litigation. *See Westways World Travel, Inc. v. AMC Corp.*, 218 F.R.D. 223, 240 (C.D. Cal. 2003).

b. *Extent and Nature of Litigation Already Commenced by Class Members*

Plaintiff is unaware of any other actions by Class Members against Defendant asserting similar claims as here. This factor also militates in favor of certification.

c. *The Desirability of Concentrating the Litigation in a Particular Forum*

Third, certification is superior because concentrating this litigation in one forum would not only prevent the risk of inconsistent outcomes but would also “reduce litigation costs and promote greater efficiency.” *Negrete v. Allianz Life Ins. Co. of North America*, 238 F.R.D. 482, 493 (C.D. Cal. 2006).

d. *This Case is Manageable As a Class Action*

Finally, the question here is “whether reasonably foreseeable difficulties render some other method of adjudication superior to class certification.” *In re*

1 *Prudential Ins. Co. of Am. Sales Practices Litig.*, 962 F. Supp. 450, 525 (D.N.J.
 2 1997). As the Supreme Court has held, manageability issues will not foreclose
 3 certification for settlement purposes. *See Amchem Prods.*, 521 U.S. at 620
 4 (“Confronted with a request for settlement-only class certification, a district court
 5 need not inquire whether the case, if tried, would present intractable management
 6 problems *see* Fed. Rule Civ. Proc. 23(b)(3)(D), for the proposal is that there be no
 7 trial.”).

8 Therefore, there are no serious manageability difficulties presented by
 9 conditionally certifying this case for settlement purposes, such as choice of law
 10 issues. A number of recent decisions from the district courts within the Ninth
 11 Circuit have certified nationwide classes under California law for settlement
 12 purposes. *See, e.g., Pappas, et al. v. Naked Juice Co. of Glendora, Inc., et al.*, Case
 13 No. 11-cv-08276-JAK-PLA, Dkt. No. 184 (C.D. Cal. Jan. 2, 2014) (granting final
 14 approval of nationwide class certified for settlement purposes under California
 15 law); *Arnold v. FitFlop USA, LLC*, 2014 U.S. Dist. LEXIS 58800, at *6 (S.D. Cal.
 16 Apr. 28, 2014) (same); *Miller v. Ghirardelli Chocolate Co.*, 2015 U.S. Dist. LEXIS
 17 20725 (N.D. Cal. Feb. 20, 2015) (same); *Kent v. Hewlett-Packard Co.*, 2011 U.S.
 18 Dist. LEXIS 106831 (N.D. Cal. Sept. 20, 2011) (same). As this case will not go to
 19 trial if finally approved, all that would remain is the claims administration if the
 20 Settlement is granted final approval. Hence, Plaintiff has satisfied the requirements
 21 of Rule 23(b)(3).

22 **G. Certification of a Nationwide Settlement Class is Appropriate**

23 Fed. R. Civ. P. 23(b)(3) allows the certification of a nationwide class under
 24 California consumer protection law on the facts of this case. For a state’s
 25 substantive law to be selected in a constitutionally permissible manner and applied
 26 to citizens outside of that state, that state must have a “significant contact or
 27 significant aggregation of contacts, creating state interests, such that choice of its
 28 law is neither arbitrary nor fundamentally unfair.” *See Sullivan v. Oracle Corp.*,

1 662 F.3d 1265 (9th Cir. 2011) (citing *Phillips Petroleum Co. v. Shutts*, 472 U.S.
 2 797, 821-822 (1985)); *Clothesrigger, Inc. v. GTE Corp.*, 191 Cal. App. 3d 605
 3 (1987) (citing *Shutts*).

4 Here, CJ's contacts with California are substantial. *See Declaration of Soo-*
 5 *Hee Lee in Support of Renewed Motion for Preliminary Approval of Class Action*
 6 *Settlement* ("Lee Decl.") ¶ 4 (attached as exhibit 4 to Rivas Declaration). CJ is an
 7 American corporation with its principal place of business in the state of California.
 8 Lee Decl. ¶ 2.

9 The Annie Chun's products at issue in this action are manufactured,
 10 packaged, and labeled in California and, significantly, decisions regarding the
 11 labeling, marketing, and advertising of those products are made in California. *Id.*
 12 ¶¶ 3-5. After their manufacture in California, Annie Chun's products are then
 13 distributed to retailers throughout the United States from CJ's California
 14 distribution centers. *Id.* ¶ 5. Accordingly, application of California law to
 15 Plaintiff's putative nationwide claims is neither arbitrary nor unfair. *See, e.g.,*
 16 *Sullivan*, 662 F.3d at 1271 (application of California law to nonresidents
 17 appropriate where defendant was headquartered in California, defendant's alleged
 18 decision to deny plaintiffs overtime pay was made in California, and where alleged
 19 work at issue was performed in California).

20 To the extent the Court is concerned about variations in the substantive laws
 21 of the various states, Dkt. No. 44 at pp. 8-10, such variations do not preclude the
 22 certification of a nationwide settlement class. The nationwide settlement of a Rule
 23 23(b)(3) action asserting California law claims is appropriate so long as there is a
 24 common nucleus of facts and potential legal remedies shared between resident and
 25 nonresident class members. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1022-23
 26 (9th Cir. 1988) (nationwide settlement of consumer class action appropriate given
 27 that "although some class members may possess slightly differing remedies based
 28 on state statute or common law, the actions asserted by the class representatives are

not sufficiently anomalous to deny class certification.”); *Parkinson v. Hyundai Motor Am.*, 258 F.R.D. 580, 589 (C.D. Cal. 2008) (certifying nationwide class under California law where the defendant had operations in California);

Here, the claims of the putative class members, in and outside California, will address common issues, such as the accuracy of the labeling claims at issue in this action. *Hanlon*, 150 F.3d 1022. Moreover, to the extent Plaintiff and the class would have been required to satisfy the elements of the various consumer protection laws outside of California, such issues will not need to be litigated here, because the Parties have agreed to settle this case and waive any additional rights or remedies they would have had under those state laws. Agreement ¶¶ 85-87.⁹

Further support for provisionally certifying a nationwide comes from the numerous approvals of class action settlements by California federal courts in which California law claims were asserted on a nationwide basis. *See, e.g. Pappas*, Dkt. No. 184 (C.D. Cal. Jan. 2, 2014) (granting final approval of nationwide class certified for settlement purposes under California law); *Arnold v. FitFlop USA, LLC*, 2014 U.S. Dist. LEXIS 58800, at *6 (S.D. Cal. Apr. 28, 2014) (same); *Miller v. Ghirardelli Chocolate Co.*, 2015 U.S. Dist. LEXIS 20725 (N.D. Cal. Feb. 20, 2015) (same); *Kent v. Hewlett-Packard Co.*, 2011 U.S. Dist. LEXIS 106831 (N.D. Cal. Sept. 20, 2011) (same).

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) (“NEWBERG”) (“By their very nature, because of the uncertainties of

⁹ Further, those class members outside California who wish to pursue any rights or remedies in addition to those provided by the Agreement may do so by opting out.

1 outcome, difficulties of proof, length of litigation, class action suits lend themselves
2 readily to compromise.”).

3 Where, as here, the Parties propose to resolve the claims of a certified class
4 through settlement, they must obtain court approval. Fed. R. Civ. Proc. 23(e). The
5 typical process for approving class action settlements is described in the MANUAL,
6 §§ 21.632-.635: (1) preliminary approval of the proposed settlement at an informal
7 hearing; (2) dissemination of mailed and/or published notice of the settlement to all
8 affected class members; and (3) a “formal fairness hearing,” or final approval
9 hearing, at which evidence and argument concerning the fairness, adequacy, and
10 reasonableness of the settlement is presented. *Id.* This procedure, commonly
11 employed by federal courts, serves the dual function of safeguarding class
12 members’ procedural due process rights and enabling the court to fulfill its role as
13 the guardian of class members’ interests.

14 Plaintiff asks that the Court grant preliminary approval of the proposed
15 Settlement. At this stage, the Court “must make a preliminary determination on the
16 fairness, reasonableness, and adequacy of the settlement terms and must direct the
17 preparation of notice of the certification, proposed settlement, and date of the final
18 fairness hearing.” MANUAL § 21.632. The Court should grant preliminary approval
19 if the settlement has no obvious deficiencies and “falls within the range of possible
20 approval.” NEWBERG § 11.25.

21 At the next stage of the approval process, the formal fairness hearing, courts
22 consider arguments in favor of and in opposition to the settlement. According to the
23 Ninth Circuit, the fairness hearing should not be turned into a “trial or rehearsal for
24 trial on the merits.” *Officers for Justice v. Civil Serv. Com’n of City and County of*
25 *San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982). “Neither the trial court nor this
26 court is to reach any ultimate conclusions on the contested issues of fact and law
27 which underlie the merits of the dispute.” *Id.* Rather, the inquiry “must be limited to
28 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 objects. *Young v. Polo Retail*, 2006 WL 3050861, at *5 (N.D. Cal. Oct. 25, 2006); *see also* NEWBERG § 11.41. The Settlement easily satisfies these requirements.

1. The Settlement Negotiations Were At Arm’s Length

First, the negotiations leading to the Settlement were hard fought and overseen by Magistrate Judge Burkhardt. Rivas Decl. ¶ 12. The Parties appeared in person to attend settlement conferences on two separate occasions, after settlement briefing and exchanging of informal discovery. *Id.* Given the extensive motion practice on Defendant’s Rule 12(b)(6) motion, the briefing on the settlement statements, and discovery, the Parties were able to articulate the strengths of their claims and defenses and the weaknesses of each other’s position. *Id.* ¶ 15. They ultimately reached the Settlement after weighing the facts, the applicable law, and the risks of continued litigation, including the possibility of having class certification denied and a loss at trial. Rivas Decl. ¶ 17. These facts support a presumption of fairness. NEWBERG § 11.41.

1 **2. Plaintiff's Counsel Had Ample Discovery to Make an**
 2 **Informed Judgment on the Merits of the Claims**

3 Second, the Parties had adequate discovery to make an informed judgment on
 4 the claims. The Parties exchanged initial disclosures. Rivas Decl. ¶ 11. The Parties
 5 also exchanged thorough discovery requests. Plaintiff served requests for
 6 production of documents and interrogatories on Defendant regarding, among other
 7 things: advertisements; labels; the time period each label was used; manufacturers,
 8 retailers, and distributors; the time period each of the Products were sold; revenue,
 9 profits, and retail pricing; ingredients used; customer complaints; and consumer
 10 studies. *Id.* Defendant served requests for production of documents, interrogatories,
 11 and admissions on Plaintiff regarding, among other things: the circumstances
 12 surrounding his purchase of the product in question; his food purchasing history
 13 and preferences; his understanding of “NO MSG” and “NO MSG ADDED”;
 14 documents related to his purchase; and documents to support his claim. *Id.* Plaintiff
 15 reviewed Defendant’s product labels and print advertising, among other things. *Id.*
 16 Defendant confirmed the Products’ labels for accuracy, the date they were used,
 17 and also provided sales information during the relevant time period. *Id.*

18 **3. Plaintiff's Counsel, Who Are Highly Experienced in False**
 19 **Advertising Cases and Class Action Procedure, Believe the**
 20 **Settlement is Fair, Reasonable and Adequate**

21 Third, the law firms Finkelstein Thompson LLP and Glancy Prongay &
 22 Muray LLP are highly experienced in class action litigation involving claims for
 23 violations of California’s consumer protection statutes and believe the settlement is
 24 fair, reasonable and adequate. Rivas Decl. ¶¶ 4-6 and Exhs. 1 and 2. As reflected
 25 on the firms’ resumes, Finkelstein Thompson LLP and Glancy Prongay & Murray
 26 LLP have been appointed as sole lead or co-lead class counsel in a number of other
 27 class action cases, including claims for false advertising against some of the most
 28 resourceful corporations in the country, including Allergan, Jamba Juice, and

1 Naked Juice. See *Id.* On the other side, Defendant is represented by O’Melveny &
 2 Myers LLP, a national firm with lawyers experienced in class action procedure.

3 **4. The Reaction to the Proposed Settlement**

4 Plaintiff and his counsel fully support the Settlement as fair, reasonable and
 5 adequate. Rivas Decl. ¶ 17. It is too early to tell how the Class will react to it, since
 6 notice of the Settlement has not yet been sent.

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

9 **VI. NOTICE**

10 Class notice must be “reasonably calculated, under all the circumstances, to
 11 apprise interested parties of the pendency of the action and afford them an
 12 opportunity to present their objections.” See *Mullane v. Central Hanover Trust*, 339
 13 U.S. 306, 314 (1950). Notice also must satisfy Rule 23(c)(2)(B), which provides that
 14 the notice must clearly and concisely state the following in plain, easily understood
 15 language:

16 (i) the nature of the action; (ii) the definition of the class certified; (iii) the
 17 class claims, issues, or defenses; (iv) that a class member may enter an
 18 appearance through an attorney if the member so desires; (v) that the court
 19 will exclude from the class any member who requests exclusion; and (vi) the
 binding effect of a class judgment on members under Rule 23(c)(3).

20 Here, the Long Form Notice, Summary Notice, and Settlement Website
 21 advise Class Members of the information required by Rule 23(c)(2)(B) and are
 22 written in plain English. Agreement, Exhs. E-F. Moreover, the methods for
 23 disseminating notice are designed to reach 70.2% of the Class through national
 24 publication and Internet advertising, which is reasonable under the circumstances.
 25 Agreement, Exh. C ¶ 16; *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078,
 26 1080 (N.D. Cal 2007) (“because defendants do not have a list of class members []
 27 the court agrees with plaintiffs that notice by publication is the only reasonable
 28 method of informing class members of the pending class action and [] settlement”);

Bellows v. NCO Fin. Sys., 2008 WL 4155361, at *9 (S.D. Cal. Sept. 5, 2008) (summary notice in USA Today, with national distribution further directing class members to a settlement website was the best notice practicable under the circumstances). Accordingly, the forms of notice and plan of dissemination should be approved.

VII. PROPOSED SCHEDULE

Plaintiff proposes the following schedule for the approval process. If the Court grants preliminary approval, these dates will be incorporated in the [Proposed] Order Preliminarily Approving Class Action Settlement, Provisionally Certifying A Settlement Class for Settlement Purposes, Appointing Class Counsel, Directing the Issuance of Notice to the Class and Scheduling a Fairness Hearing.

Event & Proposed Date

- Notice Program Begins (Internet notice, settlement website and toll-free number) – **March 21, 2016**
- Date for Publishing Notice in *Cooking Light* – **May 6, 2016**
- Deadline for Plaintiff's Counsel to file Motion for Final Approval and Report Verifying Dissemination of Notice – **May 20, 2016**
- Deadline for Plaintiff's Counsel to file Applications for Award of Attorneys' Fees and Reimbursement of Expenses and Incentive Award – **May 20, 2016**
- Deadline for Class Members to Submit Objections to the Settlement or Request Exclusion – **June 3, 2016**
- Deadline for Completing Notice Program – **June 3, 2016**
- Deadline for Parties to Respond to any Objections – **June 10, 2016**
- Fairness Hearing – **June 17, 2016**

VIII. CONCLUSION

For the reasons set forth above, Plaintiff requests that the Court enter the submitted Order Preliminarily Approving Class Action Settlement, Provisionally

1 Certifying A Settlement Class for Settlement Purposes, Appointing Class Counsel,
2 Directing the Issuance of Notice to the Class and Scheduling a Fairness Hearing
3 which: (1) approves the Settlement; (2) directs dissemination of notice to Class; and
4 (3) sets a date of June 17, 2016 for the final approval hearing.

5
6 DATED: February 5, 2016

Respectfully submitted,

7 **FINKELSTEIN THOMPSON LLP**

8 By: s/Rosemary M. Rivas

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23 *Plaintiff Dennis Petersen*
24
25
26
27
28

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*Attorneys for Individual and Representative
Plaintiff Dennis Petersen*

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

DENNIS PETERSEN, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

CJ AMERICA, INC.,

Defendant.

Case No. 14-CV-2570 DMS JLB

**DECLARATION OF ROSEMARY M.
RIVAS IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: March 4, 2016
Time: 1:30pm
Judge: Hon. Dana M. Sabraw
Courtroom: 13A

1 I, Rosemary M. Rivas, declare as follows:

- 2 1. I am an attorney licensed to practice by the State of California, and a partner with the
3 law firm of Finkelstein Thompson LLP, one of the counsel of record for Plaintiff
4 Dennis Petersen (“Plaintiff”), the named plaintiff in the titled action, *Petersen v. CJ*
5 *America, Inc.*, Case No. 14-CV-2570 DMS JLB.
- 6 2. I have been one of the attorneys primarily responsible for this case since its inception,
7 along with my co-counsel, Marc L. Godino of Glancy Prongay & Murray LLP.
8 Therefore, I have personal knowledge of the matters set forth herein, based on my
9 active participation in the prosecution and settlement of the case and my firm’s
10 business records, and, if called as a witness, could and would competently testify
11 thereto.
- 12 3. I submit this declaration in support of Plaintiff’s Motion for Preliminary Approval of
13 Class Action Settlement. I discuss, in the following order: (a) Plaintiff’s Counsel’s
14 experience and background; (b) a summary of the procedural history; and (c) issues
15 relating to good faith and arm’s length settlement negotiations

16 **FINKELSTEIN THOMPSON LLP’S EXPERIENCE**

- 17 4. Finkelstein Thompson LLP (“FT”) is an AV-rated firm with offices in San
18 Francisco, California and Washington, DC. The firm’s nationwide practice
19 concentrates on complex and class action litigation in both state and federal courts
20 in the areas of consumer protection, antitrust violations, securities fraud and product
21 defects, among others.
- 22 5. A number of courts have commended FT for its work on behalf of consumers in class
23 actions. In affirming a class settlement of \$49 million in a class action suit for antitrust
24 violations in the bar review market achieved by FT and its co-counsel, the Ninth
25 Circuit stated that there was no dispute “that counsel had considerable experience in
26 litigating antitrust matters, class actions, and other complex litigation.” *Rodriguez v.*
27

1 West, 563 F. 3d 948, 967 (9th Cir. 2009). In *Freeland v. Iridium World*
 2 *Communications*, Case No. CR 99-1002 (D.D.C.), the Honorable Nanette K. Laughrey
 3 commended FT and its co-counsel for their work in achieving a \$43.1 million
 4 settlement, stating, “[a]ll of the attorneys in this case have done an outstanding job,
 5 and I really appreciate the quality of work we had in our chambers as a result of this
 6 case.” Similarly, in *In re Interbank Funding Corp. Sec. Litig.*, Case No. 02-1490
 7 (D.D.C.), Judge Bates of the District Court for the District of Columbia observed that
 8 FT had “skillfully, efficiently, and zealously represented the class, and . . . worked
 9 relentlessly throughout the course of the Case.”

- 10 6. Attached as **Exhibit 1** is a true and correct copy of FT’s firm resume showing the
 11 firm’s experience in complex and class action litigation. My firm and I have
 12 served, and currently serve, as court-appointed lead or co-lead counsel in a number
 13 of class action cases and have successfully recovered millions of dollars on behalf
 14 of our clients, as indicated in the firm’s resume.
 15 7. Attached as **Exhibit 2** is a true and correct copy of the firm resume of
 16 Glancy Prongay & Murray LLP.
 17

18 **SUMMARY OF PROCEDURAL HISTORY**

- 19 8. Finkelstein Thompson LLP and Glancy Prongay & Murray LLP (“Class Counsel”) filed this case on behalf of Plaintiff Dennis Petersen on October 28, 2014 after
 20 conducting an extensive investigation regarding the facts and the law governing food
 21 labeling of monosodium glutamate (“MSG”); the advertising and labeling of the
 22 products at issue; and their ingredient composition, among other things.
 23 9. Defendant moved to dismiss on February 11, 2015, on the grounds that Plaintiff
 24 lacked standing and did not adequately plead his allegations, among other things.
 25 Plaintiff vigorously opposed the motion and filed his opposition brief on March 20,
 26 2015. On May 18, 2015, the Court granted Defendant’s motion to strike Plaintiff’s
 27
 28

1 request for injunctive relief, and denied the motion as to several remaining
2 arguments and set deadlines for the class certification motion.

3 10. Defendant filed an answer to the complaint on June 1, 2015. After the Court granted
4 the Parties' stipulation to file an amended complaint, Plaintiff filed the first
5 amended complaint on August 18, 2015 which: alleged a claim for damages under
6 the CLRA; alleged supplemental facts surrounding Plaintiff's purchase of Annie
7 Chun's Udon Soup bowl and his interest in purchasing in the future; alleged, in the
8 alternative, a California class; and clarified that Plaintiff intends to seek
9 declaratory/injunctive relief certification under Rule 23(b)(2) and issue certification
10 under Rule 23(c)(4), in addition to certification under Rule 23(b)(3).

11 11. The Parties exchanged discovery before finalizing the proposed settlement, including
12 exchanging initial disclosures. Plaintiff served requests for production of documents
13 and interrogatories on Defendant regarding, among other things: advertisements;
14 labels; the time period each label was used; manufacturers, retailers, and distributors;
15 the time period each of the Products were sold; revenue, profits, and retail pricing;
16 ingredients used; customer complaints; and consumer studies. Defendant served
17 requests for production of documents, interrogatories, and admissions on Plaintiff
18 regarding, among other things: the circumstances surrounding his purchase of the
19 product in question; his food purchasing history and preferences; his understanding of
20 "NO MSG" and "NO MSG ADDED"; documents related to his purchase; and
21 documents to support his claim. Plaintiff reviewed Defendant's product labels and
22 print advertising, among other things. Defendant confirmed the Products' labels for
23 accuracy, the date they were used, and also provided net sales information during the
24 relevant time period.
25

26 12. The parties first engaged in a private settlement conference before Magistrate Judge
27 Berkhardt on August 14, 2015. In preparation, the Parties submitted detailed
28

1 settlement conference statements, after the parties had completed briefing on
2 Defendant's motion to dismiss. Plaintiff's mediation brief outlined the facts and his
3 respective positions on the likelihood of Plaintiff's success on class certification and
4 at trial, in light of recent decisions relating to food labeling. The Parties were unable
5 to reach a resolution, however, they returned to participate in a second in-person
6 settlement conference on August 18, 2015, at which point they were able to reach
7 the material terms of the first Stipulation Settlement with the assistance of Judge
8 Burkhardt.

9
10 13. Our primary goal was to achieve the maximum cash payment we could for the
11 Class. We first focused on the amount of the cash payment and other material terms
12 relating to the relief for the Class Members. Once we reached the \$1.5 million
13 figure and other material terms, we turned to negotiating the attorneys' fees and the
14 proposed incentive award.

15 14. Once an agreement in principle was reached, negotiations continued as we
16 exchanged drafts of the settlement agreement, class notice, claim form, and other
17 settlement documents. We also interviewed a number of potential claims
18 administrators about the design of a notice program to reach the Class Members,
19 among other things, and ultimately selected Angeion Group.

20 15. The Parties executed the first Stipulation of Settlement on October 30, 2015.

21 16. In January 2016, the Parties made the decision to amend the first Stipulation of
22 Settlement to designate Consumers Union as the sole *cy pres* recipient of any
23 Residual Funds. The amendment is reflected in the Parties' Superseding Stipulation
24 of Settlement.

25 17. Given the extensive motion practice on Defendant's Rule 12(b)(6) motion, the
26 briefing on the settlement statements, and discovery, the Parties were able to
27 articulate the strengths of their claims and defenses and the weaknesses of each
28

1 other's positions, ultimately reaching the proposed settlement embodied in the
2 Superseding Stipulation of Settlement, and after weighing the facts and the
3 applicable law and the risks of continued litigation, including the possibility of not
4 achieving class certification and a loss at trial. Additionally, I am very familiar with
5 the numerous case decisions involving litigation of false advertising for consumer
6 food products both at the class certification and summary judgment stages.

7 18. While we believe the case is strong, we believe that in light of the risks, delays and
8 uncertainties of continued litigation, the Superseding Stipulation of Settlement
9 represents terms that are fair, reasonable and adequate and should be granted
10 preliminary approval.

11 19. Attached hereto as **Exhibit 3** is a true and correct copy of the declaration of Elisa
12 Odabashian of Consumers Union.

13 20. Attached hereto as **Exhibit 4** is a true and correct copy of the Declaration of Soo-
14 Hee Lee, which was provided to me by Defendant's counsel in this action, Mr.
15 Daniel Faria.

16 21. Attached hereto as **Exhibit 5** is a true and correct copy of an order entered by the
17 Honorable M. James Lorenz on November 14, 2013 granting final approval of the
18 class action settlement in *Dennis v. Kellogg Co.*, Case No. 9-cv-01786 (S.D. Cal.).
19 The settlement in *Dennis v. Kellogg* designated Consumers Union as a *cy pres*
20 recipient, as reflected in the attached order.

21 22. Attached hereto as **Exhibit 6** is a true and correct copy of the Superseding
22 Stipulation of Settlement executed by the Parties. The Superseding Stipulation of
23 Settlement has the following exhibits:

24 Exhibit A: Final Order

25 Exhibit B: Final Judgment

26 Exhibit C: Claim Form

Exhibit D: [Proposed] Order Preliminarily Approving Class Action Settlement, Provisionally Certifying a Settlement Class for Settlement Purposes, Appointing Class Counsel, Directing the Issuance of Notice to the Class and Scheduling a Fairness Hearing

Exhibit E: Long Form Notice

Exhibit F: Summary Notice

Exhibit G: Declaration of Christopher Chimicles, Esq., On Adequacy Notice Plan

23. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 5th day of February 2016, at San Francisco, California.

/s/ Rosemary M. Rivas
Rosemary M. Rivas

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EXHIBIT 1



FIRM RESUME

2016

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

ONE California Street, Suite 900 · 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, tender 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. In re Dairy Farmers Of America, Inc. Cheese Antitrust Litigation, No. 09-cv-03690 (N.D. Ill.) – Allocation Counsel for Core Period Claims; achieved allocation of 92.5% of \$46 million settlement to Core Period Claimants.
4. PaineWebber Securities Litigation, No. 94cv8547 (S.D.N.Y.) – Executive Committee member; \$200 million settlement achieved.
5. Freeland v. Iridium World Communications, Ltd., No. 99cv1002 (D.D.C.) – Liaison Counsel and Executive Committee member; \$47.5 million settlement achieved.
6. Prudential Securities Litigation, MDL 1005 (S.D.N.Y.) – Executive Committee member & Co-Chair of Settlement Committee; \$150 million settlement achieved.
7. Kidder Peabody Securities Litigation, No. 94cv3954 (S.D.N.Y.) – Executive Committee member; \$19 million settlement achieved.

8. 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
9. 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).
10. 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 Dynamic Random Access Memory (DRAM) Antitrust Litigation, No. M-02-1486 (N.D.Cal.) – Executive Committee member for indirect purchaser claims; settlement achieved for \$310 million (on appeal).
2. In re Relafen Antitrust Litigation, No. 01cv12239 (D. Mass.) – Executive Committee member in federal direct purchaser case, settlement achieved - \$175 million.
3. 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.
4. 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.

5. 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.
6. 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.

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 forty 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. 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 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 in 2006 and heads the firm's San Francisco office. Ms. Rivas focuses her practice on representing consumers in complex, class action litigation in a wide variety of areas, including consumer fraud, civil rights, and antitrust violations.

Ms. Rivas has served, or is currently serving, in a leadership role in a number of cases. Her recent cases include: *Lima v. Gateway*, (C.D. Cal.) Case No. SACV-09-1366 (Co-Lead Class Counsel in nationwide class action involving defective monitor; achieved \$195 refund for each monitor purchased); *Pappas v. Naked Juice*, (C.D. Cal.) Case No. 2:11-cv-08276 (Co-Lead Class Counsel; achieved \$9 million settlement and changes to the company's testing procedures and product labels); *Garcia v. Allergan, Inc.*, (C.D. Cal.) Case No. 09-cv-7088 PSG (Ex) (Co-Lead Class Counsel; achieved \$7.75 million settlement and changes to the company's training procedures); *In re Sony Other OS PS3 Litig.*, (N.D. Cal.) Case No. 10-1811-SC (Co-Lead Interim Counsel; ongoing). She has also been instrumental in obtaining favorable appellate decisions on behalf of consumers in the areas of false advertising, federal preemption, and arbitration, such as: *Lilly v. ConAgra Foods, Inc.*, 743 F.3d 662 (9th Cir. 2014); *In re Sony PS3 "Other OS" Litig.*, 551 Fed. App. 916 (9th Cir. 2014); *Probst v. Superior Court (Health Net of California)*, 2012 Cal. LEXIS 4476 (Ct. Appeal, 1st Dist., May 9, 2012).

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. In 2015, Bay Area Legal Aid presented Ms. Rivas with the Guardian of Justice award, for her work achievements in the law and her role in helping direct *cy pres* funds to ensure equal access to the civil justice system.

Ms. Rivas has presented at a number of speaking engagements, including: *Data Privacy Law 101: U.S. Data Privacy and Security Laws* 2015 (The Bar Association of San Francisco); *Food Labeling and False Advertising Class Actions*, 2015 (The Bar Association of San Francisco); and *Class Actions: New Developments & Approaches for Strategic Response*, 2013 (American Bar Association).

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. She 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. Ms. Rivas is fluent in Spanish.

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.

ROBERT O. WILSON
Of Counsel

ROBERT WILSON re-associated as Of Counsel with FINKELSTEIN THOMPSON LLP since February 2015 and practices in the fields of *qui tam*, shareholder, consumer protection, and antitrust litigation. Mr. Wilson graduated from James Madison University in 2003, with a Bachelor of Arts in English, with a minor in Theatre. He graduated *cum laude* from George Mason University School of Law in 2008. While in law school, he served on the editorial board of the *George Mason University Civil Rights Law Journal*.

Mr. Wilson was an associate with the firm from 2011 to 2014. Before joining Finkelstein Thompson LLP, Mr. Wilson clerked for the Honorable David S. Schell of the Fairfax Circuit Court, in the 19th Judicial Circuit of Virginia, and practiced civil and criminal litigation in the Northern Virginia area.

Mr. Wilson's published works include *A Defense of Disclosure-based Settlements in US M&A Litigation*, Financier Worldwide.com (February 2013); *Free Speech v. Trial by Jury: The Role of the Jury in the Application of the Pickering Test*, 18 George Mason University Civil Rights Law Journal 389 (2008); and *Dura Pharmaceuticals: Loss Causation Redefined or Merely Clarified?*, Journal of Taxation and Regulation of Financial Institutions, September/October 2007, at 5 (with Donald J. Enright).

Mr. Wilson is a member of the Virginia and District of Columbia bars.

EXHIBIT 2



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FIRM RESUME

Glancy Prongay & Murray LLP (the “Firm”) has represented investors, consumers and employees for 25 years. Based in Los Angeles with offices in New York City and Berkeley, the Firm has successfully prosecuted class action cases and complex litigation in federal and state courts throughout the country. As Lead Counsel or as a member of Plaintiffs’ Counsel Executive Committees, the Firm has recovered billions of dollars for parties wronged by corporate fraud and malfeasance. Indeed, the Institutional Shareholder Services unit of RiskMetrics Group has recognized the Firm as one of the top plaintiffs’ law firms in the United States in its Securities Class Action Services report for every year since the inception of the report in 2003. The Firm’s efforts have been publicized in major newspapers such as the *Wall Street Journal*, the *New York Times*, and the *Los Angeles Times*.

Glancy Prongay & Murray’s commitment to high quality and excellent personalized services has boosted its national reputation, and we are now recognized as one of the premier plaintiffs’ firms in the country. The Firm works tenaciously on behalf of clients to produce significant results and generate lasting corporate reform.

The Firm’s integrity and success originate from our attorneys, who are among the brightest and most experienced in the field. Our distinguished litigators have an unparalleled track record of investigating and prosecuting corporate wrongdoing. The Firm is respected for both the zealous advocacy with which we represent our clients’ interests as well as the highly-professional and ethical manner by which we achieve results. We are ideally positioned to interpret securities litigation, consumer litigation, antitrust litigation, and derivative and corporate takeover litigation. The Firm’s outstanding accomplishments are the direct result of the exceptional talents of our attorneys and employees.

Appointed as Lead or Co-Lead Counsel by judges throughout the United States, Glancy Prongay & Murray has achieved significant recoveries for class members, including:

In re Mercury Interactive Corporation Securities Litigation, USDC Northern District of California, Case No. 05-3395, in which the Firm served as Co-Lead Counsel and achieved a settlement valued at over \$117 million.

In re Real Estate Associates Limited Partnership Litigation, USDC Central District of California, Case No. 98-7035 DDP, in which the Firm served as local counsel and plaintiffs achieved a \$184 million jury verdict after a complex six week trial in Los Angeles, California and later settled the case for \$83 million.

The City of Farmington Hills Employees Retirement System v. Wells Fargo Bank, N.A., USDC District of Minnesota, Case No. 10-cv-04372-DWF/JJG, in which the Firm served as Co-Lead Counsel and achieved a settlement valued at \$62.5 million.

In re Lumenis, Ltd. Securities Litigation, USDC Southern District of New York, Case No.02-CV-1989, in which the Firm served as Co-Lead Counsel and achieved a settlement valued at over \$20 million.

In re Heritage Bond Litigation, USDC Central District of California, Case No. 02-ML-1475-DT, where as Co-Lead Counsel, the Firm recovered in excess of \$28 million for defrauded investors and continues to pursue additional defendants.

In re ECI Telecom Ltd. Securities Litigation, USDC Eastern District of Virginia, Case No. 01-913-A, in which the Firm served as sole Lead Counsel and recovered almost \$22 million for defrauded ECI investors.

Jenson v. First Trust Corporation, USDC Central District of California, Case No. 05-cv-3124-ABC, in which the Firm was appointed sole lead counsel and achieved an \$8.5 million settlement in a very difficult case involving a trustee's potential liability for losses incurred by investors in a Ponzi scheme. Kevin Ruf of the Firm also successfully defended in the 9th Circuit Court of Appeals the trial court's granting of class certification in this case.

Yaldo v. Airtouch Communications, State of Michigan, Wayne County, Case No. 99-909694-CP, in which the Firm served as Co-Lead Counsel and achieved a settlement valued at over \$32 million for defrauded consumers.

In re Infonet Services Corporation Securities Litigation, USDC Central District of California, Case No. CV 01-10456 NM, in which as Co-Lead Counsel, the Firm achieved a settlement of \$18 million.

In re Musicmaker.com Securities Litigation, USDC Central District of California, Case No. 00-02018, a securities fraud class action in which the Firm was sole Lead Counsel for the Class and recovered in excess of \$13 million.

In re ESC Medical Systems, Ltd. Securities Litigation, USDC Southern District of New York, Case No. 98 Civ. 7530, a securities fraud class action in which the Firm served as sole Lead Counsel for the Class and achieved a settlement valued in excess of \$17 million.

In re Lason, Inc. Securities Litigation, USDC Eastern District of Michigan, Case No. 99 76079, in which the Firm was Co-Lead Counsel and recovered almost \$13 million for defrauded Lason stockholders.

In re Inso Corp. Securities Litigation, USDC District of Massachusetts, Case No. 99 10193, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement valued in excess of \$12 million.

In re National TechTeam Securities Litigation, USDC Eastern District of Michigan, Case No. 97-74587, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement valued in excess of \$11 million.

In re Ramp Networks, Inc. Securities Litigation, USDC Northern District of California, Case No. C-00-3645 JCS, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement of nearly \$7 million.

In re Gilat Satellite Networks, Ltd. Securities Litigation, USDC Eastern District of New York, Case No. 02-1510 CPS, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement of \$20 million.

Taft v. Ackermans (KPNQwest Securities Litigation), USDC Southern District of New York, Case No. 02-CV-07951, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement worth \$11 million.

Ree v. Procom Technologies, Inc., USDC Southern District of New York, Case No. 02CV7613, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement of \$2.7 million.

Capri v. Comerica, Inc., USDC Eastern District of Michigan, Case No. 02CV60211 MOB, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement of \$6.0 million.

Tatz v. Nanophase Technologies Corp., USDC Northern District of Illinois, Case No. 01C8440, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement of \$2.5 million.

In re Livent, Inc. Noteholders Litigation, USDC Southern District of New York, Case No. 99 Civ 9425, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement of over \$27 million.

Plumbing Solutions Inc. v. Plug Power, Inc., USDC Eastern District of New York, Case No. CV 00 5553 (ERK) (RML), a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement of over \$5 million.

Schleicher v. Wendt, (Conseco Securities Litigation), USDC Southern District of Indiana, Case No. 02-1332 SEB, a securities fraud class action in which the Firm served as Lead Counsel for the Class and achieved a settlement of over \$41 million.

Lapin v. Goldman Sachs, USDC Southern District of New York, Case No. 03-0850-KJD, a securities fraud class action in which the Firm served as Co-Lead Counsel for the Class and achieved a settlement of \$29 million.

Senn v. Sealed Air Corporation, USDC New Jersey, Case No. 03-cv4372, a securities fraud class action, in which the Firm acted as co-lead counsel for the Class and achieved a settlement of \$20 million.

The Firm filed the initial landmark antitrust lawsuit against all of the major NASDAQ market makers and served on Plaintiffs' Counsel's Executive Committee in In re Nasdaq Market-Makers Antitrust Litigation, USDC Southern District of New York, Case No. 94 C 3996 (RWS), MDL

Docket No. 1023, which recovered \$900 million for investors in numerous heavily traded Nasdaq issues.

Glancy Prongay & Murray has also previously acted as Class Counsel in obtaining substantial benefits for shareholders in a number of actions, including:

In re F & M Distributors Securities Litigation,

Eastern District of Michigan, Case No. 95 CV 71778 DT (Executive Committee Member) (\$20.25 million settlement)

James F. Schofield v. McNeil Partners, L.P. Securities Litigation,

California Superior Court, County of Los Angeles, Case No. BC 133799

Resources High Equity Securities Litigation,

California Superior Court, County of Los Angeles, Case No. BC 080254

The Firm has served and currently serves as Class Counsel in a number of antitrust class actions, including:

In re Nasdaq Market-Makers Antitrust Litigation,

USDC Southern District of New York, Case No. 94 C 3996 (RWS), MDL Docket No. 1023

In re Brand Name Prescription Drug Antitrust Litigation,

USDC Northern District of Illinois, Eastern Division, Case No. 94 C 897

Glancy Prongay & Murray has been responsible for obtaining favorable appellate opinions which have broken new ground in the class action or securities fields, or which have promoted shareholder rights in prosecuting these actions. The Firm successfully argued the appeals in a number of cases:

In Smith v. L'Oreal, 39 Cal.4th 77 (2006), Firm partner Kevin Ruf established ground-breaking law when the California Supreme Court agreed with the Firm's position that waiting penalties under the California Labor Code are available to *any* employee after termination of employment, regardless of the reason for that termination.

Other notable Firm cases are: Silber v. Mabon I, 957 F.2d 697 (9th Cir. 1992) and Silber v. Mabon II, 18 F.3d 1449 (9th Cir. 1994), which are the leading decisions in the Ninth Circuit regarding the rights of opt-outs in class action settlements. In Rothman v. Gregor, 220 F.3d 81 (2d Cir. 2000), the Firm won a seminal victory for investors before the Second Circuit Court of Appeals, which adopted a more favorable pleading standard for investors in reversing the District Court's dismissal of the investors' complaint. After this successful appeal, the Firm then recovered millions of dollars for defrauded investors of the GT Interactive Corporation. The Firm also argued Falkowski v. Imation Corp., 309 F.3d 1123 (9th Cir. 2002), *as amended*, 320 F.3d 905 (9th Cir. 2003) and favorably obtained the substantial reversal of a lower court's dismissal of a cutting edge, complex class action initiated to seek redress for a group of employees whose stock options were improperly forfeited by a giant corporation in the course of its sale of the subsidiary at which they worked. The revived action is currently proceeding in the California state court system.

The Firm is also involved in the representation of individual investors in court proceedings throughout the United States and in arbitrations before the American Arbitration Association, National Association of Securities Dealers, New York Stock Exchange, and Pacific Stock Exchange. Mr. Glancy has successfully represented litigants in proceedings against such major securities firms and insurance companies as A.G. Edwards & Sons, Bear Stearns, Merrill Lynch & Co., Morgan Stanley, PaineWebber, Prudential, and Shearson Lehman Brothers.

One of the Firm's unique skills is the use of "group litigation" - the representation of groups of individuals who have been collectively victimized or defrauded by large institutions. This type of litigation brought on behalf of individuals who have been similarly damaged often provides an efficient and effective economic remedy that frequently has advantages over the class action or individual action devices. The Firm has successfully achieved results for groups of individuals in cases against major corporations such as Metropolitan Life Insurance Company, and Occidental Petroleum Corporation.

Glancy Prongay & Murray LLP currently consists of the following attorneys:

PARTNERS

LEE ALBERT, a partner, was admitted to the bars of the Commonwealth of Pennsylvania, the State of New Jersey, and the United States District Courts for the Eastern District of Pennsylvania and the District of New Jersey in 1986. He received his B.S. and M.S. degrees from Temple University and Arcadia University in 1975 and 1980, respectively, and received his J.D. degree from Widener University School of Law in 1986. Upon graduation from law school, Mr. Albert spent several years working as a civil litigator in Philadelphia, PA. Mr. Albert has extensive litigation and appellate practice experience having argued before the Supreme and Superior Courts of Pennsylvania and has over fifteen years of trial experience in both jury and

non-jury cases and arbitrations. Mr. Albert has represented a national health care provider at trial obtaining injunctive relief in federal court to enforce a five-year contract not to compete on behalf of a national health care provider and injunctive relief on behalf of an undergraduate university.

Currently, Mr. Albert represents clients in all types of complex litigation including matters concerning violations of federal and state antitrust and securities laws, mass tort/product liability and unfair and deceptive trade practices. Some of Mr. Albert's current major cases include *In Re Automotive Wire Harness Systems Antitrust Litigation* (E.D. Mich.); *In Re Heater Control Panels Antitrust Litigation* (E.D. Mich.); *Kleen Products, et al. v. Packaging Corp. of America* (N.D. Ill.); and *In re Class 8 Transmission Indirect Purchaser Antitrust Litigation* (D. Del.). Previously, Mr. Albert had a significant role in *Marine Products Antitrust Litigation* (C.D. Cal.); *Baby Products Antitrust Litigation* (E.D. Pa.); *In re ATM Fee Litigation* (N.D. Cal.); *In re Canadian Car Antitrust Litigation* (D. Me.); *In re Broadcom Securities Litigation* (C.D. Cal.); and has worked on *In re Avandia Marketing, Sales Practices and Products Liability Litigation* (E.D. Pa.); *In re Ortho Evra Birth Control Patch Litigation* (N.J. Super. Ct., Middlesex County); *In re AOL Time Warner, Inc. Securities Litigation* (S.D.N.Y.); *In re WorldCom, Inc. Securities Litigation* (S.D.N.Y.); and *In re Microsoft Corporation Massachusetts Consumer Protection Litigation* (Mass. Super. Ct.).

JOSHUA L. CROWELL, a partner in the firm's Los Angeles office, concentrates his practice on prosecuting complex securities cases on behalf of investors. Recently he helped achieve a successful resolution of the Hansen Medical, Inc., securities action, No. C 09-5094 CW (N.D. Cal.), resulting in a settlement of \$8.5 million for the shareholder class.

Prior to joining Glancy Prongay & Murray LLP, Joshua was an Associate at Labaton Sucharow LLP in New York, where he helped secure several large federal securities class settlements in cases such as *In re Countrywide Financial Corporation Securities Litigation*, No. CV 07-05295 MRP (MANx) (C.D. Cal.) (\$624 million), and the Oppenheimer Champion Fund and Core Bond Fund actions, Nos. 09-cv-525-JLK-KMT and 09-cv-1186-JLK-KMT (D. Colo.) (\$100 million combined). He began his legal career as an Associate at Paul, Hastings, Janofsky & Walker LLP in New York, primarily representing financial services clients in commercial litigation.

Prior to attending law school, Joshua was a Senior Economics Consultant at Ernst & Young LLP, where he priced intercompany transactions and calculated the value of intellectual property. Joshua received a J.D., *cum laude*, from The George Washington University Law School. During law school, he was an Associate of *The George Washington Law Review* and a member of the Mock Trial Board. He was also a law intern for Chief Judge Edward J. Damich of the United States Court of Federal Claims. Joshua earned a B.A. in International Relations from Carleton College.

LIONEL Z. GLANCY, a graduate of University of Michigan Law School, is the founding partner of the Firm. After serving as a law clerk for United States District Judge Howard McKibben, he began his career as an associate at a New York law firm concentrating in securities litigation. Thereafter, he started a boutique law firm specializing in securities litigation, and other complex litigation, from the Plaintiff's perspective. Mr. Glancy has established a distinguished career in the field of securities litigation over the last fifteen years,

having appeared and been appointed lead counsel on behalf of aggrieved investors in securities class action cases throughout the country. He has appeared and argued before dozen of district courts and a number of appellate courts. His efforts have resulted in the recovery of hundreds of millions of dollars in settlement proceeds for huge classes of shareholders. Well known in securities law, he has lectured on its developments and practice, including having lectured before Continuing Legal Education seminars and law schools.

Mr. Glancy was born in Windsor, Canada, on April 4, 1962. Mr. Glancy earned his undergraduate degree in political science in 1984 and his Juris Doctor degree in 1986, both from the University of Michigan. He was admitted to practice in California in 1988, and in Nevada and before the U.S. Court of Appeals, Ninth Circuit, in 1989.

MARC L. GODINO has extensive experience successfully litigating complex, class action lawsuits as a plaintiffs' lawyer. Mr. Godino has played a primary role in cases resulting in settlements of more than \$100 million. He has prosecuted securities, derivative, merger & acquisition, and consumer cases throughout the country in both state and federal court, as well as represented defrauded investors at FINRA arbitrations. Mr. Godino manages the Firm's consumer class action department.

While an associate with Stull Stull & Brody, Mr. Godino was one of the two primary attorneys involved in *Small v. Fritz Co.*, 30 Cal. 4th 167 (April 7, 2003), in which the California Supreme Court created new law in the State of California for shareholders that held shares in detrimental reliance on false statements made by corporate officers. The decision was widely covered by national media including *The National Law Journal*, the *Los Angeles Times*, the *New York Times*, and the *New York Law Journal*, among others, and was heralded as a significant victory for shareholders.

Successes with the firm include: *Ord v. First National Bank of Pennsylvania*, Case No. 12-766 (W. D. Pa.) (\$3,000,000 cash settlement plus injunctive relief); *Pappas v. Naked Juice Co. of Glendora, Inc.*, Case No. 11-08276 (C.D. Cal.) (\$9,000,000 cash settlement plus injunctive relief); *Astiana v. Kashi Company*, Case No. 11-1967 (S.D. Cal.) (\$5,000,000 cash settlement); *In re Magma Design Automation, Inc. Securities Litigation*, Case No. 05-2394 (N.D. Cal.) (\$13,500,000.00 cash settlement for shareholders); *In re Hovnanian Enterprises, Inc. Securities Litigation*, Case No. 08-cv-0099 (D.N.J.) (\$4,000,000.00 cash settlement for shareholders); *In re Skilled Healthcare Group, Inc. Securities Litigation*, Case No. 09-5416 (C.D. Cal.) (\$3,000,000.00 cash settlement for shareholders); *Kelly v. Phiten USA, Inc.*, Case No. 11-67 (S.D. Iowa) (\$3.2 million dollar cash settlement in addition to injunctive relief); *(Shin et al., v. BMW of North America, 2009 WL 2163509 (C.D. Cal. July 16, 2009) (after defeating a motion to dismiss, the case settled on very favorable terms for class members including free replacement of cracked wheels); Payday Advance Plus, Inc. v. MIVA, Inc.*, Case No. 06-1923 (S.D.N.Y.) (\$3,936,812 cash settlement for class members); *Esslinger, et al. v. HSBC Bank Nevada, N.A.*, Case No. 10-03213 (E.D. Pa.) (\$23.5 million settlement pending final approval); *In re Discover Payment Protection Plan Marketing and Sales Practices Litigation*, Case No. 10-06994 (\$10.5 million settlement pending final approval).

Other published decisions include: *Kramer v. Toyota Motor Corp.*, 705 F. 3d 1122 (9th Cir. 2013) (affirming denial of Defendant's motion to compel arbitration); *In re Zappos.com, Inc.*,

Customer Data Sec. Breach Litigation, 893 F. Supp. 2d 1058 (D. Nev. Sep 27, 2012) (motion to compel arbitration denied); Sateriale v. R.J. Reynolds Tobacco Co., 697 F. 3d 777 (9th Cir. 2012) (reversing order dismissing class action complaint); Lilly v. Jamba Juice Company, 2014 WL 4652283 (N. D. Cal. Sep 18, 2014) (class certification granted in part); Small v. University Medical Center of Southern Nevada, 2013 WL 3043454 (D. Nev. June 14, 2013) (order granting conditional certification to FLSA class); Peterson v. ConAgra Foods, Inc., 2014 WL 3741853 (S. D. Cal. July 29, 2014) (motion to dismiss denied); In re 2TheMart.com Securities Litigation, 114 F. Supp. 2d 955 (C.D. Cal. 2002) (motion to dismiss denied); In re Irvine Sensors Securities Litigation, 2003 U.S. Dist. LEXIS 18397 (C.D. Cal. 2003) (motion to dismiss denied); Shin v. BMW of North America, 2009 WL 2163509 (C.D. Cal. July 16, 2009) (motion to dismiss denied).

The following represent just a few of the more than two dozen cases Mr. Godino is currently litigating in a leadership position: In re Avon Anti-Aging Skincare Creams and Products Marketing and Sales Practices Litigation, Case No. 13-150 (S.D.N.Y.); PB Property Management, Inc. v. Goodman Manufacturing Company, L.P., et al., Case No. 12-1366 (M.D. Fl.); Grodzitsky v. American Honda Motor Co., Inc., Case No. 12-1142 (C.D. CA); Sciortino v. Pepsico, Inc., Case No. 14-478 (N.D. CA); Javorsky v. Western Athletic Clubs, Inc., Case No. 13-528384 (Sup. Ct. San Francisco).

Mr. Godino received his undergraduate degree from Susquehanna University with a Bachelor of Science degree in Business Management. He received his Juris Doctor degree from Whittier Law School in 1995.

Mr. Godino is admitted to practice before the Supreme Court of the United States, the State of California, the United States District Courts for the Central, Northern, and Southern Districts of California, the District of Colorado, and the Ninth Circuit Court of Appeals.

MARK S. GREENSTONE specializes in consumer, financial fraud and employment-related class actions. Possessing significant law and motion and trial experience, Mr. Greenstone has represented clients in multi-million dollar disputes in California state and federal courts, as well as the Court of Federal Claims in Washington, D.C.

Mr. Greenstone received his training as an associate at Sheppard, Mullin, Richter & Hampton LLP where he specialized in complex business litigation relating to investment management, government contracts and real estate. Upon leaving Sheppard Mullin, Mr. Greenstone founded an internet-based company offering retail items on multiple platforms nationwide. He thereafter returned to law bringing a combination of business and legal skills to his practice.

Mr. Greenstone graduated Order of the Coif from the UCLA School of Law. He also received his undergraduate degree in Political Science from UCLA, where he graduated Magna Cum Laude and was inducted into the Phi Beta Kappa honor society.

Mr. Greenstone is a member of the Consumer Attorneys Association of Los Angeles, the Santa Monica Bar Association and the Beverly Hills Bar Association. He is admitted to practice in state and federal courts throughout California.

SUSAN G. KUPFER is the founding partner of the Firm's Berkeley office and head of the Firm's Antitrust Practice Group. Ms Kupfer joined the Firm in 2003. She is a native of New York City, and received her A.B. degree from Mount Holyoke College in 1969 and her Juris Doctor degree from Boston University School of Law in 1973. She did graduate work at Harvard Law School and, in 1977, was named Assistant Dean and Director of Clinical Programs at Harvard, supervising and teaching in that program of legal practice and related academic components.

For much of her legal career, Ms. Kupfer has been a professor of law. Her areas of academic expertise are Civil Procedure, Federal Courts, Conflict of Laws, Constitutional Law, Legal Ethics, and Jurisprudence. She has taught at Harvard Law School, Hastings College of the Law, Boston University School of Law, Golden Gate University School of Law, and Northeastern University School of Law. From 1991 through 2002, she was a lecturer on law at the University of California, Berkeley, Boalt Hall, teaching Civil Procedure and Conflict of Laws. Her publications include articles on federal civil rights litigation, legal ethics, and jurisprudence. She has also taught various aspects of practical legal and ethical training, including trial advocacy, negotiation and legal ethics, to both law students and practicing attorneys.

Ms. Kupfer previously served as corporate counsel to The Architects Collaborative in Cambridge and San Francisco, and was the Executive Director of the Massachusetts Commission on Judicial Conduct. She returned to the practice of law in San Francisco with Morgenstein & Jubelirer and Berman DeValerio LLP before joining the Firm.

Ms. Kupfer's practice is concentrated in complex antitrust litigation. She currently serves, or has served, as Co-Lead Counsel in several multidistrict antitrust cases: *In re Photochromic Lens Antitrust Litig.* (MDL 2173, M.D. Fla. 2010); *In re Fresh and Process Potatoes Antitrust Litig.* (D. ID. 2011); *In re Korean Air Lines Antitrust Litig.* (MDL No. 1891, C.D. Cal. 2007); *In re Urethane Antitrust Litigation* (MDL 1616, D. Kan. 2004); *In re Western States Wholesale Natural Gas Litigation* (MDL 1566, D. Nev. 2005); and *Sullivan et al v. DB Investments et al* (D. N.J. 2004). She has been a member of the lead counsel teams that achieved significant settlements in: *In re Sorbates Antitrust Litigation* (\$96.5 million settlement); *In re Pillar Point Partners Antitrust Litigation* (\$50 million settlement); and *In re Critical Path Securities Litigation* (\$17.5 million settlement).

Ms. Kupfer is a member of the bar of Massachusetts and California, and is admitted to practice before the United States District Courts for the Northern, Central, Eastern and Southern Districts of California, the District of Massachusetts, the Courts of Appeals for the First and Ninth Circuits, and the U.S. Supreme Court.

BRIAN MURRAY, the managing partner of the Firm's New York office, was admitted to the bars of Connecticut in 1990, New York and the United States District Courts for the Southern and Eastern Districts of New York in 1991, the Second Circuit in 1997, the First and Fifth Circuits in 2000, the Ninth Circuit in 2002, and the Eastern and Western Districts of Arkansas in 2011. He received Bachelor of Arts and Master of Arts degrees from the University of Notre Dame in 1983 and 1986, respectively. He received a Juris Doctor degree, *cum laude*, from St. John's University School of Law in 1990. At St. John's, he was the Articles Editor of the ST. JOHN'S LAW REVIEW. Mr. Murray co-wrote: *Jurisdição Estrangeira Tem Papel Relevante*

Na De Fiesa De Investidores Brasileiros, ESPAÇA JURÍDICO BOVESPA (August 2008); *The Proportionate Trading Model: Real Science or Junk Science?*, 52 CLEVELAND ST. L. REV. 391 (2004-05); *The Accident of Efficiency: Foreign Exchanges, American Depository Receipts, and Space Arbitrage*, 51 BUFFALO L. REV. 383 (2003); *You Shouldn't Be Required To Plead More Than You Have To Prove*, 53 BAYLOR L. REV. 783 (2001); *He Lies, You Die: Criminal Trials, Truth, Perjury, and Fairness*, 27 NEW ENGLAND J. ON CIVIL AND CRIMINAL CONFINEMENT 1 (2001); *Subject Matter Jurisdiction Under the Federal Securities Laws: The State of Affairs After Itoba*, 20 MARYLAND J. OF INT'L L. AND TRADE 235 (1996); *Determining Excessive Trading in Option Accounts: A Synthetic Valuation Approach*, 23 U. DAYTON L. REV. 316 (1997); *Loss Causation Pleading Standard*, NEW YORK LAW JOURNAL (Feb. 25, 2005); *The PSLRA 'Automatic Stay' of Discovery*, NEW YORK LAW JOURNAL (March 3, 2003); and *Inherent Risk In Securities Cases In The Second Circuit*, NEW YORK LAW JOURNAL (Aug. 26, 2004). He also authored *Protecting The Rights of International Clients in U.S. Securities Class Action Litigation*, INTERNATIONAL LITIGATION NEWS (Sept. 2007); *Lifting the PSLRA "Automatic Stay" of Discovery*, 80 N. DAK. L. REV. 405 (2004); *Aftermarket Purchaser Standing Under § 11 of the Securities Act of 1933*, 73 ST. JOHN'S L. REV. 633 (1999); *Recent Rulings Allow Section 11 Suits By Aftermarket Securities Purchasers*, NEW YORK LAW JOURNAL (Sept. 24, 1998); and *Comment, Weissmann v. Freeman: The Second Circuit Errs in its Analysis of Derivative Copy-rights by Joint Authors*, 63 ST. JOHN'S L. REV. 771 (1989).

Mr. Murray was on the trial team that prosecuted a securities fraud case under Section 10(b) of the Securities Exchange Act of 1934 against Microdyne Corporation in the Eastern District of Virginia and he was also on the trial team that presented a claim under Section 14 of the Securities Exchange Act of 1934 against Artek Systems Corporation and Dynatach Group which settled midway through the trial.

Mr. Murray's major cases include *In re Eagle Bldg. Tech. Sec. Litig.*, 221 F.R.D. 582 (S.D. Fla. 2004), 319 F. Supp. 2d 1318 (S.D. Fla. 2004) (complaint against auditor sustained due to magnitude and nature of fraud; no allegations of a "tip-off" were necessary); *In re Turkcell Iletisim A.S. Sec. Litig.*, 209 F.R.D. 353 (S.D.N.Y. 2002) (defining standards by which investment advisors have standing to sue); *In re Turkcell Iletisim A.S. Sec. Litig.*, 202 F. Supp. 2d 8 (S.D.N.Y. 2001) (liability found for false statements in prospectus concerning churn rates); *Feiner v. SS&C Tech., Inc.*, 11 F. Supp. 2d 204 (D. Conn. 1998) (qualified independent underwriters held liable for pricing of offering); *Malone v. Microdyne Corp.*, 26 F.3d 471 (4th Cir. 1994) (reversal of directed verdict for defendants); and *Adair v. Bristol Tech. Systems, Inc.*, 179 F.R.D. 126 (S.D.N.Y. 1998) (aftermarket purchasers have standing under section 11 of the Securities Act of 1933). Mr. Murray also prevailed on an issue of first impression in the Superior Court of Massachusetts, in *Cambridge Biotech Corp. v. Deloitte and Touche LLP*, in which the court applied the doctrine of continuous representation for statute of limitations purposes to accountants for the first time in Massachusetts. 6 Mass. L. Rptr. 367 (Mass. Super. Jan. 28, 1997). In addition, in *Adair v. Microfield Graphics, Inc.* (D. Or.), Mr. Murray settled the case for 47% of estimated damages. In the *Qiao Xing Universal Telephone* case, claimants received 120% of their recognized losses.

Among his current cases, Mr. Murray represents the West Virginia Investments Management Board in a major litigation against ResidentialAccredit Loans, Deutsche Bank, and Credit Suisse.

Mr. Murray is also currently co-lead counsel in *Avenarius, et al., v. Eaton Corp., et al.* (D. Del.), an antitrust class action against the world's largest commercial truck and transmission manufactures.

Mr. Murray served as a Trustee of the Incorporated Village of Garden City (2000-2002); Commissioner of Police for Garden City (2000-2001); Co-Chairman, Derivative Suits Subcommittee, American Bar Association Class Action and Derivative Suits Committee, (2007-Present); Member, Sports Law Committee, Association of the Bar for the City of New York, 1994-1997; Member, Litigation Committee, Association of the Bar for the City of New York, 2003-2007; Member, New York State Bar Association Committee on Federal Constitution and Legislation, 2005-2008; Member, Federal Bar Council, Second Circuit Committee, 2007-present.

Mr. Murray has been a panelist at CLEs sponsored by the Federal Bar Council and the Institute for Law and Economic Policy, at the German-American Lawyers Association Annual Meeting in Frankfurt, Germany, and is a frequent lecturer before institutional investors in Europe and South America on the topic of class actions.

ROBERT V. PRONGAY is a partner in the Firm's Los Angeles office where he focuses on the investigation, initiation, and prosecution of complex securities cases on behalf of institutional and individual investors. Mr. Prongay's practice concentrates on actions to recover investment losses resulting from violations of the federal securities laws and various actions to vindicate shareholder rights in response to corporate and fiduciary misconduct.

Mr. Prongay has extensive experience litigating complex cases in state and federal courts nationwide. Since joining the Firm, Mr. Prongay has successfully recovered millions of dollars for investors victimized by securities fraud and has negotiated the implementation of significant corporate governance reforms aimed at preventing the recurrence of corporate wrongdoing.

Several of Mr. Prongay's cases have received national and regional press coverage. Mr. Prongay has been interviewed by journalists and writers for national and industry publications, ranging from *The Wall Street Journal* to the *Los Angeles Daily Journal*. Mr. Prongay recently appeared as a guest on Bloomberg Television where he was interviewed about the securities litigation stemming from the high-profile initial public offering of Facebook, Inc.

Mr. Prongay received his Bachelor of Arts degree in Economics from the University of Southern California and his Juris Doctor degree from Seton Hall University School of Law. Mr. Prongay is also an alumnus of the Lawrenceville School.

KEVIN F. RUF graduated from the University of California at Berkeley in 1984 with a Bachelor of Arts in Economics and earned his Juris Doctor degree from the University of Michigan in 1987. Mr. Ruf was admitted to the State Bar of California in 1988. Mr. Ruf was an associate at the Los Angeles firm Manatt Phelps and Phillips from 1988 until 1992, where he specialized in commercial litigation and was a leading trial lawyer among the associates there. In 1993, he joined the firm Corbin & Fitzgerald in order to gain experience in criminal law. There, he specialized in white collar criminal defense work, including matters related to National Medical Enterprises, Cynergy Film Productions and the Estate of Doris Duke. Mr. Ruf joined the Firm in 2001 and has taken a lead trial lawyer role in many of the Firm's cases. In 2006, Mr.

Ruf argued before the California Supreme Court in the case *Smith v. L'Oreal* and achieved a unanimous reversal of the lower court rulings; the case established a fundamental right of all California workers to immediate payment of all earnings at the conclusion of employment. In 2007, Mr. Ruf took an important case before the Ninth Circuit Court of Appeals, convincing the Court to affirm the lower court's certification of a class action in a fraud case (fraud cases have traditionally faced difficulty as class actions because of the requirement of individual reliance). Mr. Ruf has extensive trial experience, including jury trials, and considers his courtroom and oral advocacy skills to be his strongest asset as a litigator. Mr. Ruf currently acts as the Head of the Firm's Labor and Consumer Practice, and has extensive experience in securities cases as well. Mr. Ruf also has experience in real estate law and has been a Licensed California Real Estate Broker since 1999.

EX KANO S. SAMS II earned his Bachelor of Arts degree in Political Science from the University of California Los Angeles. Mr. Sams earned his Juris Doctor degree from the University of California Los Angeles School of Law, where he served as a member of the UCLA Law Review. After law school, Mr. Sams practiced class action civil rights litigation on behalf of plaintiffs. Subsequently, Mr. Sams was a partner at Coughlin Stoia Geller Rudman & Robbins LLP (currently Robbins Geller Rudman & Dowd LLP) – the largest plaintiffs' class action firm in the country – where his practice focused on securities and consumer class actions on behalf of investors and consumers.

Mr. Sams has served as lead counsel in dozens of securities class actions, shareholder derivative actions, and complex litigation cases throughout the United States. In conjunction with the efforts of co-counsel, Mr. Sams briefed and successfully obtained the reversal in the Ninth Circuit of an order dismissing class action claims brought pursuant to Sections 11 and 15 of the Securities Act of 1933. *Hemmer Grp. v. SouthWest Water Co.*, No 11-56154, 2013 WL 2460197 (9th Cir. June 7, 2013). In another securities case that he actively litigated, Mr. Sams assisted in a successful appeal before a Fifth Circuit panel that included former United States Supreme Court Justice Sandra Day O'Connor sitting by designation, in which the court unanimously vacated the lower court's denial of class certification, reversed the lower court's grant of summary judgment, and issued an important decision on the issue of loss causation in securities litigation: *Alaska Electrical Pension Fund v. Flowserve Corp.*, 572 F.3d 221 (5th Cir. 2009). The case settled for \$55 million.

Mr. Sams has also obtained other significant results. Notable examples include: *Forbush v. Goodale*, No. 33538/2011, 2013 WL 582255 (N.Y. Sup. Feb. 4, 2013) (denying motions to dismiss in a shareholder derivative action); *Curry v. Hansen Med., Inc.*, No. C 09-5094 CW, 2012 WL 3242447 (N.D. Cal. Aug. 10, 2012) (upholding securities fraud complaint; case settled for \$8.5 million); *Wilkof v. Caraco Pharm. Labs., Ltd.*, 280 F.R.D. 332 (E.D. Mich. 2012) (granting class certification); *Puskala v. Koss Corp.*, 799 F. Supp. 2d 941 (E.D. Wis. 2011) (upholding securities fraud complaint); *Mishkin v. Zynex Inc.*, Civil Action No. 09-cv-00780-REB-KLM, 2011 WL 1158715 (D. Colo. Mar. 30, 2011) (denying defendants' motion to dismiss securities fraud complaint); *Wilkof v. Caraco Pharm. Labs., Ltd.*, No. 09-12830, 2010 WL 4184465 (E.D. Mich. Oct. 21, 2010) (upholding securities fraud complaint and cited favorably by the Eighth Circuit in *Public Pension Fund Grp. v. KV Pharm. Co.*, 679 F.3d 972, 981-82 (8th Cir. 2012)); and *Tsirekidze v. Syntax-Brilliant Corp.*, No. CV-07-02204-PHX-FJM, 2009 WL 2151838 (D. Ariz. July 17, 2009) (granting class certification; case settled for \$10 million).

Additionally, Mr. Sams has successfully represented consumers in class action litigation. Mr. Sams worked on nationwide litigation and a trial against major tobacco companies, and in statewide tobacco litigation that resulted in a \$12.5 billion recovery for California cities and counties in a landmark settlement. He also was a principal attorney in a consumer class action against one of the largest banks in the country that resulted in a substantial recovery and a change in the company's business practices. Mr. Sams also participated in settlement negotiations on behalf of environmental organizations along with the United States Department of Justice and the Ohio Attorney General's Office that resulted in a consent decree requiring a company to perform remediation measures to address the effects of air and water pollution.

Mr. Sams is a member of the John M. Langston Bar Association, as well as other local and business bar associations. Additionally, Mr. Sams has volunteered at community legal clinics to provide pro bono legal services to low-income and underrepresented individuals in South Central Los Angeles. Mr. Sams also serves as a mentor to law students through the John M. Langston Bar Association.

KARA M. WOLKE's practice spans consumer, labor, securities, and other areas of complex class action prosecution. She has extensive experience in written appellate advocacy in both State and Federal Circuit Courts of Appeals, and has successfully argued before the Court of Appeals for the State of California.

Ms. Wolke graduated summa cum laude with a B.S.B.A. in Economics from The Ohio State University in 2001, and subsequently earned her J.D. (with honors) from Ohio State, where she was active in Moot Court and received the Dean's Award for Excellence during each of her three years. In 2005, she was a finalist in a national writing competition co-sponsored by the American Bar Association and the Grammy® Foundation. Her article, regarding United States Copyright Law's failure to provide a public performance right in sound recordings, is published at 7 Vand. J. Ent. L. & Prac. 411.

Since joining the firm in 2005, and becoming a partner in 2014, Ms. Wolke has aided in the prosecution of class action cases which have recovered hundreds of millions of dollars for injured investors, consumers, and employees, including: *Schleicher, et al. v. Wendt, et al.* (Conseco), Case No. 02-cv-1332 (S.D. Ind.) (\$41.5 million securities class action settlement); *Lapin v. Goldman Sachs*, Case No. 03-850 (S.D.N.Y.) (\$29 million securities class action settlement); *In Re: Mannkind Corporation Securities Litigation*, Case No. 11-929 (C.D. Cal.) (approximately \$22 million settlement - \$16 million in cash plus stock); *Jenson v. First Trust Corporation*, Case No. 05-3124 (C.D. Cal.) (\$8.5 million settlement of class action alleging breach of fiduciary duty and breach of contract); and *Pappas v. Naked Juice Co.*, Case No. 11-08276 (C.D. Cal.) (\$9 million settlement in consumer class action alleging misleading labeling of juice products as "All Natural"). With a background in intellectual property, Ms. Wolke is currently prosecuting a class action seeking to have a large music publisher's claim of copyright ownership over the song "Happy Birthday to You" declared invalid.

Ms. Wolke is admitted to the State Bar of California, the Ninth Circuit Court of Appeals, as well as the United States District Courts for the Northern, Southern, and Central Districts of California.

SENIOR COUNSEL

GREGORY B. LINKH works out of the New York office, where he specializes in securities, shareholder derivative, antitrust, and consumer litigation. Greg graduated from the State University of New York at Binghamton in 1996 and from the University of Michigan Law School in 1999. While in law school, Greg externed with United States District Judge Gerald E. Rosen of the Eastern District of Michigan. Greg was previously associated with the law firms Dewey Ballantine LLP, Pomerantz Haudek Block Grossman & Gross LLP, and Murray Frank LLP.

Greg is the co-author of *Inherent Risk In Securities Cases In The Second Circuit*, NEW YORK LAW JOURNAL (Aug. 26, 2004); *Staying Derivative Action Pursuant to PSLRA and SLUSA*, NEW YORK LAW JOURNAL, P. 4, COL. 4 (Oct. 21, 2005) and the *SECURITIES REFORM ACT LITIGATION REPORTER*, Vol. 20, No. 3 (Dec. 2005).

OF COUNSEL

PETER A. BINKOW has prosecuted lawsuits on behalf of consumers and investors in state and federal courts throughout the United States. He served as Lead or Co-Lead Counsel in many class action cases, including: *In re Mercury Interactive Securities Litigation* (\$117.5 million recovery); *Schleicher v Wendt* (Conseco Securities litigation - \$41.5 million recovery); *Lapin v Goldman Sachs* (\$29 million recovery); *In re Heritage Bond Litigation* (\$28 million recovery); *In re National Techteam Securities Litigation* (\$11 million recovery for investors); *In re Lason Inc. Securities Litigation* (\$12.68 million recovery), *In re ESC Medical Systems, Ltd. Securities Litigation* (\$17 million recovery); and many others. In *Schleicher v Wendt*, Mr. Binkow successfully argued the seminal Seventh Circuit case on class certification, in an opinion authored by Chief Judge Frank Easterbrook. He has argued and/or prepared appeals before the Ninth Circuit, Seventh Circuit, Sixth Circuit and Second Circuit Courts of Appeals.

Mr. Binkow joined the Firm in 1994. He was born on August 16, 1965 in Detroit, Michigan. Mr. Binkow obtained a Bachelor of Arts degree from the University of Michigan in 1988 and a Juris Doctor degree from the University of Southern California in 1994.

ASSOCIATES

ELAINE CHANG graduated from the University of California, Berkeley with a Bachelor of Science degree in Business Administration and a Bachelor of Arts degree in Economics. Ms. Chang received her Juris Doctor degree from the UCLA School of Law, where she was on the editorial board of the *UCLA Journal of Law and Technology* and the *Asian Pacific American Law Journal*, as well as a member of the UCLA Moot Court Honors Board. While in law school, Ms. Chang also externed for the Honorable Gary A. Feess in the Central District of California.

Prior to law school, Ms. Chang worked on a number of financial reporting and securities fraud investigations at a big four accounting firm. Ms. Chang also worked in the marketing and product management department at an investment management firm in New York.

PHILIP S. GUTIERREZ joined Glancy Prongay & Murray LLP in 2012. He is an associate at the Firm's Los Angeles office, and he specializes in securities, consumer, and anti-trust litigation. Prior to joining the firm, Mr. Gutierrez was an attorney at the Alliance for Children's Rights and worked in the Office of the General Counsel at Children's Hospital Los Angeles. Mr. Gutierrez also worked at AIG SunAmerica for 3 years as a Regional Marketing Specialist.

Mr. Gutierrez graduated magna cum laude from the University of Southern California with a B.A. in Psychology and a minor in Law. He received his J.D. from the University of Southern California Gould School of Law. While attending law school, Mr. Gutierrez was a Content Editor for the Southern California Review of Law and Social Justice. His article You Have the Right to [Plead Guilty]: How We Can Stop Police Interrogations from Inducing False Confessions was published in the journal.

Mr. Gutierrez is a Los Angeles native.

LEANNE HEINE SOLISH joined Glancy Prongay & Murray LLP in 2012. Leanne graduated *summa cum laude* from Tulane University with a B.S.M. in Accounting and Finance in 2007, and she received her J.D. from the University of Texas School of Law in 2011. While attending law school, Leanne was an editor for the Texas International Law Journal, a student attorney for the Immigration and Worker Rights Clinics, and she externed with MALDEF and the Texas Civil Rights Project. Leanne is a member of the Beta Gamma Sigma Business Honors Society. She is a registered CPA in Illinois, and was admitted to the California State Bar in 2011.

THOMAS J. KENNEDY works out of the New York office, where he specializes in securities, antitrust, and consumer litigation. He received a Juris Doctor degree from St. John's University School of Law in 1995. At St. John's, he was a member of the ST. JOHN'S JOURNAL OF LEGAL COMMENTARY. Tom graduated from Miami University in 1992 with a Bachelor of Science degree in Accounting and has passed the CPA exam. Tom was previously associated with the law firm Murray Frank LLP.

JARED F. PITT joined Glancy Prongay & Murray LLP in 2012 specializing in securities, consumer, and anti-trust litigation. Prior to joining the firm, Jared was an associate at Willoughby Doyle LLP and was a senior financial statement auditor for KMPG LLP where he earned his CPA license.

Jared earned his J.D. from Loyola Law School in 2010. Prior to attending law school he graduated with honors from both the University of Michigan's Ross School of Business and USC's Marshall School of Business where he received a Masters of Accounting.

LESLEY F. PORTNOY joined the firm in 2014. He has represented clients throughout the country in securities litigation and class actions. Mr. Portnoy has previously served as counsel to investors in Bernard L. Madoff securities, assisting the SIPC trustee Irving Picard in recovering money on behalf of defrauded investors. During law school, he worked in the New York

Supreme Court Commercial Division, the Second Circuit Court of Appeals, and the New York City Law Department. Mr. Portnoy has represented pro bono clients in New York and California. In his time off, he enjoys cycling, reading, sports, and spending time with his wife and three children.

CASEY E. SADLER is a native of New York, New York. After graduating from the University of Southern California, Gould School of Law, Mr. Sadler joined the Firm in 2010. While attending law school, Mr. Sadler externed for the Enforcement Division of the Securities and Exchange Commission, spent a summer working for P.H. Parekh & Co. -- one of the leading appellate law firms in New Delhi, India -- and was a member of USC's Hale Moot Court Honors Program.

Mr. Sadler's practice focuses on securities and consumer litigation. An associate in the Firm's Los Angeles office, Mr. Sadler is admitted to the State Bar of California and the United States District Courts for the Northern, Southern, and Central Districts of California.

BRIAN S. UMPIERRE has specialized in class action, consumer and antitrust litigation since his admission to the California Bar in 2005, where he is a member of the Antitrust and Unfair Competition Section of the California Bar. While in law school at Villanova University School of Law, Mr. Umpierre was an extern for the U.S. Environmental Protection Agency - Region III in Philadelphia, PA. He graduated from the University of Scranton, where he was a member of Alpha Kappa Delta, the International Sociology Honor Society.

EXHIBIT 3

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

13 DENNIS PETERSEN,
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15 Plaintiff,
16 v.
17 CJ AMERICA, INC.,
18 Defendant.

Case No. 3:14-CV-2570-DMS-JLB
**DECLARATION OF ELISA
ODABASHIAN IN SUPPORT OF
CONSUMERS UNION AS A CY
PRÉS BENEFICIARY**

Judge: Hon. Dana M. Sabraw
Courtroom: 13A

DECLARATION OF ELISA ODABASHIAN

I, Elisa Odabashian, hereby declare and state as follows:

1. I am the director of Consumers Union's state advocacy campaigns and West Coast Office in San Francisco, as well as its Southwest Office in Austin, Texas. I submit this declaration in support of the designation of Consumers Union as a proposed *cy prè*s beneficiary pursuant to the Superseding Stipulation of Settlement in *Petersen v. CJ America, Inc. et al.*, No. 3:14-cv-2570-JLB. I have been with Consumers Union for 22 years. I have personal knowledge of the facts stated herein and could testify to them if called upon to do so.

2. Consumers Union is the policy and action division of the Consumer Reports publication. Together with Consumer Reports and Consumerist, Consumers Union seeks to empower consumers as they navigate their way through an increasingly complex marketplace. Consumers Union works with our advocates and content providers, as well as with other non-profit organizations across the country, to fight for a fairer, safer, and more transparent marketplace for consumers, before state legislatures and Congress, state and federal regulatory agencies, and through marketplace campaigns targeting corporate actors.

3. Consumers Union has a long history of working to educate and protect consumers in the marketplace. Since its first issue in 1936, Consumers Union has never accepted or published paid ads in Consumer Reports. Free from the pressures of advertisers and commercial influence, Consumer Reports has tackled some of the toughest safety and misleading advertising issues of the time, evaluating new products and technologies, warning consumers about potential dangers and unfounded claims by advertisers, and fighting for accurate labeling.

4. Consumers Union employs attorneys, policy analysts, grassroots organizers, researchers, media experts, and outreach specialists who advocate for consumer protections in the areas of financial services, food safety, product safety, health care, telecommunications, and clean energy. Consumers Union's advocates

1 sponsor and weigh in on legislation, push for regulatory reforms, watchdog the
 2 implementation of new laws, run public education and marketplace campaigns,
 3 support and oppose state ballot measures, publish reports that highlight original
 4 research and surveys, and are trusted and much-consulted experts by the media.
 5 More than 1.3 million e-activists have signed up to follow Consumers Union and
 6 take action on issues that impact them. Consumers Union's Share Your Story
 7 database empowers consumers to describe their experiences in the marketplace
 8 dealing with misleading advertising, and unsafe products and practices—or to
 9 describe their interactions with good corporate actors. We work with the story
 10 sharers to develop and fact-check their stories, and with permission, provide them
 11 to reporters who are writing about a particular problem in the marketplace, and to
 12 legislators who are looking for examples of the problem their legislation is
 13 endeavoring to fix. People who share their stories with us become some of
 14 Consumers Union's most active and engaged volunteers.

15 5. Consumers Union has long been on the cutting edge of reporting risks
 16 and advocating for transparency and improvements in quality and safety of the
 17 consumer marketplace, fights for accurate labeling and consumer protections in the
 18 products and services that consumers often encounter in the marketplace, and is
 19 tireless in its efforts on behalf of its only constituency—the public. Accordingly,
 20 Consumers Union has extensive consumer protection and advocacy experience
 21 within the field of food labeling and advertising. For example, Consumers Union
 22 has been working to educate consumers and lawmakers about (1) “green”¹ claims
 23 on food product labels, (2) food labeling laws that could clarify the terms “healthy”
 24 and “natural,”² (3) unexpected “junk” foods³ and potentially misleading food

25 ¹ Consumer Reports, EcoLabels, <http://www.greenerchoices.org/eco-labels/eco-home.cfm?redirect=1> (last visited February 1, 2016).

26 ² Consumerist, Proposed Food Labeling Law would clarify use of “natural”
 27 and “healthy,” <http://consumerist.com/2015/11/23/proposed-food-labeling-law-would-clarify-use-of-natural-and-healthy/> (last visited February 1, 2016).
 28

1 labeling claims,⁴ (4) hidden sources of sodium in food products,⁵ and (5) the need
 2 for transparency in “organic”⁶ and GMO labeling.⁷ Thus, Consumers Union can
 3 and intends to direct any *cy prè*s award received pursuant to forward its work in the
 4 food labeling and advertising field.

5 6. Consumers Union has advocates and content providers working
 6 throughout the United States. Therefore, Consumers Union can ensure that *cy prè*s
 7 funded consumer protection services reach a broad spectrum of consumers
 8 throughout the United States. Accordingly, directing *cy prè*s funds to Consumers
 9 Union presents a unique opportunity to contribute funds to an organization working
 10 directly on the issues relevant to this action and on behalf of all proposed class
 11 members.

12 Executed this 5th day of February, 2016 at San Francisco, California.

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 15 Elisa Odabashian

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 20 ³ Consumer Reports, Surprising junk food in the dairy aisle,
 21 [http://www.consumerreports.org/cro/news/2015/04/surprising-junk-food-in-the-](http://www.consumerreports.org/cro/news/2015/04/surprising-junk-food-in-the-dairy-aisle/index.htm)
 22 [dairy-aisle/index.htm](http://www.consumerreports.org/cro/news/2015/04/surprising-junk-food-in-the-dairy-aisle/index.htm) (last visited February 1, 2016).

23 ⁴ Consumer Reports, 5 food-label claims that can fool you,
 24 [http://www.consumerreports.org/cro/news/2014/09/5-misleading-food-label-](http://www.consumerreports.org/cro/news/2014/09/5-misleading-food-label-claims/index.htm)
 25 [claims/index.htm](http://www.consumerreports.org/cro/news/2014/09/5-misleading-food-label-claims/index.htm) (last visited February 1, 2016).

26 ⁵ Consumer Reports, Where sodium hides and how to limit it,
 27 [http://www.consumerreports.org/cro/2012/04/where-sodium-hides-and-how-to-](http://www.consumerreports.org/cro/2012/04/where-sodium-hides-and-how-to-limit-it/index.htm)
 28 [limit-it/index.htm](http://www.consumerreports.org/cro/2012/04/where-sodium-hides-and-how-to-limit-it/index.htm) (last visited February 1, 2016).

⁶ Consumer Reports, Organic Food Labels don't always mean what you think,
[http://www.consumerreports.org/cro/news/2014/04/organic-food-labels-do-](http://www.consumerreports.org/cro/news/2014/04/organic-food-labels-do-not-always-mean-what-you-think/index.htm)
[not-always-mean-what-you-think/index.htm](http://www.consumerreports.org/cro/news/2014/04/organic-food-labels-do-not-always-mean-what-you-think/index.htm) (last visited February 1, 2016).

⁷ Consumer Reports, Why Food Labels Should Have GMO Information,
[http://www.consumerreports.org/cro/news/2014/04/food-labels-should-have-gmo-](http://www.consumerreports.org/cro/news/2014/04/food-labels-should-have-gmo-information/index.htm)
[information/index.htm](http://www.consumerreports.org/cro/news/2014/04/food-labels-should-have-gmo-information/index.htm) (last visited February 1, 2016).

EXHIBIT 4

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6 Attorneys for Defendant
CJ America, Inc.
7
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10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 DENNIS PETERSEN,
13 Plaintiff,
14 v.
15 CJ AMERICA, INC.,
16 Defendant.
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Case No. 3:14-CV-2570-DMS-JLB

**DECLARATION OF SOO-HEE
LEE IN SUPPORT OF RENEWED
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Judge: Hon. Dana M. Sabraw
Courtroom: 13A

DECLARATION OF SOO-HEE LEE

I, Soo-Hee Lee, hereby declare and state as follows:

1. I am the Chief Financial Officer for CJ America, Inc. and I submit this declaration in support of preliminary approval of the Superseding Stipulation of Settlement (the "Agreement") in *Petersen v. CJ America, Inc. et al.*, No. 3:14-cv-2570-JLB. I have served as the Chief Financial Officer of CJ America, Inc. since August 11, 2012. I have personal knowledge of the facts stated herein and could testify to them if called upon to do so.

2. CJ America, Inc. ("CJ America") is a corporation incorporated in the state of New York but registered to do business in California and with its principal place of business located at 3530 Wilshire Boulevard, Suite 1220, Los Angeles, California, 90010.

3. CJ Foods, Inc., a registered d/b/a of CJ America located in La Palma, California and CJ Food Manufacturing Corporation, a subsidiary of CJ America located in Fullerton, California, are responsible for manufacturing, labeling, marketing, and advertising the "Annie Chun's" line of ready-made Asian food products, including the Annie Chun's Soup Bowls, Noodle Bowls, and Ramen House products at issue in this action (the "Subject Products").


4. CJ America is a wholly-owned subsidiary of a South Korean company. However, CJ America, Inc. is an American corporation with its principal place of business in California, and, during the entire class period at issue in this action (i.e., from November 19, 2012 to the present), decisions regarding the labeling, marketing, and advertising of the Subject Products, including decisions regarding the labeling and advertising claims to be made regarding the MSG content of the Subject Products, have been and are made in California.

5. During the entire class period at issue in this action, the Subject Products have been and are packaged and labeled in the State of California and

1 distributed to retailers throughout the United States from distribution centers
2 located in the State of California.

3 I declare under penalty of perjury that the foregoing is true and correct to the
4 best of my knowledge, information, and belief.

5 Executed this 3rd day of February, 2016 at Los Angeles, California.

6
7 

8 _____
Soo-Hee Lee
CJ America, Inc.

EXHIBIT 5

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

HARRY DENNIS and JON KOZ,
individually and on behalf of those
similarly situated,

Plaintiffs,

vs.

KELLOGG CO.,

Defendant.

CASE NO. 09-CV-1786-L (WMc)

AMENDED ORDER:

**1. GRANTING MOTION FOR
FINAL SETTLEMENT
APPROVAL, ATTORNEYS'
FEES, AND INCENTIVE
AWARDS;**

[Doc. No. 101]

**2. OVERRULING ALL
OBJECTIONS AND
DENYING OBJECTOR'S
FEE REQUEST**

Upon motion of the parties [Doc. No. 137], the Order of September 10, 2013 [Doc. No. 115] is hereby vacated and replaced with this Amended Order which addresses Plaintiffs' motion for final settlement approval and attorneys' fees and costs, as well as several objections, one of which also requests attorneys' fees. For the reasons below, the Court **GRANTS** Plaintiffs' motion in its entirety, **OVERRULES** all objections, and **DENIES** objector's request for attorneys' fees.

BACKGROUND

This is a consumer class action alleging Defendant Kellogg Company made false and unsubstantiated representations in advertising and labeling its Frosted Mini-Wheats cereal products. The action originally settled with the approval of this

1 Court on April 5, 2011. [See Doc. No. 49.] Under the original settlement, all
 2 claims¹ were released in exchange for:

- 3 • a \$2.75 million cash fund for distribution to class members on a
 4 claims-made basis;
- 5 • Kellogg distributing, pursuant to the *cy pres* doctrine, \$5.5 million of
 6 food products to charities to feed the indigent;
- 7 • Kellogg refraining from using the challenged representations in
 8 advertising for three years; and
- 9 • approximately \$2 million in attorneys' fees and costs.

10 The original settlement's value thus totaled approximately \$10.5 million. With
 11 attorney and claims administration fees and costs subtracted, the value totaled
 12 approximately \$8.5 million.

13 But on September 4, 2012, the Ninth Circuit reversed the final settlement
 14 approval order, vacated the judgment and award of attorneys' fees, and remanded
 15 for further proceedings, finding that the *cy pres* award under the terms of the
 16 original settlement failed to target the plaintiff class. *See Dennis v. Kellogg*
 17 *Company*, 697 F.3d 858, 869 (9th Cir. 2012). While the asserted claims concern
 18 fair competition and consumer protection, the original *cy pres* award would benefit
 19 the indigent. The Ninth Circuit reasoned that "[t]his noble goal . . . has little or
 20 nothing to do with the purposes of the underlying lawsuit or the class of plaintiffs
 21 involved." *Id.* at 866.

22 On remand, the parties negotiated a revised settlement, which the Court
 23 preliminarily approved on May 3, 2013. [Doc. No. 95.] Under the revised
 24 settlement, all claims arising out of the challenged advertising are released in
 25

26
 27 ¹ The Amended Complaint alleges claims of unjust enrichment, and
 28 violation of California's Unfair Competition Law and Consumer Legal Remedies
 Act, and similar laws of other states. [See Doc. No. 22.]

exchange for:

- a \$4 million cash fund for distribution to class members on a claims-made basis, any remaining balance of which to be distributed equally, pursuant to the *cy pres* doctrine, among recipients Consumers Union, Consumer Watchdog, and the Center for Science in the Public Interest; and
- Kellogg refraining from using the challenged representations in advertising for three years.

The revised settlement's value thus totals \$4 million plus the value of the agreed injunctive relief. Minus requested attorneys' fees and expenses of \$1 million as well as approximately \$900,000 in claims notice and administration costs, the cash value to the class totals approximately \$2.1 million. From this cash fund, class members that submit a valid claim are entitled to cash distributions of between \$5 and \$45. In its preliminary approval order, the Court ordered the settling parties to address the revised settlement's diminished value yet seemingly unchanged attorneys' fees and expenses.

Notice issued and out of a putative class of hundreds of thousands only 6 objections were submitted. [See Doc. Nos. 102 (filing by Obj. Henderson, 103 (joint filing by Objs. Jan and Onzen), 105 (filing by Obj. Santiago), 107 and 109 (filings by Obj. Cicero), 113-1, Ex. 3 (Obj. by Kutchka), 113-1, Ex. 4 (Obj. by Sagaribay)] The settling parties filed reply briefs addressing the objections as well as the Court's concerns. [Doc. Nos. 112, 113.] As to the Court's concerns, Plaintiffs explain that although the combined, total fees and costs appear unchanged, the cost of notice has increased due to expanded notice to the class while the requested fees have decreased by 50%. On September 9, 2013, the Court heard oral argument on behalf of the settling parties and objectors.

For the reasons below, the Court:

- **GRANTS** final settlement approval;

- **GRANTS** certification of the settlement class;
- **GRANTS** class counsel’s request for attorneys’ fees and costs;
- **GRANTS** the requested incentive awards to the class representatives;
- **OVERRULES** all objections; and
- **DENIES** objector’s request for attorneys’ fees.

DISCUSSION

I. Final Approval of the Settlement

“Voluntary conciliation and settlement are the preferred means of dispute resolution in complex class action litigation.” *Smith v. CRST Van Expedited, Inc.*, 2013 WL 163293, at *2 (S.D. Cal. Jan. 14, 2013) (citing *Officers for Justice v. Civil Service Com’n of City and County of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982)). “And though, unlike the settlement of most private civil actions, class actions may be settled only with the approval of the district court, the court’s intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited.” *Id.* (internal quotation omitted); *see also* Fed. R. Civ. P. 23(e). “Courts are 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.” *Id.* “Rather, ‘a district court’s only role in reviewing the substance of [a] settlement is to ensure that it is fair, adequate, and free of collusion.’” *Id.* (quoting *Lane v. Facebook*, 696 F.3d 811, 819 (9th Cir. 2012)).

“In making this appraisal, courts have ‘broad discretion’ to consider a range of factors such as ‘the strength of the plaintiffs’ case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members

1 to the proposed settlement.” *Id.* “The relative importance to be attached to any
 2 factor will depend upon and be dictated by the nature of the claim(s) advanced, the
 3 type(s) of relief sought, and the unique facts and circumstances presented by each
 4 individual case.” *Officers for Justice*, 688 F.2d at 625.

5 Here, after careful review, the proposed settlement appears fair, adequate,
 6 and free of collusion. As discussed more fully below, the settlement is the product
 7 of arms-length negotiations by experienced counsel before a respected mediator,
 8 reached after and in light of years of hard fought litigation and ample discovery
 9 into the asserted claims. As a result of counsel’s efforts, the settlement provides the
 10 class with both a substantial cash recovery as well as significant injunctive relief,
 11 which together amount to over \$4,000,000 in value achieved for the class.
 12 Moreover, the reaction of the class has been largely positive and the few objections
 13 are without merit.

14 **A. Strengths and Risks of the Case and Value of the Settlement**

15 This case was initiated in 2009 and has progressed through considerable
 16 litigation and discovery into the asserted claims, an initial approved settlement, a
 17 lengthy appeal, as well as further discovery and mediation on remand. Plaintiffs
 18 maintain they have developed a strong case. [*See* Doc. No. 101-1 at 4-11, 24-25,
 19 28-29.] Defendant disagrees and, should the case not settle, has committed to
 20 vigorously contesting the asserted claims. [*Id.* at 25.] But both parties acknowledge
 21 the significant risks and costs presented by further litigation and which are avoided
 22 by this reasonable compromise. Settlement was reached with much of the case still
 23 to be litigated. This prevents the likely expense, complexity, and duration of, *inter*
 24 *alia*, full discovery, summary judgment, expert reports, trial, and any subsequent
 25 appeals. Numerous issues remain in dispute, including, *e.g.*, whether the contested
 26 advertising constitutes puffery, whether the claims are amenable to class wide
 27 proof, whether common issues predominate, and the measure and extent of
 28 damages. In addition to being expensive, going forward risks further exposure and

1 uncertainty for Defendant as well as impairment or delay of relief to the class.

2 Against these considerations, the parties have agreed to a settlement fund of
3 \$4,000,000, which results in individual payouts to claimants of at least \$5 and up
4 to \$45. [*See* Doc. No. 101-1 at 12.] These amounts reflect the retail cost of between
5 1 and 9 boxes of cereal, the advertising of which forms the basis of this dispute.
6 This is a favorable result given the considerable challenges Plaintiffs face should
7 litigation continue. Moreover, the settlement avoids the risks of extreme results on
8 either end, *i.e.*, complete or no recovery. Thus, it is plainly reasonable for the
9 parties at this stage to agree that the actual recovery realized and risks avoided here
10 outweigh the opportunity to pursue potentially more favorable results through full
11 adjudication. These factors support approval. *See Officers for Justice*, 688 F.2d at
12 625 (settlement is necessarily “an amalgam of delicate balancing, gross
13 approximations and rough justice.”); *Facebook*, 696 F.3d at 819 (“the question
14 whether a settlement is fundamentally fair . . . is different from the question
15 whether the settlement is perfect in the estimation of the reviewing court.”).

16 **B. Endorsement of Experienced Counsel**

17 Class counsel attest to decades of experience litigating class actions,
18 including similar litigation on behalf of consumers and a range of other complex
19 matters. [*See, e.g.*, Doc. No. 90-3 (firm resumes).] “Given their extensive
20 experience and understanding of the strengths and weaknesses of cases such as
21 this, class counsel’s endorsement weighs in favor of final approval.” *Smith*, 2013
22 WL 163293, at *4; *see also Hartless v. Clorox Co.*, 273 F.R.D. 630, 641 (S.D. Cal.
23 2011) (“The recommendations of counsel are given great weight since they are
24 most familiar with the facts of the underlying litigation.”); *Singer v. Becton*
25 *Dickinson and Co.*, 2010 WL 2196104, at *6 (S.D. Cal. June 1, 2010) (same).

26 **C. Reaction of the Class**

27 The reaction of the class has been almost entirely positive. Of a putative
28 class covering hundreds of thousands of purchases of cereal nationwide, [*see* Doc.

No. 95 (recognizing numerosity of the putative class)], only 6 objections have been submitted. “The small percentage of . . . objectors strongly supports the fairness of the settlement.” *Smith*, 2013 WL 163293, at *4; *see also Hartless*, 273 F.R.D. at 641 (“The absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of the settlement are favorable to the class members.”).

Moreover, the few objections submitted are without merit.²

1. Objection of Kendal Mark Jan and Toni Ozen

Jan and Ozen object to class counsel’s purported failure to identify the intended *cy pres* recipients and purported failure to file a request for attorneys’ fees. [Doc. No. 103.] But the settlement itself, Plaintiffs’ briefing, as well as the Court’s preliminary approval order, all identified the three intended *cy pres* recipients, [Doc. Nos. 90, 95], and class counsel did in fact file a request for fees

² Many jurists and commentators bemoan that “too much of the controversy in many class action litigations seems to center on the issue of attorneys’ fees” and that, as a result, “a cottage industry has developed of professional objectors, where again the emphasis or at least the primary motivation is attorneys’ fees.” *In re Countrywide Financial Corp. Customer Data Sec. Breach Litig.*, 2010 WL 3328249, at *4 (W.D. Ky. Aug. 24, 2010). As a corollary, “when assessing the merits of an objection to a class action settlement, courts consider the background and intent of objectors and their counsel, particularly when indicative of a motive other than putting the interest of the class members first.” *In re Law Office of Jonathan E. Fortman, LLC*, 2013 WL 414476, at *5 (E.D. Mo. Feb. 1, 2013). In this light, the Court notes that present objectors’ counsel, Darrell Palmer has been widely and repeatedly criticized as a serial, professional, or otherwise vexatious objector, *see, e.g., In re Oil Spill by Oil Rig Deepwater Horizon*, _F.R.D._, 2013 WL 144042, at *48 n.40 (E.D. La. Jan. 11, 2013) (noting that “Mr. Palmer has been deemed a ‘serial objector’” with a history of “admitt[ed] . . . ‘bad faith and vexatious conduct’”); *Heekin v. Anthem, Inc.*, 2013 WL 752637, at *3 (S.D. Ind. Feb. 27, 2013) (finding “bad faith and vexatious conduct on the part of . . . attorney Darrell Palmer” and noting his reputation as “a serial objector”).

1 along with its motion for final approval, [101-1 at 42-51]. Thus, Jan and Ozen's
2 objection appears baseless.

3 Moreover, Jan and Ozen's objection fails to provide their signatures,
4 telephone numbers, or addresses, all of which are required per the terms of the
5 settlement notice. [See Doc. No. 103.] With these omissions, Jan or Ozen fail to
6 establish that they are members of the class with the right to object. *See In re Apple*
7 *Sec. Litig.*, 2011 WL 1877988, at *2 n.4 (N.D. Cal. May 17, 2011) (finding
8 objector "lacks standing to object [because] he did not provide evidence to show
9 that he is a class member."). As Jan and Ozen appear to lack standing to object,
10 their objection is defective. *See Moore v. Verizon Communs., Inc.*, 2013 WL
11 450365, at *4 (N.D. Cal. Feb. 5, 2013) ("non-class members have no standing to
12 object to the settlement of a class action").

13 For these reasons, the Court **OVERRULES** Jan and Ozen's objection.

14 **2. Objections of M. Todd Henderson**

15 Objector Henderson does not object to the fairness of the settlement
16 amount;³ rather, he argues that other objectors should be entitled to attorneys' fees
17 for their prior success on appeal. But neither Henderson nor his counsel, Theodore
18 Frank of the Center for Class Action Fairness, participated in the appeal. The
19 objectors that in fact prevailed on appeal, class members Stephanie Berg and Omar
20 Rivero, [see *Dennis*, 697 F.3d at 863], are no longer participating in this case. They
21 have apparently terminated their association with objector's counsel Darrell
22 Palmer, and neither objects to the present settlement or moves for fees.

23
24
25 ³ Henderson concedes that claims made will likely exhaust the fund and
26 thus that a *cy pres* distribution will be unnecessary. [Doc. No. 102 at 16.]
27 Nonetheless, Henderson reserves the right to object to the Center for Science in the
28 Public Interest as an "activist" organization inappropriate as a *cy pres* recipient.
[*Id.*] As Henderson concedes, this objection is unripe and likely to prove moot.
[See Doc. No. 113-2 at 2.]

Accordingly, the propriety of a fee award on behalf of their efforts on appeal is not properly before the Court.

Henderson also objects that the class notice and administration costs are excessive as a percentage of recovery and for including the notice costs of the original settlement, and further that no such costs should be considered for purposes of determining attorneys' fees. [Doc. No. 102.] But the costs of noticing the original settlement are not in fact included in the present request. [See Doc. No. 113 at 7.] And the Court finds the approximately \$900,000 in requested notice costs reasonable given the challenges of adequately noticing the disparate, nationwide class governed by the present settlement. [See *infra* §III.A.] Finally, contrary to Henderson's objection, "post-settlement cost of providing notice to the class can reasonably be considered a benefit to the class," and thus such costs are properly and routinely paid from the common settlement fund. *Staton v. Boeing Co.*, 327 F.3d 938, 975 (9th Cir. 2003); *accord Smith*, 2013 WL 163293, at *5.

For these reasons and in light of all briefing and oral argument on his behalf, the Court **OVERRULES** all of Henderson's objections and **DENIES** as unwarranted his request for a fee award to objectors' counsel.

3. Objections of Stephen Santiago

Objector Santiago objects that the injunctive relief provided under the settlement is illusory because the advertising Kellogg agrees to refrain from has already been debunked. [Doc. No. 105.] But the purported falsity of the challenged advertising has not been determined. Indeed, Kellogg maintains Plaintiffs' claims would ultimately fail on the merits. Because the merits of the challenged advertising remains unsettled, injunctive relief preventing such advertising constitutes a substantial concession by Defendant. As such, Santiago's objection is baseless and does not undermine the fairness of the settlement. *Cf. Smith v. CRST Van Expedited, Inc.*, 2012 WL 5873701, at *6 (S.D. Cal. Nov. 20, 2012) (in objecting to a proposed settlement "empty assertion does not suffice").

1 Santiago also objects that class counsel's attorneys' fee request is
 2 insufficiently detailed and includes a "Quick Pay provision." [Doc. No. 105 at 1.]
 3 But the settlement does not in fact include a "Quick Pay provision," as fees are not
 4 paid to counsel until 10 days after final judgment is entered. [See Doc. Nos. 89 at
 5 19; 113 at 17.] And the declarations of counsel detailing rates and hours worked
 6 suffice even without a corresponding allocation of fees among counsel. *See Staton*,
 7 327 F.3d at 963 n.15. Thus, the Court **OVERRULES** Santiago's objections.

8 **4. Objection of Dorothy Cicero**

9 Objector Cicero claims that her family eats more than 3 boxes of cereal a
 10 month and thus that she should be compensated for 54 boxes. But any settlement is
 11 necessarily "an amalgam of delicate balancing, gross approximations and rough
 12 justice." *Officers for Justice*, 688 F.2d at 625. And "the question whether a
 13 settlement is fundamentally fair . . . is different from the question whether the
 14 settlement is perfect in the estimation of the reviewing court." *Facebook*, 696 F.3d
 15 at 819. Cicero's dissatisfaction based on circumstances unique to her and her
 16 family cannot undermine the overall fairness of the settlement to the class as a
 17 whole in light of the significant risks posed by further litigation. *See Smith*, 2013
 18 WL 163293, at *4 ("the proposed settlement [is not] to be judged against a
 19 hypothetical or speculative measure."). Thus, the Court **OVERRULES** Cicero's
 20 objection.

21 **5. Objection by Jeremy Sagaribay**

22 Objector Sagaribay does not object on behalf of the class, but rather objects
 23 to Defendant Kellogg Co. paying anything at all without Plaintiffs' claims being
 24 first proven at trial. [Doc. No. 113-1 at 25.] But in reviewing the proposed
 25 settlement, the Court is a fiduciary to absent class members, not Defendant. *See*,
 26 *e.g., Wiesmueller v. Kosobucki*, 2009 WL 4667576, at *4 (W.D. Wisc. Dec. 2,
 27 2009) (notwithstanding "the judicial duty under Rule 23 to insure that class
 28 counsel can adequately represent the interests of the class," courts owe "no such

duty to defendants, who may protect their own interests.”). Accordingly, objections on behalf of Defendant are irrelevant and cannot undermine final approval. Thus, the Court **OVERRULES** Sagaribay’s objections.

6. Objection by Jay Kutchka

Objector Kutchka objects that the approved notice program is insufficient because he has eaten Kellogg cereal for years and did not know of this litigation until recently. [Doc. No. 113-1 at 19-21.] No notice of pending litigation is required; only notice of pending settlement is required. *See* Fed. R. Civ. P. 23. Kutchka plainly received notice of the settlement. Moreover, Rule 23 only requires that the notice be the “best practicable under the circumstances.” Fed. R. Civ. P. 23(c)(2)(B). It need not be perfect. *Browning v. Yahoo! Inc.*, 2007 WL 4105971, at *7 (N.D. Cal. Nov. 16, 2007) (“For approval, the notice need not have been perfect.”). Here, the parties implemented a notice program with the assistance of an experienced administrator that included print advertising, online banner advertising, press releases to print, broadcast, television, and online media, and a settlement website because individual notice was not possible. [See Doc. Nos. 90; 101.] This extensive notice program appears sufficient and warranted under the circumstances. Thus, the Court **OVERRULES** Kutchka’s objections.

D. No Suggestion Of Collusion

Although the Court expressed skepticism in its preliminary approval order regarding the revised settlement value as compared to the corresponding fee request, that skepticism has been allayed. The Court was concerned that the combined attorneys’ fee request and claims administration costs appeared unchanged from the last settlement, notwithstanding a significant drop in total value to the class. But Plaintiffs’ final approval briefing and supporting declarations make clear that the seemingly unchanged total amount reflects the increased cost of expanded claims notice administration rather than static fees. In fact, the requested attorneys’ fees are 50% less than provided under the initial

1 settlement. [*See, e.g.*, Doc. No. 101-1 at 10-11 (\$1 million present fee request
 2 versus \$2 million dollar fee provision under the initial settlement).] With the
 3 Court’s concerns allayed, no aspect of the settlement suggests collusion. Rather the
 4 present settlement was reached through mediation before the Honorable Richard
 5 Haden, [*see* Doc. No. 101-2 at 6], and neither the requested attorneys’ fees nor the
 6 requested incentive awards appear unreasonable, [*see infra*]. Nor have even the few
 7 objectors suggested collusion. [*Cf.* Doc. No. 102 (Henderson Obj. (“This objection
 8 does not argue that the settlement is a product of collusion.”).] At bottom, “the
 9 circumstances and extent of the parties’ negotiations suggest fundamental fairness
 10 and thus weigh in favor of approval.” *Smith*, 2013 WL 163293, at *4.

11 Thus, the Court **OVERRULES** all objections and **GRANTS** final approval
 12 of the settlement.

13 **II. Class Certification**

14 With its preliminary settlement approval order, the Court preliminarily
 15 certified the following settlement class:

16 All persons or entities in the United States who purchased Frosted
 17 Mini-Wheats branded cereal from January 28, 2008, up to and
 18 including October 1, 2009. Excluded from the Class are Kellogg’s
 19 employees, officers, directors, agents, and representatives and those
 20 who purchased Frosted Mini-Wheats for the purpose of re-sale.
 21 [Doc. No. at .] Only one objector, Santiago, contests the propriety of class
 22 certification, and he does so in utterly conclusory fashion. [*See* Doc. No. 105 (one
 23 sentence objection to class certification providing no specifics or reasoning).]
 24 Nothing in any of the objections or final approval briefing undermines the Court’s
 25 preliminary findings in regard to class certification. Accordingly, the Court
 26 **GRANTS** final certification of this settlement class.

27 **III. Class Counsel’s Requests for Fees, Expenses, and Incentive Awards**

28 Out of the \$4 million settlement fund, class counsel seeks an award of \$1

million in attorneys' fees and expenses, approximately \$900,000 in class claims notice and administration costs, and \$5,000 incentive awards to class representatives Koz and Dennis. [See Doc. No. 101 at 11.]

A. Class Counsel's Fees and Expenses

Because "[t]his action asserts California claims premised on diversity jurisdiction," "the Court applies California law to determine both the right to and method for calculating fees." *Smith*, 2013 WL 163293, at *5. "Under California law, . . . in cases such as this, where the class benefit can be monetized with a reasonable degree of certainty, a percentage of the benefit approach may be used." *Id.* (citing *In re Consumer Privacy Cases*, 175 Cal. App. 4th 545, 557-58 (2009)). "Under the percentage method, California has recognized that most fee awards based on either a lodestar or percentage calculation are 33 percent and has endorsed the federal benchmark of 25 percent." *Id.*; see also *In re Consumer Privacy Cases*, 175 Cal. App. 4th at 556 n. 13. "As to the settlement fund amount: '[t]he total fund c[an] be used to measure whether the portion allocated to the class and to attorney fees is reasonable.'" *Id.* (citing Manual for Complex Litigation (4th ed. 2008) § 21.71, p. 525). "Always, the ultimate goal is to award a reasonable fee." *Id.* (internal citation omitted); see also *Hartless*, 273 F.R.D. at 645.

Here, the settlement confers a total financial benefit to the class in excess of \$4,000,000, including both a non-reversionary cash fund of \$4,000,000 and injunctive relief that will benefit both class members and non-class consumers going forward. In light of the results achieved, the requested fees appear reasonable. The settlement provides for, and class counsel here seeks, an award of \$1,000,000 in fees which constitutes 25% of the cash fund. This percentages compares favorably with both California (33%) and federal (25%) benchmarks and the requested fee compares well with a lodestar cross-check as well. Applying class counsel's hourly rates ranging from \$145 (for law clerks) to \$950 (for name partners), which fall within typical rates for attorneys of comparable experience,

the total lodestar totals \$975,526.25. [See, e.g., Doc. No. 101-2 at 10 (summary class counsel hourly rates and hours expended).] The \$1 million requested fee is essentially at cost without any multiplier and thus appears reasonable, perhaps even a discount, given the risks borne by counsel proceeding on contingency, the duration and complexity of the case, and the substantial benefit realized for the class. Cf. *Sproul v. Astrue*, 2013 WL 394056, at *2 (S.D. Cal. Jan. 30, 2013) (“Courts are loathe to penalize experienced counsel for efficient representation under contingency agreements.”); see also *Singer*, 2010 WL 2196104, at *8 (awarding 33 1/3% fee in class action); *Ingalls v. Hallmark Mktg. Corp.*, Case No. 08cv4342, Doc. No. 77 (C.D. Cal. Oct. 16, 2009) (awarding 33.33% fee on a \$5.6 million class action); *Birch v. Office Depot, Inc.*, Case No. 06cv1690, Doc. No. 48 (S.D. Cal. Sept. 28, 2007) (awarding a 40% fee on a \$16 million class action); *Rippee v. Boston Mkt. Corp.*, Case No. 05cv1359, Doc. No. 70 (S.D. Cal. Oct. 10, 2006) (awarding a 40% fee on a \$3.75 million class action).

The requested claims notice and administration costs also appear reasonable. Class counsel seeks \$908,665 in claims notice and administration costs. [See Doc. No. 101-1 at 11.] These amounts are within that contemplated by the settlement, have been endorsed by experienced counsel and claims administration consultants involved in this case, and are thus presumed reasonable. See *Smith*, 2013 WL 163293, at *4 (“costs and expenses incurred by experienced counsel in creating or preserving a common fund [are] presumed reasonable”). Moreover, the widely disparate, nationwide class of potential claimants in this case both necessitates, and justifies the increased cost of, the broad and diverse notice campaign contemplated and executed under the present settlement. Cf. *Malta v. Fed. Home Loans Mortg. Corp.*, 2013 WL 444619, at *7 (S.D. Cal. Feb. 5, 2013) (approving nearly \$3 million in claims notice and administration costs); *In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177-78 (S.D. Cal. 2007) (finding similar costs and expenses “necessary” to class action litigation).

1 Accordingly, the Court **GRANTS** class counsel's fee and expense request.

2 **B. Incentive Awards to Class Representatives**

3 The two class representatives, Koz and Dennis, each seek an incentive
4 payment of \$5,000 for their service in prosecuting this action on behalf of the
5 class. [See Doc. No. 101-1 at 51-52.] "Incentive awards are fairly typical in class
6 action cases." *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958 (9th Cir.
7 2009). "Such awards are discretionary . . . and are intended to compensate class
8 representatives for work done on behalf of the class, to make up for financial or
9 reputational risk undertaken in bringing the action." *Id.* "The criteria courts may
10 consider in determining whether to make an incentive award include: 1) the risk to
11 the class representative in commencing suit, both financial and otherwise; 2) the
12 notoriety and personal difficulties encountered by the class representative; 3) the
13 amount of time and effort spent by the class representative; 4) the duration of the
14 litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class
15 representative as a result of the litigation." *Van Vranken v. Atlantic Richfield Co.*,
16 901 F. Supp. 294, 299 (N.D. Cal. 1995) (citations omitted).

17 Here, all factors weigh in favor of the awards sought. This consumer class
18 action risked the class representatives' reputations and their exposure to joint and
19 several liability for counterclaims. *See Martin v. AmeriPride Services, Inc.*, 2011
20 WL 2313604, at *4 (S.D. Cal. 2011) (acknowledging professional and legal risks
21 posed to class representatives in class actions). Further, both class representatives
22 were active in assisting class counsel in a wide variety of respects, from initiating
23 the case, reviewing pleadings, making themselves available for deposition and
24 possible trial testimony, to providing factual background and support, and
25 communicating with class counsel in regard to the case. [See, e.g., Doc. No. 101-1
26 at 51-52; 101-4.] Class representatives' efforts and involvement have thus
27 protected and benefitted the class as a whole. *See Hartless*, 273 F.R.D. at 647
28 (class representative involvement "protect[s] the interests of the class" and thus

warrants incentive awards). Given Koz and Dennis's record of involvement despite the risks posed, the requested incentive awards are warranted. *Van Vranken*, 901 F.Supp. at 300.

Moreover, the amount of the incentive payments requested, \$5,000, is well within if not below the range awarded in similar cases. *See Smith*, 2013 WL 163293, at *5 (\$15,000 award); *Singer*, 2010 WL 2196104, at *9 (\$25,000 award); *Cicero v. DirectTV*, 2010 WL 2991486, at *5 (C.D. Cal. July 27, 2010) (\$5,000 award); *Van Vranken*, 901 F. Supp. at 300 (\$50,000 incentive award). Thus, the Court **GRANTS** the requested class representative incentive awards.


CONCLUSION

For the foregoing reasons, the Court hereby:

- **GRANTS** final settlement approval;
- **GRANTS** certification of the settlement class;
- **GRANTS** class counsel's request for attorneys' fees and costs;
- **GRANTS** the requested incentive awards to the class representatives;
- **OVERRULES** all objections; and
- **DENIES** objector's request for attorneys' fees.

IT IS SO ORDERED.

DATED: November 14, 2013


M. James Lorenz
United States District Court Judge

COPY TO:

HON. WILLIAM MCCURINE, JR.
UNITED STATES MAGISTRATE JUDGE
ALL PARTIES/COUNSEL

EXHIBIT 6

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

DENNIS PETERSEN, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

CJ AMERICA, INC., Inc.,

Defendant.

Case No. 3:14-CV-2570-DMS-JLB

**SUPERSEDING STIPULATION
OF SETTLEMENT**

Judge: Hon. Dana M. Sabraw

1 Subject to Court approval pursuant to Rule 23 of the Federal Rules of Civil
2 Procedure, Plaintiff Dennis Petersen, on behalf of himself and each of the Class
3 Members, and Defendant CJ America, Inc. (collectively, the “Parties”), by and
4 through their respective counsel, authorized to settle this Action on their behalf, in
5 consideration for and subject to the promises, terms, and conditions contained in this
6 Superseding Stipulation of Settlement (“Agreement”), which modifies and
7 supersedes, in full, the Stipulation of Settlement previously executed by the Parties on
8 October 30, 2015, hereby stipulate and agree, as follows:

9 **I. RECITALS**

10 A. On October 28, 2014, Plaintiff Dennis Petersen filed a proposed
11 nationwide class action lawsuit against CJ America, Inc. (“CJ”) in the United States
12 District Court for the Southern District of California, Case No. 14-CV-2570-DMS-
13 JLB, which asserted claims for violations of California’s False Advertising Law (Cal.
14 Bus. & Prof. Code §§ 17500, *et seq.*) (the “FAL”), California’s Unfair Competition
15 Law (Cal. Bus. & Prof. Code §§ 17200, *et seq.*) (the “UCL”), the California
16 Consumers Legal Remedies Act (Cal. Civ. Code §§ 1750, *et seq.*) (“CLRA”), and for
17 breach of express warranty, that related to the advertising, labeling, and marketing of
18 the Subject Products as “NO MSG ADDED.”

19 B. On February 11, 2015, CJ filed a motion to dismiss or strike the above-
20 referenced complaint, which the Court granted in part (as to CJ’s motion to strike
21 Plaintiff’s claims for injunctive relief) and denied in part (as to the remaining claims
22 in the complaint). Accordingly, on August 18, 2015, Plaintiff filed an Amended
23 Class Action Complaint, which is the operative pleading in the Action.

24 C. Before entering into this Agreement, Plaintiff, by and through his
25 respective counsel, conducted a thorough examination, investigation, and evaluation
26 of the relevant law, facts, and allegations to assess the merits of the claims and
27 potential claims to determine the strength of liability, potential remedies, and all
28 defenses thereto.

1 D. Plaintiff, by and through his respective counsel, conducted an extensive
2 investigation into the facts and law relating to the matters alleged in the Action,
3 including (i) label design and product formulation; (ii) the marketing and advertising
4 of the products; and (iii) sales, pricing, and financial data. This investigation
5 included pretrial discovery, an inspection of the CJ products, the evaluation of
6 documents and information provided by CJ, as well as legal research as to the
7 sufficiency of the claims and appropriateness of class certification.

8 E. This Agreement was reached as a result of extensive arm's-length
9 negotiations between the Parties and their counsel, occurring over the course of two
10 days of in-person mediation sessions with the Honorable Jill L. Burkhardt. Before
11 and during these mediations, the Parties had an arm's-length exchange of sufficient
12 information to permit Plaintiff and his counsel to evaluate the claims and potential
13 defenses and to meaningfully conduct informed settlement discussions.

14 F. Plaintiff, as class representative, believes that the claims settled herein
15 have merit, but he and his counsel recognize and acknowledge the expense and length
16 of continued proceedings necessary to prosecute the claims through trial, appeal, and
17 ancillary actions. Plaintiff and his counsel have also taken into account the uncertain
18 outcome and risk of any litigation, as well as the difficulties and delay inherent in
19 such litigation, and they believe that the settlement set forth in this Agreement
20 confers important benefits upon the Class Members (defined herein). Based upon
21 their evaluation, Plaintiff and his counsel have determined that the settlement set
22 forth in this Agreement is in the best interests of the Class.

23 G. Based upon their review, investigation, and evaluation of the facts and
24 law relating to the matters alleged in the pleadings, Plaintiff and Class Counsel, on
25 behalf of Plaintiff and the Class, have agreed to settle the Action pursuant to the
26 provisions of this Agreement, after considering, among other things: (i) the benefits
27 to the Class Members under the terms of this Agreement; (ii) the risks, costs, and
28 uncertainty of protracted litigation, especially in complex actions such as this, as well

1 as the difficulties and delays inherent in such litigation; and (iii) the desirability of
2 consummating this Agreement promptly in order to provide effective relief to Class
3 Members;

4 H. CJ denied and continues to deny all charges of wrongdoing or liability
5 against it arising out of any of the conduct, statements, acts or omissions alleged, or
6 that could have been alleged, in the Action. CJ specifically denies Plaintiff's
7 allegation that the Subject Products contained MSG at any time, or that CJ labeled
8 and marketed the Subject Products in a manner that was false or misleading as to
9 their MSG content. As a result, CJ believes that it is not and cannot be held liable for
10 any of the alleged conduct, statements, acts, or omissions at issue in the Action. CJ
11 also has denied and continues to deny, *inter alia*, allegations that Plaintiff, the Class,
12 or any other member of the Class has suffered damage or harm by reason of any
13 alleged conduct, statement, act, or omission of CJ. CJ further has denied and
14 continues to deny that the Action meets the requisites for certification as a class
15 action under federal or California law, except for purposes of settlement, or that the
16 evidence is sufficient to support a finding of liability on an individual or classwide
17 basis. Nonetheless, CJ has concluded that further defense of the Action would be
18 protracted and expensive, and that it is desirable that the Action be fully and finally
19 settled in the manner and upon the terms and conditions set forth in the Agreement.
20 CJ also has taken into account the uncertainty and risks inherent in any litigation. CJ,
21 therefore, has determined that it is desirable and beneficial to it that the Action be
22 settled in the manner and upon the terms and conditions set forth in this Agreement.

23 I. This Agreement, and the proposed certification, for settlement purposes
24 only, of the Class, effectuates the resolution of disputed claims and is for settlement
25 purposes only.

26 NOW THEREFORE, it is hereby STIPULATED AND AGREED, by and
27 between the Parties, through their respective counsel, that: (a) the Action and all
28 Released Claims be fully and finally compromised, settled, and released upon final

1 settlement approval by the Court after the hearings as provided for in this Agreement;
 2 and (b) upon such approval by the Court, a Final Order and Final Judgment,
 3 substantially in the form attached hereto as Exhibits A and B, respectively, be entered
 4 dismissing the Action with prejudice upon the following terms and conditions:

5 **II. DEFINITIONS**

6 As used in this Agreement and the attached exhibits, the following terms have
 7 the following meanings, unless this Agreement specifically provides otherwise.
 8 Other capitalized terms used in this Agreement but not defined below shall have the
 9 meaning ascribed to them in this Agreement and the exhibits attached hereto:

10 1. “Action” shall mean the proposed class action lawsuit entitled *Dennis*
 11 *Petersen vs. CJ America, Inc.*, Case No. 14-CV-2570-DMS-JLB (and previously
 12 entitled *Dennis Peterson vs. CJ America, Inc.*, Case No. 14-CV-2570-DMS-JLB),
 13 pending in the United States District Court for the Southern District of California.

14 2. “Agreement” means this Superseding Stipulation of Settlement and its
 15 exhibits, attached hereto and incorporated herein, including all subsequent
 16 amendments agreed to in writing by the Parties and any exhibits to such amendments.

17 3. “Attorneys’ Fees and Expenses” means such funds as may be awarded
 18 by the Court to Plaintiff’s Counsel to compensate Plaintiff’s Counsel for their fees
 19 and expenses in connection with the Action and the Settlement, as described more
 20 particularly in Section VI of this Agreement.

21 4. “Authorized Claimant” means a member of the Class who timely
 22 submits a valid Claim Form in accordance with the terms of this Agreement.

23 5. “CJ” means CJ America, Inc., and includes, without limitation all related
 24 entities, including but not limited to parents, subsidiaries, agents, employees and
 25 assigns, predecessors, successors and affiliates of CJ America, Inc. and its related
 26 entities.

27 6. “Claim Deadline,” means the final time and date by which a valid Claim
 28 Form must be postmarked or received by the Settlement Administrator in order for a

1 Class Member to be eligible for any of the settlement consideration contemplated in
 2 this Agreement. The Claim Deadline shall be clearly set forth in the Court orders
 3 granting preliminary and final approval of the Settlement, the Long Form Notice and
 4 Summary Notice, on the Settlement Website, and on the front page of the Claim
 5 Form.

6 7. “Claim Form” means the proof of claim and release form(s),
 7 substantially in the form attached hereto as Exhibit C, the format of which may be
 8 modified to meet the requirements of the Settlement Administrator, to be submitted
 9 by Class Members seeking to recover settlement consideration pursuant to this
 10 Agreement.

11 8. “Class” means all persons in the United States and United States
 12 Territories who purchased at retail one or more of the Subject Products during the
 13 Class Period. Specifically excluded from the Class are: (a) CJ its employees,
 14 principals, officers, directors, agents, affiliated entities legal representatives,
 15 successors and assigns; (b) the judges to whom the Action has been or is assigned and
 16 any members of their immediate families; (c) those who purchased the Subject
 17 Products for the purpose of re-sale; and (d) all persons who have filed a timely
 18 Request for Exclusion from the Class.

19 9. “Class Member(s)” means any member of the Class.

20 10. “Class Notice” means, collectively, the Long Form Notice and Summary
 21 Notice provided to the Class as provided herein and directed by the Court, and the
 22 Internet advertising to be facilitated by the Settlement Administrator.

23 11. “Class Period” means the period from November 19, 2012 up to and
 24 including the date on which the Court enters the Preliminary Approval Order.

25 12. “Court” means the United States District Court for the Southern District
 26 of California and all judges assigned to the Action.

27 13. “Defense Counsel” means the law firm of O’Melveny & Myers LLP.

28 14. “Effective Date” means the first date after which all of the following

1 events and conditions have been met or have occurred:

2 (a) The Court has entered the Preliminary Approval Order;
 3 (b) The Court has entered the Final Order and Final Judgment;
 4 (c) Unless the Parties otherwise agree in writing to waive all or any
 5 portions of the following provision, there has occurred: (i) in the event there is a
 6 properly and timely filed objection to entry of the Final Order and Final Judgment,
 7 the expiration (without the filing or noticing of an appeal) of the time to appeal from
 8 the Final Order and Final Judgment; (ii) if the Final Order and Final Judgment is
 9 appealed, the final dismissal of an appeal from the Final Order and Final Judgment or
 10 the affirmance on appeal of the Final Order and Final Judgment in its entirety; (iii) if
 11 a ruling or decision is entered by an appellate court affirming of the Final Order and
 12 Final Judgment, the time to petition for a writ of certiorari with respect to such ruling
 13 or decision has expired; or (iv) if a petition for a writ of certiorari with respect to the
 14 Final Order and Final Judgment is filed, the petition has been denied or dismissed or,
 15 if granted, has resulted in affirmance of the Final Order and Final Judgment in
 16 substantial form.

17 15. “Fairness Hearing” means the hearing that is to take place after the entry
 18 of the Preliminary Approval Order and after the Notice Date for purposes of: (a)
 19 determining the fairness, adequacy and reasonableness of the Agreement in
 20 accordance with applicable jurisprudence; (b) if the Court so decides, entering the
 21 Final Order and Final Judgment and dismissing the Action with prejudice; (c) ruling
 22 upon an application by Class Counsel for Attorneys’ Fees and Expenses and
 23 Plaintiff’s Incentive Award. The Parties shall request that the Court schedule the
 24 Fairness Hearing for a date that is in compliance with the provisions of 28 U.S.C.
 25 § 1715(d).

26 16. “Final Order and Final Judgment” means the Court’s order and judgment
 27 fully and finally approving the Settlement and dismissing the Action with prejudice,
 28 substantially in the form attached hereto as Exhibits A and B.

1 17. “Long Form Notice” means the long form notice of settlement,
2 substantially in the form attached hereto as Exhibit E.

3 18. “Notice Date” means the first date upon which the Class Notice is
4 disseminated.

5 19. “Objection Deadline” means the date, to be set by the Court, by which
6 Class Members must file objections, if any, to the Agreement in accordance with
7 Section IX of this Agreement. The Parties shall request that the Court set an
8 Objection Deadline coinciding with the Opt Out Date.

9 20. “Opt Out Date” means the date, to be set by the Court, by which a
10 Request For Exclusion must be sent to Settlement Administrator in order for a Class
11 Member to be excluded from the Settlement Class. The Parties shall request that the
12 Court set an Opt Out Date coinciding with the Objection Deadline.

13 21. “Parties” means Plaintiff and CJ, collectively, as each of those terms are
14 defined in this Agreement.

15 22. “Plaintiff” means Dennis Petersen.

16 23. “Plaintiff’s Counsel” and/or “Class Counsel” means the law firms of
17 Finkelstein Thompson LLP and Glancy Prongay & Murray LLP.

18 24. “Preliminary Approval Order” means the order, substantially in the form
19 attached hereto as Exhibit D, conditionally certifying, for settlement purposes only,
20 the Class; appointing Plaintiff’s Counsel as counsel for the Class; setting the date of
21 the Fairness Hearing; preliminarily approving this Agreement; approving the Class
22 Notice program and Claim Form; and setting dates for the Claim Deadline, Opt Out
23 Date, Objection Deadline, and Notice Date.

24 25. “Proof of Purchase” means receipts, Annie Chun’s packaging, or other
25 documentation from a third-party commercial source reasonably establishing the
26 purchase during the Class Period of one or more of the Subject Products. Packaging,
27 including bar codes or UPCs, shall constitute Proof of Purchase only if the Subject
28 Product(s) claimed to have been purchased by the Class Member can be identified

1 from the packaging submitted.

2 26. (a) “Released Claims” means and includes any and all claims,
3 demands, rights, damages, obligations, suits, debts, liens, and causes of action under
4 common law or statutory law (federal, state, or local) of every nature and description
5 whatsoever, ascertained or unascertained, suspected or unsuspected, existing or
6 claimed to exist, including Unknown Claims as of the Notice Date by Plaintiff and all
7 Class Members (and Plaintiff’s and Class Members’ respective heirs, guardians,
8 executors, administrators, representatives, agents, attorneys, partners, successors,
9 predecessors-in-interest, and assigns) that:

10 (i) were asserted or that could have been reasonably asserted in the Action
11 against the Released Parties (as hereinafter defined), or any of them, and that
12 arise out of or are related in any way to any or all of the acts, omissions, facts,
13 matters, transactions, or occurrences that were or could have been directly or
14 indirectly alleged or referred to in the Action (including, but not limited to,
15 alleged violations of Cal. Bus. & Prof. Code § 17200 *et seq.*, Cal. Bus. & Prof.
16 Code § 17500 *et seq.*, Cal. Civ. Code § 1750 *et seq.*, and breach of express
17 warranty); or

18 (ii) relate in any way to communications, disclosures, representations,
19 statements, claims, nondisclosures and/or omissions, packaging, advertising,
20 labeling, and/or marketing of or concerning the Subject Products related to the
21 alleged MSG or glutamate content of the Subject Products, including, but not
22 limited to “NO MSG ADDED” and “100% all natural ingredients,” made
23 through any medium.

24 (b) Notwithstanding any other provision of this Agreement, “Released
25 Claims” do not include claims for personal injuries. Plaintiff and Class Members are
26 not releasing any claims, demands, rights, damages, obligations, suits, debts, liens,
27 and causes of action relating to personal injuries.

28 27. “Released Parties” shall be defined and construed broadly to effectuate

a complete and comprehensive release, and means CJ and any entity that made, manufactured, tested, inspected, audited, certified, purchased, distributed, supplied, licensed, transported, donated, marketed, advertised, promoted, sold or offered for sale any Subject Product, or contributed to any labeling, sale, distribution, supply, advertising, marketing, or packaging of any Product, including all of their respective predecessors, successors, assigns, parents, subsidiaries, divisions, departments, and affiliates, and any and all of their past, present and future officers, directors, employees, shareholders, partners, principals, agents, servants, successors, attorneys, insurers, representatives, licensees, licensors, customers, subrogees and assigns. It is expressly understood that, to the extent a Released Party is not a Party to this Agreement, all such Released Parties are intended third party beneficiaries of this Agreement.

28. “Releasing Parties” means Plaintiff, Plaintiff’s Counsel, and all Class Members, and any person claiming by or through each Class Member, including but not limited to spouses, children, wards, heirs, devisees, legatees, invitees, employees, associates, co-owners, attorneys, agents, administrators, predecessors, successors, assignees, representatives of any kind, shareholders, partners, directors, or affiliates.

29. “Request For Exclusion” means the written communication that must be sent to the Settlement Administrator and postmarked on or before the Opt Out Date by a Class Member who wishes to be excluded from the Class.

30. “Residual Fund” means the balance remaining in the Settlement Fund after payment of (a) any and all Settlement Administration Expenses, (b) the incentive award to the Plaintiff as approved by the Court (“Incentive Award”), (c) the Attorneys’ Fees and Expenses, and (d) all redeemed cash awards.

31. “Settlement” means the settlement embodied in this Agreement, including all attached exhibits (which are an integral part of this Agreement and are incorporated in their entirety by reference).

32. “Settlement Administrator” means Angeion Group.

1 33. “Settlement Administration Expenses” means the expenses incurred by
2 the Settlement Administrator assisting with the implementation of this Agreement,
3 which shall primarily result from administering the notice program and processing all
4 claims made by Class Members.

5 34. “Settlement Fund” means the one million five hundred thousand dollar
6 (\$1,500,000.00) common fund discussed in Section IV of this Agreement, that CJ
7 will pay as full and final consideration for the settlement of the Action and the release
8 of all claims as provided in this Agreement, and that shall represent CJ’s total
9 financial commitment under the Settlement.

10 35. “Subject Products” means the following products sold by CJ during the
11 Class Period under Annie Chun’s Noodle Bowl, Soup Bowl, and Ramen House
12 product lines, that were labeled “NO MSG ADDED”: Chinese Chicken Soup Bowl,
13 Hot & Sour Soup Bowl, Korean Kimchi Soup Bowl, Miso Soup Bowl, Thai Tom
14 Yum Soup Bowl, Udon Soup Bowl, Vietnamese Pho, Garlic Scallion Noodle Bowl,
15 Korean Sweet Chili Noodle Bowl, Kung Pao Noodle Bowl, Pad Thai Noodle Bowl,
16 Peanut Sesame Noodle Bowl, Teriyaki Noodle Bowl, Soy Ginger Ramen, Spicy
17 Chicken Ramen, and Spring Vegetable Ramen.

18 36. “Summary Notice” means the summary notice of the proposed
19 Settlement, substantially in the form attached hereto as Exhibit F.

20 37. “Unknown Claims” means any and all Released Claims that a Class
21 Member, or anyone acting on behalf of or in the Class Member’s interest, does not
22 know or suspect to exist against any of the Released Parties which, if known, might
23 have affected his or her decision to enter into or to be bound by the terms of this
24 Agreement. The Plaintiff and Class Members acknowledge that they may hereafter
25 discover facts in addition to or different from those that they now know or believe to
26 be true concerning the subject matter of this Agreement, but nevertheless fully,
27 finally, and forever settle and release any and all Released Claims, known or
28 unknown, suspected or unsuspected, contingent or non-contingent, which now exist,

may hereafter exist, or heretofore have existed which arise from, or in any way relate to, the labeling, packaging, sale, distribution, supply, marketing, or advertising, regardless of medium, of any Subject Product, without regard to subsequent discovery or existence of such different or additional facts concerning each of the Released Parties. Notwithstanding this paragraph or any other paragraph herein, this Agreement shall not be deemed to release any individual, class, representative, group or collective claim, liability, right, demand, suit, matter, obligation, damage, loss, action or cause of action, of any kind or description that a Releasing Party has or may have for a personal injury not caused by the labeling, packaging, sale, distribution, supply, marketing, or advertising of the Subject Products.

III. SUBMISSION OF THE SETTLEMENT TO THE COURT FOR REVIEW AND APPROVAL

38. As soon as is practicable following the signing of this Agreement, Class Counsel shall apply to the Court for entry of the Preliminary Approval Order (substantially in the form attached as Exhibit D), for the purpose of, among other things:

(a) Approving the Class Notice, including the Long Form Notice and Summary Notice, substantially in the form set forth at Exhibits E and F;

(b) Finding that the requirements for preliminary certification of the Class have been satisfied, appointing Plaintiff as the representative of the Class and his counsel as Class Counsel, and preliminarily approving the Settlement as being within the range of reasonableness such that the Class Notice should be provided pursuant to this Agreement;

(c) Scheduling the Fairness Hearing on a date ordered by the Court, provided in the Preliminary Approval Order, and in compliance with applicable law, to determine whether the Settlement should be approved as fair, reasonable, and adequate, and to determine whether a Final Order and Final Judgment should be entered dismissing the Action with prejudice.

1 (d) Determining that the notice of the Settlement and of the Fairness
2 Hearing, as set forth in this Agreement, complies with all legal requirements,
3 including but not limited to the Due Process Clause of the United States Constitution;

4 (e) Preliminarily approving the form of the Final Order and Final
5 Judgment;

6 (f) Appointing Angeion Group as the Settlement Administrator;

7 (g) Directing that Class Notice shall be given to the Class as provided
8 in Section V of this Agreement.

9 (h) Providing that Class Members will have until the Claim Deadline
10 to submit Claim Forms;

11 (i) Providing that any objections by any Class Member to the
12 certification of the Class and the proposed Settlement contained in this Agreement,
13 and/or the entry of the Final Order and Final Judgment, shall be heard and any papers
14 submitted in support of said objections shall be considered by the Court at the
15 Fairness Hearing only if, on or before the Objection Deadline set by the Court, such
16 objector files with the Court a written objection and notice of the objector's intention
17 to appear, and otherwise complies with the requirements in Section IX of this
18 Agreement;

19 (j) Establishing dates by which the Parties shall file and serve all
20 papers in support of the application for final approval of the Settlement and/or in
21 response to any valid and timely objections;

22 (k) Providing that all Class Members will be bound by the Final
23 Order and Final Judgment dismissing the Action with prejudice unless such members
24 of the Class timely file valid written Requests for Exclusion in accordance with this
25 Agreement and the Class Notice;

26 (l) Providing that Class Members wishing to exclude themselves
27 from the Settlement will have until the Opt Out Date to submit a valid written
28 Request for Exclusion to the Settlement Administrator, in accordance with the

1 procedures set forth in Section IX of this Agreement;

2 (m) Directing the Parties, pursuant to the terms and conditions of this
3 Agreement, to take all necessary and appropriate steps to establish the means
4 necessary to implement the Settlement;

5 (n) Pending the Fairness Hearing, staying all proceedings in the
6 Action, other than proceedings necessary to carry out or enforce the terms and
7 conditions of this Agreement and the Preliminary Approval Order; and

8 (o) Pending the Fairness Hearing, enjoining Plaintiff and Class
9 Members, or any of them, from commencing or prosecuting, either directly or
10 indirectly, any action in any forum (state or federal) asserting any Released Claims.

11 39. Following the entry of the Preliminary Approval Order, the Class Notice
12 shall be given and published in the manner directed and approved by the Court, as set
13 forth in fuller detail in Section IV of this Agreement.

14 40. At the Fairness Hearing, the Parties shall seek to obtain from the Court a
15 Final Order and Final Judgment in the form substantially similar to Exhibits A and
16 Exhibit B, respectively. The Final Order and Final Judgment shall, among other
17 things:

18 (a) Find that the Court has personal jurisdiction over all Class
19 Members, the Court has subject matter jurisdiction over the claims asserted in the
20 Action, and that venue is proper;

21 (b) Finally approve the Agreement and the Settlement pursuant to
22 Rule 23 of the Federal Rules of Civil Procedure;

23 (c) Certify the Class for settlement purposes only;

24 (d) Find that the notice to the Class complied with all laws and
25 requirements, including, but not limited to, the Due Process Clause of the United
26 States Constitution;

27 (e) Incorporate and effectuate the release set forth in the Agreement
28 and make the Release effective as of the date of the Final Order and Final Judgment;

(f) Issue the injunctive relief described in Section IV.B of this Agreement;

(g) Authorize the Parties to implement the terms of the Settlement;

(h) Dismiss the Action with prejudice; and

(i) Notwithstanding the aforementioned dismissal with prejudice, retain jurisdiction relating to the administration, consummation, enforcement, and interpretation of the Agreement, the Final Order and Final Judgment, any final order approving Attorneys' Fees and Expenses and Incentive Award, and for any other necessary purpose.

41. The Parties acknowledge that each intends to implement the terms of this Agreement. The Parties shall, in good faith, cooperate and assist with and undertake all reasonable actions and steps to accomplish all required events on the schedule set by the Court, and shall use reasonable efforts to implement all terms and conditions of this Agreement. In the event the Court does not preliminarily or finally approve this Agreement, the Parties further agree to continue to cooperate in good faith in an attempt to address any deficiencies raised by the Court in an expeditious manner.

IV. THE SETTLEMENT CONSIDERATION

A. Settlement Fund and Awards to Class Members

42. Total Financial Commitment: CJ's total financial commitment under the Settlement shall be one million five hundred thousand dollars (\$1,500,000.00). This amount shall include any Court ordered Attorneys' Fees and Expenses, Plaintiff's Incentive Award, any and all Settlement Administration Expenses, and all cash awards to Class Members. All Settlement Administration Expenses will be paid by CJ to the Settlement Administrator as incurred and on terms to be negotiated between CJ and the Settlement Administrator.

43. Cash Awards: Class Members who (a) execute and submit a valid Claim Form on or before the Claim Deadline; (b) attest under penalty of perjury pursuant to 28 U.S.C. § 1746 that they purchased one or more of the Subject Products during the

1 Class Period; and (c) provide all required Proof of Purchase or other required
2 documentation (as necessary), and comply with all other conditions and requirements
3 specified herein, may receive a cash award as follows:

4 (a) Cash Awards: The relief to be provided to each Authorized
5 Claimant who submits a valid Claim Form on or before the Claim Deadline pursuant
6 to the terms and conditions of this Agreement, is a \$1.50 cash award for each Subject
7 Product the Authorized Claimant purchased during the Class Period, up to a
8 maximum of ten (10) claims (or \$15.00 in cash) if the Authorized Claimant does not
9 provide Proof of Purchase. Authorized Claimants who claim more than \$15.00 in
10 cash awards must submit Proof of Purchase establishing their purchase during the
11 Class Period of each Subject Product claimed in excess of ten (10) products.

12 (b) Timing of Awards: All Class Members who submit Claim Forms
13 shall be sent cash awards or, as applicable, a letter explaining the rejection of their
14 Claim Forms, within forty-five (45) calendar days of the Effective Date (the “Award
15 Issuance Date”). CJ shall pay the Settlement Administrator the aggregate value of all
16 cash awards to be distributed to Class Members no later than fifteen (15) calendar
17 days before the Award Issuance Date. All cash awards to Class Members will be in
18 the form of checks, and such checks will state that they must be redeemed within 120
19 calendar days of the Award Issuance Date (the “Expiration Date”) or they will
20 become void.

21 44. Insufficient Funds: If the aggregate value of the cash rewards claimed
22 by Authorized Claimants pursuant to valid and timely Claim Forms exceeds the value
23 of the Net Settlement Fund (the remainder of the Settlement Fund after payment of all
24 Settlement Administration Expenses; any Incentive Award approved by the Court and
25 any court approved award of Attorneys’ Fees and Expenses), then the monetary value
26 of the awards to be provided to each Authorized Claimant shall be reduced on a *pro*
27 *rata* basis, such that the aggregate value of the awards does not exceed the Net
28 Settlement Fund. After the Expiration Date, the Settlement Administrator, in

consultation with the Parties as necessary, shall determine each Authorized Claimant's *pro rata* share based upon each Authorized Claimant's Claim Form and the aggregate value of the awards claimed by Authorized Claimants.

(a) Excess Funds: All remaining funds of CJ's total financial commitment of \$1,500,000.00 (if any), *see* Paragraph 34, after the payment of Settlement Administration Costs, any Award of Attorneys' Fees and Expenses, any Incentive Award, and cash awards to Class Members who submit valid and timely Claim Forms, shall comprise the Residual Fund, and shall be distributed as follows:

(i) Any funds remaining in the Net Settlement Fund after the payment of all cash awards shall comprise the Residual Fund.

(ii) Any cash awards that are not redeemed before the Expiration Date or that are returned to the Settlement Administrator as undeliverable after mailing to the Authorized Claimant at the address provided by the Authorized Claimant, will no longer be valid awards, and the value of such unredeemed awards shall be added to the Residual Fund and distributed in accordance with this Section. The Settlement Administrator shall provide the Parties with an identification of the rewards returned as undeliverable or not cashed within one hundred twenty (120) calendar days of the date issued and of the total value to be added to the Residual Fund.

(iii) No later than thirty (30) calendar days after the Expiration Date, the Residual Fund will be distributed *cy près* in the form of a cash donation to Consumers Union.

B. Injunctive Relief

45. In consideration for the Release contained in this Agreement, and as a result of the efforts of the Plaintiff and his counsel, for a period of three years after the Effective Date, CJ shall not order and/or print labels or packaging of the Subject Products bearing the phrase "NO MSG ADDED," and will otherwise not market

and/or advertise Subject Products shipped to distributors and/or retail customers after the Effective Date as “NO MSG ADDED.” Nothing in this Agreement shall prevent CJ from implementing the change referenced in this Paragraph (or other product changes) prior to the Effective Date. Plaintiff and Class Counsel agree, on behalf of themselves and all proposed Class Members, that this Agreement does not preclude CJ from making further changes to its product labels that: (a) CJ reasonably believes are necessary to comply with any statute, regulation, or other law of any kind; (b) are necessitated by product and/or ingredient changes, and/or that are necessary to ensure that CJ provides accurate descriptions of its products; or (c) are more detailed than those required by this Agreement.

V. NOTICE TO THE CLASS

46. The Parties shall jointly recommend and retain Angeion Group as the Settlement Administrator. Following the entry of the Preliminary Approval Order and the Court’s appointment of the proposed Settlement Administrator, the Settlement Administrator shall disseminate the Class Notice as specified in the Preliminary Approval Order and in this Section, in order to comply with all applicable laws and requirements, including, but not limited to, the Due Process Clause of the United States Constitution.

47. The Long Form Notice: The Long Form Notice, which shall be made available on the Settlement Website and to Class Members requesting a hard copy from the Settlement Administrator, shall be in a form substantially similar to the document attached to this Agreement as Exhibit E and shall comport to the following terms and requirements:

(a) General Terms: The Long Form Notice shall contain a plain and concise description of the nature of the Action and the proposed Settlement, including information on the definition of the Class, the identity of eligible Class Members, how the proposed Settlement would provide relief to Class Members, what claims are released under the proposed Settlement, and other relevant information.

(b) Opt Out Rights: The Long Form Notice shall inform Class Members that they have the right to opt out of the Settlement. The Long Form Notice shall provide the deadlines and procedures for exercising this right.

(c) Objection to Settlement: The Long Form Notice shall inform Class Members of their right to object to the proposed Settlement and appear at the Fairness Hearing. The Class Notice shall provide the deadlines and procedures for exercising these rights.

(d) Fees and Expenses: The Long Form Notice shall inform Class Members about the amounts being sought by Class Counsel as Attorneys' Fees and Expenses and Plaintiff's Incentive Award, and shall explain that the Attorneys' Fees and Expenses and Plaintiff's Incentive Award, in addition to amounts being made available for relief to Class Members, will be deducted from the Settlement Fund and be paid out of the Settlement Fund.

(e) Claim Form: The Long Form Notice and Settlement Website shall include the Claim Form, which shall inform Class Members that they must fully complete and timely return the Claim Form prior to the Claim Deadline to be eligible to obtain relief pursuant to this Agreement.

48. The Summary Notice: Upon the Notice Date, the Settlement Administrator shall cause to be published, in the next possible issue of *Cooking Light*, the Summary Notice, in the form substantially similar to Exhibit F.

49. Internet Advertising Program: No later than the Notice Date, the Settlement Administrator shall also cause notice of the settlement to be provided through a series of Internet banner advertisements pursuant to the Settlement Administrator's notice plan set forth in the declaration of the Settlement Administrator to be filed in support of preliminary approval of the Settlement.

50. Settlement Website: No later than the Notice Date, the Settlement Administrator shall establish and caused to be published an Internet website (the "Settlement Website"), www.noMSGaddedsettlement.com. All Internet advertising

that is part of the Class Notice program will direct Class Members to the Settlement Website. The Settlement Website will allow Class Members to submit Claim Forms online and will contain information relevant to Class Members, including but not limited to all applicable deadlines, the Agreement, Class Notice, a downloadable Claim Form, all papers filed by the Parties in support of this Agreement (including Plaintiff's anticipated motion for Attorneys' Fees and Expenses), orders of the Court pertaining to this Agreement, and contact information for reaching the Settlement Administrator via a toll-free telephone number, e-mail and U.S. mail. The Parties shall use reasonable efforts to agree on all information and documents to be posted on this website and no information shall be posted or provided on the website without the Parties' express approval. The website shall be rendered inactive one hundred fifty (150) days after the Award Issuance Date. Settlement Administration Expenses include the costs associated with maintenance of the Settlement Website.

51. Toll-Free Telephone Number: Prior to the dissemination of the Class Notice, the Settlement Administrator shall establish a toll-free telephone number that will provide Settlement-related information to Class Members, pursuant to the terms and conditions of this Agreement. Settlement Administration Expenses include the costs associated with maintenance of this toll-free telephone number. The Parties shall also create a protocol for the Settlement Administrator to refer Class Member inquiries to Class Counsel. The toll-free telephone number shall be rendered inactive one hundred fifty (150) calendar days after the Award Issuance Date.

52. Nothing contained herein shall limit Class Counsel's ability to disseminate notice by publishing a link to the Settlement Website on their firm website's, Facebook pages, or social media accounts, provided that any such dissemination must comply with Paragraph 106 of this Agreement.

VI. ATTORNEYS' FEES AND EXPENSES AND CLASS REPRESENTATIVE INCENTIVE AWARD

53. In recognition of the time and effort the representative Plaintiff

1 expended in pursuing this action and in fulfilling his obligations and responsibilities
2 as class representatives, and of the benefits conferred on all Class Members by the
3 Settlement, Class Counsel may ask the Court for the payment of an Incentive Award
4 from the Settlement Fund to the representative Plaintiff. CJ will not oppose and
5 Plaintiff and Class Counsel will submit an application for an Incentive Award of five
6 thousand dollars (\$5,000.00). Any court-ordered Incentive Award will be paid to
7 Plaintiff by CJ no later than fifteen (15) calendar days after the Effective Date.

8 54. Class Counsel will make an application, and CJ will not oppose an
9 application, to the Court for an award of Attorneys' Fees and Expenses in the Action
10 in an amount not to exceed three hundred and seventy-five thousand dollars
11 (\$375,000.00) in attorneys' fees and an amount not to exceed five thousand dollars
12 (\$5,000.00) in costs and expenses incurred up to the submission of Class Counsel's
13 fee application to the Court prior to the Fairness Hearing. These amounts, which
14 together shall not exceed three hundred and eighty thousand dollars (\$380,000.00),
15 shall be the sole aggregate compensation paid by CJ for Plaintiff's Counsel. CJ will
16 not oppose Plaintiff's assertion made in proceedings on the Settlement that the Action
17 was the catalyst to CJ's change of the labels on the Subject Products to eliminate the
18 "NO MSG ADDED" representation. The amount of the Attorneys' Fees and
19 Expenses will be determined by the Court. Any court-ordered Attorneys' Fees and
20 Expenses shall be paid to Class Counsel by CJ no later than fifteen (15) calendar days
21 after the Effective Date, but in no event shall CJ be obligated to pay Attorneys' Fees
22 and Expenses (or any other payments) that would make CJ's total payment towards
23 the Settlement an amount in excess of the Settlement Fund (i.e., \$1,500,000.00). The
24 Attorneys' Fees and Expenses ordered by the Court shall represent Class Counsel's
25 sole compensation under the Settlement, will be in lieu of statutory fees Plaintiff
26 and/or his attorneys might otherwise have been entitled to recover from CJ, and shall
27 be inclusive of all fees and costs of Class Counsel to be paid by CJ. Plaintiff and
28 Class Counsel agree that CJ shall not pay or be obligated to pay Class Counsel in

1 excess of any award of Attorneys' Fees and Expenses ordered by the Court, and that
 2 in no event shall CJ be obligated to pay Class Counsel in excess of \$375,000.00 for
 3 attorneys' fees and in excess of \$5,000.00 for costs and expenses.

4 55. Class Counsel shall have the sole and absolute discretion to allocate the
 5 Attorneys' Fees and Expenses amongst Plaintiff's Counsel and any other attorneys
 6 for Plaintiff. CJ shall have no liability or other responsibility for allocation of any
 7 such Attorneys' Fees and Expenses awarded, and, in the event that any dispute arises
 8 relating to the allocation of fees, Class Counsel agree to hold CJ harmless from, and
 9 indemnify CJ with respect to, any and all such liabilities, costs, and expenses,
 10 including attorneys' fees and dispute costs, of such dispute.

11 **VII. RELEASES AND DISMISSAL OF ACTION**

12 56. Upon the Effective Date, the Releasing Parties shall be deemed to have,
 13 and by operation of the Final Order and Final Judgment shall have, fully, finally and
 14 forever released, relinquished, and discharged all Released Claims against the
 15 Released Parties. In connection with the Released Claims, each Releasing Party shall
 16 be deemed as of the Effective Date to have expressly, knowingly, and voluntarily
 17 waived any and all provisions, rights, benefits conferred by Section 1542 of the
 18 California Civil Code, and any statute, rule, and legal doctrine similar, comparable, or
 19 equivalent to Section 1542, which provides as follows:

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

26 In connection with such waiver and relinquishment, the Releasing Parties hereby
 27 acknowledge that they are aware that they or their attorneys may hereafter discover
 28 claims or facts in addition to or different from those that they now know or believe
 exist with respect to Released Claims, but that it is their intention to hereby fully,
 finally, and forever settle and release all of the Released Claims, whether known or

unknown, suspected or unsuspected, that they have against the Released Parties. In furtherance of such intention, the release herein given by the Releasing Parties shall be and remain in effect as a full and complete general release notwithstanding the discovery or existence of any such additional different claims or facts. Each of the Releasing Parties expressly acknowledges that he/she/it has been advised by its attorney of the contents and effect of Section 1542, and with knowledge, each of the Parties hereby expressly waives whatever benefits he/she/it may have had pursuant to such section. Plaintiff and Class Members are not releasing any claims for personal injuries. Plaintiff acknowledges, and the Class Members shall be deemed by operation of the Final Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a material element of the Settlement of which this release is a part.

57. Upon the Effective Date, the Action shall be dismissed with prejudice. Plaintiff and Class Counsel shall have the responsibility for ensuring that the Action is dismissed with prejudice in accordance with the terms of this Agreement.

58. The Court shall enter an order retaining jurisdiction over the Parties to this Agreement with respect to the future performance of the terms of this Agreement. In the event that any applications for relief are made, such applications shall be made to the Court.

59. Upon the Effective Date: (a) the Agreement shall be the exclusive remedy for any and all Released Claims of Plaintiff and Class Members; and (b) Plaintiff and the Class Members stipulate to be and shall be permanently barred and enjoined by Court order from initiating, asserting, or prosecuting against the Released Parties in any federal or state court or tribunal any and all Released Claims.

VIII. ADMINISTRATION OF THE SETTLEMENT

60. CJ shall, subject to the approval of Class Counsel, retain Angeion Group as the Settlement Administrator to help implement the terms of the Agreement. Subject to the terms and conditions of this Agreement, CJ shall pay all costs

1 associated with the Settlement Administrator, including costs of providing Class
2 Notice and reviewing and processing claims.

3 61. In fulfilling its responsibilities, the Settlement Administrator shall be
4 responsible for, without limitation: (a) consulting on and designing the notice to be
5 disseminated to Class Members; (b) arranging for the publication of the Summary
6 Notice and dissemination of Class Notice; (c) responding to requests from Class
7 Counsel and/or Defense Counsel; and (d) otherwise assisting with administration of
8 the Settlement.

9 62. The Settlement Administrator also shall be responsible for, without
10 limitation, the dissemination of Class Notice and implementing the terms of the claim
11 process and related administrative activities that include communications with Class
12 Members concerning the Settlement, claim process, and their options thereunder. In
13 particular, the Settlement Administrator shall be responsible for: (a) printing, e-
14 mailing, mailing or otherwise arranging for the mailing of the Class Notice in
15 response to Class Members' requests; (b) making any mailings required under the
16 terms of this Agreement; (c) establishing the Settlement Website; (d) establishing a
17 toll-free voice response unit with message and interactive voice response (IVR)
18 capabilities to which Class Members may refer for information about the Action and
19 the Settlement; (e) receiving and maintaining any Class Member correspondence
20 regarding requests for exclusion and objections to the Settlement; (f) forwarding
21 inquiries from Class Members to Class Counsel or their designee for a response, if
22 warranted; (g) establishing a post office box for the receipt of Claim Forms, exclusion
23 requests, and any correspondence; (h) reviewing Claim Forms according to the
24 review protocols agreed to by the Parties and standards set forth in this Agreement;
25 and (i) otherwise implementing and/or assisting with the claim review process and
26 payment of the claims.

27 63. The Settlement Administrator shall administer the Settlement in
28 accordance with the terms of this Agreement and, without limiting the foregoing,

1 shall: (a) treat any and all documents, communications and other information and
2 materials received in connection with the administration of the Settlement as
3 confidential and shall not disclose any or all such documents, communications or
4 other information to any person or entity except as provided for in this Agreement or
5 by court order; and (b) receive Requests for Exclusion and provide to Class Counsel
6 and Defense Counsel a copy thereof within three (3) business days of receipt. If the
7 Settlement Administrator receives any Requests for Exclusion after the deadline for
8 the submission of such forms and requests, the Settlement Administrator shall
9 promptly provide Class Counsel and Defense Counsel with copies thereof and receive
10 and maintain all correspondence from any Class Member regarding the Settlement.

11 64. The Claim Form will be available for downloading and may be
12 completed and submitted online at the Settlement Website, and, at Class Counsel's
13 option, the Claim Form will be available for downloading on Class Counsel's
14 websites. The Claim Form may also be requested by calling the toll-free number
15 provided by the Settlement Administrator or by writing to the Settlement
16 Administrator.

17 65. To be eligible for a cash award, each Class Member must submit or
18 postmark a Claim Form, on or before the Claim Deadline, containing his or her name,
19 mailing address, and e-mail address, and an attestation, pursuant to 28 U.S.C. § 1746
20 and under penalty of perjury, that the Class Member purchased one or more Subject
21 Products during the Class Period. The Claim Form will also direct Class Members to
22 submit Proof of Purchase for any awards claimed in excess of \$15.00 in cash. The
23 Claim Form will be deemed to have been submitted when the Claim Form, including
24 any necessary Proof of Purchase, is posted, if received with a postmark, or equivalent
25 mark by a courier company indicated on the envelope or mailer and if mailed with
26 pre-paid postage and addressed in accordance with the instructions set out in the
27 Claim Form. In the case of online claims, the Claim Form shall be deemed to have
28 been submitted when it is fully uploaded, including any necessary Proof of Purchase,

1 to the Settlement Website.

2 66. Any Class Member who, in accordance with the terms and conditions of
3 this Agreement, neither seeks exclusion from the Class nor files submits a valid and
4 timely Claim Form, will not be entitled to receive any relief pursuant to this
5 Agreement, but will be bound together with all Class Members by all of the terms of
6 this Agreement, including the terms of the Final Order and Final Judgment to be
7 entered in the Action and the releases provided for herein, and will be barred from
8 bringing any action in any forum (state or federal) against any of the Released Parties
9 concerning the Released Claims.

10 67. The Settlement Administrator shall use adequate and customary
11 procedures and standards to determine whether a Claim Form meets the requirements
12 set forth in this Agreement and to prevent the payment of fraudulent claims and/or
13 pay only valid and eligible claims. Each Claim Form shall be submitted to and
14 reviewed by the Settlement Administrator, who shall determine the extent, if any, to
15 which each claim shall be allowed. The Settlement Administrator shall use all
16 reasonable efforts and means to identify and reject duplicate and/or fraudulent claims,
17 including, without limitation, indexing all awards provided to Class Members.

18 68. Claim Forms that do not meet the terms and conditions of this
19 Agreement shall be promptly rejected by the Settlement Administrator. The
20 Settlement Administrator shall have forty-five (45) calendar days from the Effective
21 Date to exercise the right of rejection. The Settlement Administrator shall notify the
22 Class Member using the contact information provided in the Claim Form of the
23 rejection, including via electronic mail. Class Counsel and Defense Counsel shall be
24 provided with copies of all such notifications to Class Members. If any claimant
25 whose Claim Form has been rejected, in whole or in part, desires to contest such
26 rejection, the claimant must, within fifteen (15) business days from receipt of the
27 rejection, transmit to the Settlement Administrator by e-mail or U.S. mail a notice and
28 statement of reasons indicating the claimant's grounds for contesting the rejection,

1 along with any supporting documentation, and requesting further review by the
2 Settlement Administrator, in consultation with Class Counsel and Defense Counsel,
3 of the denial of the claim. If Class Counsel and Defense Counsel cannot agree on a
4 resolution of claimant's notice contesting the rejection, the disputed claim shall be
5 presented to the Court or a referee appointed by the Court for summary and non-
6 appealable resolution.

7 69. No person shall have any claim against CJ, Defense Counsel, Plaintiff,
8 Plaintiff's counsel, the Class, Class Counsel, and/or the Settlement Administrator
9 based on any eligibility determinations, distributions, or awards made in accordance
10 with this Agreement. This provision does not affect or limit in any way the right of
11 review by the Court or referee of any disputed Claim Forms as provided in this
12 Agreement.

13 70. Class Counsel and Defense Counsel shall have the right to inspect the
14 Claim Forms and supporting documentation received by the Settlement Administrator
15 at any time upon reasonable notice.

16 71. Not later than seven (7) calendar days before the date of the Fairness
17 Hearing, the Settlement Administrator shall file with the Court: (a) a list of those
18 persons who have opted out or excluded themselves from the Settlement; and (b) the
19 details regarding the number of valid Claim Forms received and processed by the
20 Settlement Administrator.

21 72. The Settlement Administrator may retain one or more persons to assist in
22 the completion of its responsibilities.

23 73. The Settlement Administrator shall distribute benefits to eligible Class
24 Members only after the Effective Date and pursuant to the deadlines set forth in
25 Section 43(c) of this Agreement.

26 74. If the Settlement is not approved or for any reason the Effective Date
27 does not occur, no payments or distributions of any kind shall be made pursuant to
28 this Agreement, except for the costs and expenses of the Settlement Administrator,

1 for which Plaintiff and/or Plaintiff's Counsel are not responsible.

2 75. In the event the Settlement Administrator fails to perform its duties,
3 and/or makes a material or fraudulent misrepresentation to, or conceals requested
4 material information from, Class Counsel, CJ, and/or Defense Counsel, then the party
5 to whom the misrepresentation is made shall, in addition to any other appropriate
6 relief, have the right to demand that the Settlement Administrator immediately be
7 replaced. No party shall unreasonably withhold consent to remove the Settlement
8 Administrator. The Parties will attempt to resolve any disputes regarding the
9 retention or dismissal of the Settlement Administrator in good faith, and, if they are
10 unable to do so, will refer the matter to the Court for resolution.

11 76. The Settlement Administrator shall coordinate with Defense Counsel to
12 provide notice as required by 28 U.S.C. § 1715, and the costs of such notice shall be
13 considered Settlement Administration Expenses.

14 77. CJ and the Released Parties are not obligated to (and will not be
15 obligated to) compute, estimate, or pay any taxes on behalf of any Plaintiff, any Class
16 Member, Plaintiff's Counsel, Class Counsel, and/or the Settlement Administrator.

17 **IX. OBJECTIONS AND REQUESTS FOR EXCLUSION**

18 78. Members of the Class who fail to file, no later than the Objection
19 Deadline, through the Court's Case Management/Electronic Case Files ("CM/ECF")
20 system or through any other method in which the Court will accept objections, if any,
21 and serve upon the Settlement Administrator, Class Counsel, and Defense Counsel,
22 written objections in the manner specified in this Agreement and the Class Notice
23 shall be deemed to have waived all objections and shall be foreclosed from making
24 any objection (whether by appeal or otherwise) to the Settlement.

25 79. Any Class Member who intends to object to the fairness, reasonableness,
26 and/or adequacy of the Settlement must, in addition to filing the written objection
27 with the Court through the Court's CM/ECF system (or any other method in which
28 the Court will accept filings, if any) no later than the Objection Deadline, provide a

1 copy of the written objection by U.S. mail or e-mail to the Settlement Administrator
 2 with a copy by U.S. Mail or e-mail to Class Counsel and Defense Counsel (at the
 3 addresses set forth below) postmarked no later than the Objection Deadline. Class
 4 Members who object must set forth in their written objection: (a) their full name;
 5 (b) current address; (c) a written statement of their objection(s) and the reasons for
 6 each objection; (d) a statement of whether they intend to appear at the Fairness
 7 Hearing (with or without counsel); (e) their signature; (f) a statement, sworn to under
 8 penalty of perjury pursuant to 28 U.S.C. § 1746, attesting to the fact that he or she
 9 purchased one or more of the Subject Products during the Class Period; (f) details of
 10 their purchase of the Subject Products, including the Subject Products purchased, and
 11 the date and location of purchase; and (g) the case name and number of the Action.
 12 Objections must be served on Class Counsel and Defense Counsel as follows:

13 *Upon Class Counsel at:*

14
 15 Rosemary M. Rivas
 16 **FINKELSTEIN THOMPSON LLP**
 17 One California Street, Suite 900
 18 San Francisco, California 94111
 rrivas@finkelsteinthompson.com

19 Marc L. Godino
 20 **GLANCY PRONGAY & MURRAY LLP**
 21 1925 Century Park East, Suite 2100
 Los Angeles, CA 90067
 mgodino@glancylaw.com

22 *Upon Defense Counsel at:*

23
 24 Carlos M. Lazatin
 Daniel J. Faria
 25 **O'MELVENY & MYERS LLP**
 26 400 South Hope Street
 Los Angeles, California 90071-2899
 27 clazatin@omm.com
 28 dfaria@omm.com

1 80. The Parties shall request that the Court allow any interested party to file
2 a reply to any objection no later than seven (7) calendar days before the Fairness
3 Hearing, or as the Court may otherwise direct.

4 81. Members of the Class may also elect to opt out of the Settlement,
5 relinquishing their rights to benefits hereunder. Members of the Class who opt out of
6 the Settlement will not release their claims pursuant to this Agreement. Proposed
7 Class Members wishing to opt out of the Settlement must send to the Settlement
8 Administrator by U.S. Mail a Request for Exclusion postmarked no later than the Opt
9 Out Date. The Request for Exclusion must be a personally signed letter from the
10 Class Member including (a) their full name; (b) current address; (c) a clear statement
11 communicating that they elect to be excluded from the Class, do not wish to be a
12 Class Member, and elect to be excluded from any judgment entered pursuant to the
13 Settlement; (d) their signature; and (e) the case name and case number of the Action.
14 Members of the Class who fail to submit a valid and Request for Exclusion on or
15 before the Opt Out Date shall, in accordance with Paragraph 66 of this Agreement, be
16 bound by all terms of this Agreement and the Final Order and Final Judgment,
17 regardless of whether they have requested exclusion from the Settlement.

18 82. Any member of the Class who submits a timely Request for Exclusion or
19 opt out may not file an objection to the Settlement and shall be deemed to have
20 waived any rights or benefits under this Agreement. So-called “mass” or “class” opt
21 outs shall not be allowed.

22 83. The Settlement Administrator shall promptly provide copies of all
23 Requests for Exclusion, objections, and/or related correspondence from Class
24 Members to Class Counsel and Defense Counsel. Not later than three (3) business
25 days after the deadline for submission of Requests for Exclusion, the Settlement
26 Administrator shall provide to Class Counsel and Defense Counsel a complete list of
27 Class Members requesting exclusion from the Settlement together with copies of the
28 Requests for Exclusion. Notwithstanding any other provision of this Agreement, if

1 more than one thousand (1,000) members of the Class opt out of the Settlement, CJ,
2 in its sole discretion, may rescind and revoke the entire Settlement and this
3 Agreement, thereby rendering the Settlement null and void in its entirety, by sending
4 written notice that CJ revokes the settlement pursuant to this paragraph to Class
5 Counsel within ten (10) business days following the date the Settlement
6 Administrator informs CJ of the number of Class members who have requested to opt
7 out of the Settlement pursuant to the provisions set forth above. If CJ rescinds the
8 Settlement pursuant to this paragraph, it shall have no further obligations to pay the
9 Settlement Fund and shall be responsible for only the fees and expenses actually
10 incurred by the Settlement Administrator, for which Plaintiff and his Counsel are not
11 liable.

12 84. On the date set forth in the Preliminary Approval Order, a Fairness
13 Hearing shall be conducted to determine final approval of the Settlement. A Motion
14 in support of the Fairness Hearing shall be filed no later than fourteen (14) calendar
15 days before the deadline to object or opt out of the Settlement. Upon final approval
16 of the Settlement by the Court at or after the Fairness Hearing, the Parties shall
17 present the Final Order and Final Judgment, substantially in the form attached to this
18 Agreement as Exhibits A and B, and a final order approving Attorneys' Fees and
19 Expenses and incentive award, to the Court for approval and entry. Class Members
20 who wish to be heard at the Fairness Hearing (whether individually or through
21 separate counsel) and are objecting to the Settlement shall comply with the provisions
22 of this Agreement. Class Members who wish to be heard at the Fairness Hearing
23 (whether individually or through separate counsel) and are not objecting to the
24 Settlement shall file a notice of appearance with the Court's CM/ECF system or
25 through any other method in which the Court will accept filings, if any, and serve
26 upon Class Counsel and Defense Counsel at the addresses indicated above at least
27 seven (7) calendar days before the Fairness Hearing.
28

X. SCOPE AND EFFECT OF CONDITIONAL CERTIFICATION OF THE CLASS SOLELY FOR PURPOSES OF SETTLEMENT

85. For purposes of settlement only, the Parties agree to seek preliminary certification of the Class on a nationwide basis, including United States territories. The Parties further agree that the Court should make preliminary findings and enter the Preliminary Approval Order (substantially in the form attached at Exhibit D) granting preliminary certification of the Class subject to final findings and ratification in the Final Order and Final Judgment, and appointing Plaintiff as the representative of the Class and Class Counsel as counsel for the Class.

86. CJ does not consent to certification of the Class for any purpose other than to effectuate the Settlement of the Action or otherwise admit that the litigation of any claims that have or could have been asserted in the Action on a classwide basis is appropriate under applicable laws and standards. CJ's agreement to conditional certification does not constitute an admission of wrongdoing, fault, liability, or damage of any kind to Plaintiff or any of the putative class members.

87. If this Agreement is terminated pursuant to its terms, disapproved by any court (including any appellate court), and/or not consummated for any reason, or the Effective Date for any reason does not occur, the order certifying the Class for purposes of effectuating this Agreement, and all preliminary and/or final findings regarding that class certification order, shall be automatically vacated upon notice of the same to the Court, the Action shall proceed as though the Class had never been certified pursuant to this Agreement and such findings had never been made, the Action shall return to the procedural status quo in accordance with this paragraph, and nothing in this Agreement or other papers or proceedings related to the Settlement shall be used as evidence or argument by any Party concerning whether the Action may properly be maintained as a class action, whether the purported class is ascertainable, or whether Class Counsel or the Plaintiff can adequately represent the Class Members under applicable law.

XI. MODIFICATION OR TERMINATION OF THE SETTLEMENT

88. If the preconditions necessary to trigger the Effective Date (as set forth in Paragraph 14 of this Agreement) are not met, this this Agreement shall be cancelled and terminated unless Defense Counsel and Class Counsel mutually agree in writing to proceed with and effectuate this Agreement.

89. The terms and provisions of this Agreement may be amended, modified, or expanded by written agreement of the Parties and approval of the Court; provided, however that, after entry of the Final Order and Final Judgment, the Parties may by written agreement effect such amendments, modifications, or expansions of this Agreement and its implementing documents (including all exhibits hereto) without further notice to the Class or approval by the Court if such changes are consistent with the Court's Final Order and Final Judgment and do not materially alter, reduce or limit the rights of Class Members under this Agreement.

90. Either Party may terminate this Agreement by providing written notice to the other Party and the Court within ten (10) days of the occurrence of the following: (a) The preliminary or final approval of this Agreement is not obtained without substantial modification, which modification the Parties did not agree to and which modification the terminating Party deems in good faith to be material (*e.g.*, because it significantly increases the costs of the settlement or deprives the terminating party of an expressly stated benefit of the settlement); or (b) The Final Order and Final Judgment is reversed, vacated, or modified in any material respect by another court, except that it is expressly agreed by the Parties that any modification of the Court's award of Attorneys' Fees and Expenses shall not be grounds to terminate this Agreement provided the modified award does not exceed \$380,000.00.

91. In the event that this Agreement is not approved by the Court or the settlement set forth in this Agreement is terminated or fails to become effective in accordance with its terms, the Parties shall be restored to their respective pre-settlement positions in the Action, including with regard to any agreements

concerning tolling and similar agreements, and this entire Agreement shall be null and void, shall have no further force and effect with respect to any Party in the Action, and shall not be offered in evidence or used in any litigation for any purpose, including the existence, certification, or maintenance of any purported class or CJ's liability with respect to the claims that are, were or could have been asserted in the Action. In the event of such, this Agreement and all negotiations, proceedings, documents prepared, and statements made in connection with it shall be without prejudice to the Parties, and shall not be deemed or construed to be an admission or confession by any Party of any fact, matter, or proposition of law, and shall not be used in any manner for any purpose, and all Parties to the Action shall stand in the same position as if this Agreement had not been negotiated, made, or filed with the Court.

92. In the event of termination, the terminating Party shall cause the Settlement Administrator to post information regarding the termination on the Settlement Website.

93. In the event of termination, all Parties shall be restored to their respective positions as of immediately prior to the date of execution of this Agreement. Upon termination, Paragraphs 86-97 herein shall survive and be binding on the Parties, but this Agreement shall otherwise be null and void.

XII. SETTLEMENT NOT EVIDENCE AGAINST PARTIES

94. The Parties expressly acknowledge and agree that this Agreement and its exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, and correspondence, constitute an offer of compromise and a compromise within the meaning of Federal Rule of Evidence 408 and any equivalent state law or rule. In no event shall this Agreement, any of its provisions or any negotiations, statements or court proceedings relating to its provisions in any way be construed as, offered as, received as, used as, or deemed to be evidence of any kind in the Action, any other action, or in any judicial, administrative, regulatory or other proceeding, except in a

1 proceeding to enforce this Agreement or the rights of the Parties or their counsel.
2 Without limiting the foregoing, neither this Agreement nor any related negotiations,
3 statements, or court proceedings shall be construed as, offered as, received as, used as
4 or deemed to be evidence or an admission or concession of any liability or
5 wrongdoing whatsoever on the part of any person or entity, including, but not limited
6 to, CJ, the Released Parties, Plaintiff, or the Class, or as a waiver by CJ, the Released
7 Parties, Plaintiff, or the Class of any applicable privileges, claims or defenses.

8 95. The provisions contained in this Agreement are not and shall not be
9 deemed a presumption, concession, or admission by CJ of any default, liability or
10 wrongdoing as to any facts or claims alleged or asserted in the Action, or in any
11 actions or proceedings, nor shall they be interpreted, construed, deemed, invoked,
12 offered, or received in evidence or otherwise used by any person in the Action, or in
13 any other action or proceeding, whether civil, criminal or administrative. CJ
14 expressly denies the allegations in the Action. CJ does not admit that it or any of the
15 Released Parties has engaged in any wrongful activity or that any person has
16 sustained any damage by reason of any of the facts complained of in the Action. And
17 CJ does not consent to certification of the Class for any purpose other than to
18 effectuate the Settlement of the Action or otherwise admit that the treatment of any
19 claims that have been or could have been asserted in the Action on a classwide basis
20 is appropriate.

21 **XIII. BEST EFFORTS**

22 96. Class Counsel shall take all necessary actions to accomplish approval of
23 the Settlement, the Class Notice, and dismissal of the Action. The Parties (including
24 their counsel, successors, and assigns) agree to cooperate fully and in good faith with
25 one another and to use their best efforts to effectuate the Settlement, including
26 without limitation in seeking preliminary and final Court approval of the Agreement
27 and the Settlement embodied herein, carrying out the terms of this Agreement, and
28 promptly agreeing upon and executing all such other documentation as may be

1 reasonably required to obtain final approval by the Court of the Settlement. In the
 2 event that the Court fails to approve the Settlement or fails to issue the Final Order
 3 and Final Judgment, the Parties agree to use all reasonable efforts, consistent with
 4 this Agreement and subject to Section XI, to cure any defect identified by the Court.

5 97. Each party will cooperate with the other party in connection with
 6 effectuating the Settlement or the administration of claims thereunder. Any requests
 7 for cooperation shall be narrowly tailored and reasonably necessary for the requesting
 8 party to recommend the Settlement to the Court, and to carry out its terms.

9 **XIV. MISCELLANEOUS PROVISIONS**

10 98. The Parties agree that the recitals are contractual in nature and form a
 11 material part of this Agreement.

12 99. This Agreement and its accompanying exhibits set forth the entire
 13 understanding of the Parties. No change or termination of this Agreement shall be
 14 effective unless in writing and signed by Plaintiff's Counsel and Defense Counsel.
 15 No extrinsic evidence or parol evidence shall be used to interpret this Agreement.

16 100. Any and all previous agreements and understandings between or among
 17 the Parties regarding the subject matter of this Agreement, whether written or oral,
 18 are superseded and hereby revoked by this Agreement. The Parties expressly agree
 19 that the terms or conditions of this Agreement will control over any other written or
 20 oral agreements.

21 101. All of the Parties warrant and represent that they are agreeing to the
 22 terms of this Agreement based upon the legal advice of their respective attorneys, that
 23 they have been afforded the opportunity to discuss the contents of this Agreement
 24 with their attorneys and that the terms and conditions of this document are fully
 25 understood and voluntarily accepted.

26 102. The waiver by any party of a breach of any term of this Agreement shall
 27 not operate or be construed as a waiver of any subsequent breach by any party. The
 28 failure of a party to insist upon strict adherence to any provision of the Agreement

1 shall not constitute a waiver or thereafter deprive such party of the right to insist upon
2 strict adherence.

3 103. The headings in this Agreement are inserted merely for the purpose of
4 convenience and shall not affect the meaning or interpretation of this document.

5 104. This Agreement may be executed by facsimile signature and in
6 counterparts, each of which shall be deemed an original and all of which, when taken
7 together, shall constitute one and the same instrument. The date of execution shall be
8 the latest date on which any party signs the Agreement.

9 105. This Agreement has been negotiated among and drafted by Class
10 Counsel and Defense Counsel. Plaintiff, Plaintiff's Counsel, Class Members, and CJ
11 shall not be deemed to be the drafter of this Agreement or of any particular provision,
12 nor shall they argue that any particular provision should be construed against its
13 drafter or otherwise resort to the *contra proferentem* canon of construction.

14 Accordingly, this Agreement should not be construed in favor of or against one party
15 as to the drafter, and the Parties agree that the provisions of California Civil Code
16 § 1654 and common law principles of construing ambiguities against the drafter shall
17 have no application. All Parties agree that counsel for the Parties drafted this
18 Agreement during extensive arm's-length negotiations. No parol or other evidence
19 may be offered to explain, construe, contradict, or clarify its terms, the intent of the
20 Parties or their counsel, or the circumstances under which this Agreement was made
21 or executed.

22 106. Except in connection with any court filing or proceeding, or the
23 dissemination of notice to the Class, Plaintiff and Class Counsel will not issue any
24 press releases regarding the Settlement or the Action without prior approval of CJ.
25 Plaintiff and Class Counsel agree not to disparage CJ, CJ products, Defense Counsel,
26 or the Settlement in the media, through any public statements, or otherwise. CJ
27 agrees not to disparage Plaintiff, Class Counsel, or the Settlement.

28 107. CJ represents and warrants that the individual(s) executing this

1 Agreement are authorized to enter into this Agreement on behalf of CJ.

2 108. Any disagreement and/or action to enforce this Agreement shall be
3 commenced and maintained only in the Court in which this Action is pending.

4 109. Whenever this Agreement requires or contemplates that one of the
5 Parties shall or may give notice to the other, notice shall be provided by e-mail and/or
6 next-day (excluding Saturdays, Sundays and Legal Holidays) express delivery service
7 as follows:

8 *Upon Class Counsel at:*

9
10 Rosemary M. Rivas
11 **FINKELSTEIN THOMPSON LLP**
12 One California Street, Suite 900
13 Francisco, California 94111
14 rrivas@finkelsteinthompson.com

15 Marc L. Godino
16 **GLANCY PRONGAY & MURRAY LLP**
17 1925 Century Park East, Suite 2100
18 Los Angeles, CA 90067
19 mgodino@glancylaw.com

20 *Upon Defense Counsel at:*

21 Carlos M. Lazatin
22 Daniel J. Faria
23 **O'MELVENY & MYERS LLP**
24 400 South Hope Street
25 Los Angeles, California 90071-2899
26 clazatin@omm.com
27 dfaria@omm.com

28 110. The Parties reserve the right, subject to the Court's approval, to agree to
any reasonable extensions of time that might be necessary to carry out any of the
provisions of this Agreement.

111. Plaintiff Dennis Petersen expressly affirms that the allegations contained
in the consolidated complaints filed in the Action were made in good faith and have a

1 basis in fact, but consider it desirable for the Action to be settled and dismissed
2 because of the substantial benefits that the proposed Settlement will provide to Class
3 Members.


4 112. In the event any one of the provisions contained in this Agreement shall
5 for any reason be held to be invalid, illegal, or unenforceable in any respect, such
6 invalidity, illegality, or unenforceability shall not affect other provisions if Defense
7 Counsel and Class Counsel, on behalf of the Parties, mutually elect to proceed as if
8 such invalid, illegal, or unenforceable provision had never been included in this
9 Agreement.

10 IN WITNESS WHEREOF, the Parties hereto, by and through their respective
11 attorneys, and intending to be legally bound hereby, have duly executed this
12 Agreement as of the date set forth below.
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[SIGNATURES ON NEXT PAGE]

PLAINTIFF

Dated: 2-4-16, 2016


Dennis Petersen
Plaintiff

DEFENDANT

Dated: _____, 2016

CJ America, Inc.

By: _____

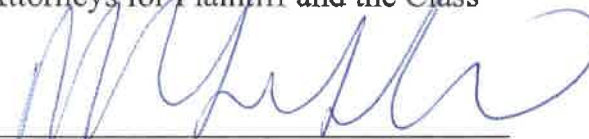
Its: _____

PLAINTIFF'S COUNSEL

Dated: _____, 2016

By: Rosemary M. Rivas
Finkelstein Thompson LLP
Attorneys for Plaintiff and the Class

Dated: 2-4-16, 2016


By: Marc L. Godino
Glancy Prongay & Murray, LLP
Attorneys for Plaintiff and the Class

DEFENSE COUNSEL

Dated: _____, 2016

By: Carlos M. Lazatin
O'Melveny & Myers LLP
Attorneys for CJ America, Inc.

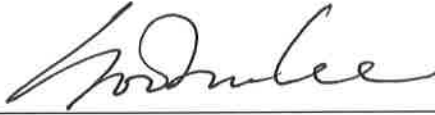
PLAINTIFF

Dated: _____, 2016

Dennis Petersen
Plaintiff

DEFENDANT

Dated: February 4, 2016



CJ America, Inc.

By: Soo Hee Lee

Its: CFO

PLAINTIFF'S COUNSEL

Dated: _____, 2016

By: Rosemary M. Rivas
Finkelstein Thompson LLP
Attorneys for Plaintiff and the Class

Dated: _____, 2016

By: Marc L. Godino
Glancy Prongay & Murray, LLP
Attorneys for Plaintiff and the Class

DEFENSE COUNSEL

Dated: _____, 2016

By: Carlos M. Lazatin
O'Melveny & Myers LLP
Attorneys for CJ America, Inc.

PLAINTIFF

Dated: _____, 2016

Dennis Petersen
Plaintiff

DEFENDANT

Dated: _____, 2016


CJ America, Inc.

By: _____

Its: _____

PLAINTIFF'S COUNSEL

Dated: 2-2, 2016


By: Rosemary M. Rivas
Finkelstein Thompson LLP
Attorneys for Plaintiff and the Class

Dated: _____, 2016

By: Marc L. Godino
Glancy Prongay & Murray, LLP
Attorneys for Plaintiff and the Class

DEFENSE COUNSEL

Dated: _____, 2016

By: Carlos M. Lazatin
O'Melveny & Myers LLP
Attorneys for CJ America, Inc.

PLAINTIFF

Dated: _____, 2016

Dennis Petersen
Plaintiff

DEFENDANT

Dated: _____, 2016

CJ America, Inc.

By: _____

Its: _____

PLAINTIFF'S COUNSEL

Dated: _____, 2016


By: Rosemary M. Rivas
Finkelstein Thompson LLP
Attorneys for Plaintiff and the Class

Dated: _____, 2016

By: Marc L. Godino
Glancy Prongay & Murray, LLP
Attorneys for Plaintiff and the Class

DEFENSE COUNSEL

Dated: 5 February, 2016



By: Carlos M. Lazatin
O'Melveny & Myers LLP
Attorneys for CJ America, Inc.

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DENNIS PETERSEN, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

CJ AMERICA, INC.,

Defendant.

Case No. 3:14-cv-02570-DMS-JLB

**[PROPOSED] FINAL ORDER
APPROVING CLASS ACTION
SETTLEMENT**

Judge: Hon. Dana M. Sabraw

1 WHEREAS, the Parties have entered into the Superseding Stipulation of
 2 Settlement, with its attached exhibits (collectively, the “Agreement”), signed and filed
 3 with this Court on _____, 2016, to settle *Dennis Petersen vs. CJ America,*
 4 *Inc.*, Case No. 14-CV-2570 DMS JLB, pending in the United States District Court,
 5 Southern District of California, (the “Action”).

6 WHEREAS, by Order dated _____, 2016 (the “Preliminary Approval
 7 Order”), this Court granted preliminary approval of the proposed class action settlement
 8 between the parties in the Action, ordering the dissemination of Class Notice to potential
 9 Class Members, and providing potential Class Members with an opportunity either to
 10 exclude themselves from the Class or to object to the proposed settlement and issuing
 11 related Orders.

12 WHEREAS, the Court also preliminarily certified a Class, for settlement purposes
 13 only, approved the procedure for giving notice and forms of notice, and set a Fairness
 14 Hearing to take place on _____, 2016. On that date, the Court held a
 15 duly noticed Fairness Hearing to consider: (1) whether the terms and conditions of the
 16 Agreement are fair, reasonable and adequate; (2) whether a judgment should be entered
 17 dismissing Plaintiff’s complaint on the merits and with prejudice in favor of Defendant
 18 CJ America, Inc. (“CJ”) and the Released Parties and against all persons who are Class
 19 Members pursuant and subject to the terms of the Agreement; (3) whether and in what
 20 amount to award an Incentive Award to Plaintiff; and (4) whether and in what amount to
 21 award Attorneys’ Fees and Expenses to Class Counsel.

22 WHEREAS, the Court, having considered the papers submitted by the Parties and
 23 by all other persons who timely submitted papers in accordance with the Preliminary
 24 Approval Order, and having heard oral presentations by the Parties and all persons who
 25 complied with the Preliminary Approval Order, and based on all of the foregoing,
 26 together with this Court’s familiarity with the Action, it is hereby **ORDERED,**
 27 **ADJUDGED AND DECREED** as follows:

28 1. Use of Capitalized Terms. Except where otherwise noted, all capitalized terms

1 used in this Final Order Approving Class Action Settlement shall have the meanings
2 attributed to them in the Agreement.

3 2. Incorporation of Other Documents. This Final Order Approving Class
4 Action Settlement incorporates and makes a part hereof: (a) the Agreement, including all
5 amendments and exhibits thereto, and definitions included therein, which was signed
6 and filed with this Court on [DATE] (b) the briefs, affidavits, declarations, and other
7 materials filed in support of the Settlement and Class Counsel's request for an award of
8 Attorneys' Fees and Expenses; (c) the record at the Fairness Hearing; (d) the documents
9 listed on the docket sheet or otherwise submitted to the Court; and (e) all prior
10 proceedings in the Action.

11 3. Jurisdiction. The Court has personal jurisdiction over the Parties, and
12 because due, adequate, and the best practicable notice has been disseminated and all
13 potential Class Members have been given the opportunity to exclude themselves from
14 or object to this Settlement, the Court has personal jurisdiction over all Class Members
15 (as defined below and in the Agreement). The Court has subject-matter jurisdiction over
16 the claims asserted in the Action pursuant to 28 U.S.C. §§ 1332 and 1367, including,
17 without limitation, jurisdiction to approve the proposed Settlement and the Agreement
18 and all exhibits attached thereto, grant final certification of the Class for settlement
19 purposes, settle and release all claims arising out of the transactions alleged in this
20 Action, and dismiss the Action on the merits and with prejudice and issue related orders.
21 The Court finds that venue is proper in this district pursuant to 28 U.S.C. § 1391.

22 4. Final Class Certification For Settlement Purposes Only. The Class
23 preliminarily certified by this Court is hereby finally certified, for settlement purposes
24 only, under Fed. R. Civ. P. 23(a), (b)(3), and (c)(2), the Court finding that the Class fully
25 satisfies all the applicable requirements of Fed. R. Civ. P. 23 and due process. The Class
26 shall consist of all persons in the United States and United States Territories who
27 purchased at retail one or more of the Subject Products during the Class Period.
28 Specifically excluded from the Class are: (a) CJ its employees, principals, officers,

1 directors, agents, affiliated entities legal representatives, successors and assigns; (b) the
2 judges to whom the Action has been or is assigned and any members of their immediate
3 families; (c) those who purchased the Subject Products for the purpose of re-sale; and (d)
4 all consumers who have filed a timely Request for Exclusion from the Class. The
5 “Subject Products” at issue in the Settlement are the following products sold by CJ
6 during the Class Period under the Annie Chun’s Noodle Bowl, Soup Bowl, and Ramen
7 House Product lines, that were labeled “NO MSG ADDED”: Chinese Chicken Soup
8 Bowl, Hot & Sour Soup Bowl, Korean Kimchi Soup Bowl, Miso Soup Bowl, Thai Tom
9 Yum Soup Bowl, Udon Soup Bowl, Vietnamese Pho, Garlic Scallion Noodle Bowl,
10 Korean Sweet Chili Noodle Bowl, Kung Pao Noodle Bowl, Pad Thai Noodle Bowl,
11 Peanut Sesame Noodle Bowl, Teriyaki Noodle Bowl, Soy Ginger Ramen, Spicy Chicken
12 Ramen, and Spring Vegetable Ramen.

13 5. Requests for Exclusion. The Court finds that only those persons listed in
14 Exhibit A to this Order have submitted timely and valid Requests for Exclusion from the
15 Class and are therefore not bound by this Final Order and the accompanying Final
16 Judgment. Class Counsel and Defense Counsel may mutually agree to allow additional
17 Class Members to exclude themselves or to withdraw their exclusion requests by filing
18 an appropriate notice with the Court.

19 6. Adequacy of Representation. The Court designates Plaintiff Dennis
20 Petersen as the representative of the Class, and finds that this Plaintiff has adequately
21 represented the Class for purposes of entering into and implementing the Agreement.
22 The Court appoints the law firms of Glancy Prongay & Murray LLP, and Finkelstein
23 Thompson LLP, as counsel for the Class (“Class Counsel”). For purposes of these
24 settlement approval proceedings only, the Court finds that Glancy Prongay & Murray
25 LLP, and Finkelstein Thompson LLP, are experienced and adequate Class Counsel.
26 Plaintiff and Class Counsel have satisfied the requirements of Fed. R. Civ. P. 23(a)(4),
27 and 23(g).

28 7. Class Notice. The Court finds that the dissemination of the Class Notice in

1 accordance with the terms of the Agreement and this Court's Preliminary Approval
 2 Order, as described in the Settlement Administrator's Declaration filed before the
 3 Fairness Hearing, a copy of which is incorporated herein and made a part hereof:

4 a. constituted the best practicable notice to Class Members under the
 5 circumstances of the Action;

6 b. constituted notice that was reasonably calculated, under the circumstances,
 7 to apprise Class Members of (i) the pendency of this class action; (ii) the terms of the
 8 proposed Settlement; (iii) their rights under the proposed Settlement; (iv) their right to
 9 exclude themselves from the Class and the proposed Settlement; (v) their right to object
 10 to any aspect of the proposed Settlement (including, but not limited to, final certification
 11 of the Class, the fairness, reasonableness or adequacy of the proposed Settlement, the
 12 adequacy of the Class's representation by Plaintiff or Class Counsel and/or the award of
 13 attorneys' fees and expenses and representative awards); (vi) their right to appear at the
 14 Fairness Hearing—either on their own or through counsel hired at their own expense—if
 15 they did not exclude themselves from the Class; and (vii) the binding effect of the
 16 Orders and Final Judgment in this Action, whether favorable or unfavorable, on all
 17 persons who did not request exclusion from the Class;

18 c. constituted notice that was reasonable, due, adequate, and sufficient notice
 19 to all persons and entities entitled to be provided with notice; and

20 d. constituted notice that fully satisfied all applicable requirements of the
 21 Federal Rules of Civil Procedure, including Rule 23(c)(2) and (e) of the Federal Rules of
 22 Civil Procedure, the United States Constitution (including Due Process Clause), the
 23 Rules of this Court, and any other applicable law, as well as complied with the Federal
 24 Judicial Center's illustrative class action notices.

25 8. CAFA Notice. The Court finds that CJ provided notice of the proposed
 26 Settlement to the appropriate state and federal government officials pursuant to 28
 27 U.S.C. § 1715. Furthermore, the Court has given the appropriate state and federal
 28 government officials the requisite ninety (90) day time period (pursuant to the Class

1 Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1715(d)) to comment or object to
 2 the proposed settlement before entering its Orders and Final Judgment and no such
 3 objections or comments were received.

4 9. Final Settlement Approval. The terms and provisions of the Agreement,
 5 including any and all amendments and exhibits, have been entered into in good faith and
 6 are hereby fully and finally approved as fair, reasonable, and adequate as to, and in the
 7 best interests of, each of the Parties and the Class Members, and in full compliance with
 8 all applicable requirements of the Federal Rules of Civil Procedure, CAFA, the United
 9 States Constitution (including the Due Process Clause), and any other applicable law.
 10 The Settlement is approved and all objections to the Settlement are overruled as
 11 without merit. The Parties and Class Members are hereby directed to implement and
 12 consummate the Agreement in accordance with its terms and provisions. Class Counsel
 13 shall take all steps necessary and appropriate to provide Class Members with the benefits
 14 to which they are entitled under the terms of the Agreement.

15 The Court finds that the Agreement is fair, adequate and reasonable based on the
 16 following factors, among other things:

17 a. There was no fraud or collusion underlying this Settlement, and it
 18 was reached as a result of extensive arm’s-length negotiations, occurring over the course
 19 of several months and two full-day, in-person mediation sessions before the Honorable
 20 Jill Burkhardt, warranting a presumption in favor of approval. *See, e.g., Officers for*
 21 *Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982); *In re Bluetooth*
 22 *Headset Prods. Liab. Litig.*, 654 F.3d at 948 (presence of a neutral mediator is a factor
 23 weighing in favor of a finding of non-collusiveness).

24 b. The complexity, expense, and likely duration of the litigation favor
 25 settlement—which provides meaningful benefits on a much shorter time frame than
 26 otherwise possible—on behalf of the Settlement Class. *See, e.g., Lane v. Facebook,*
 27 *Inc.*, 696 F.3d 811, 820 (9th Cir. 2012) (affirming the district court’s approval of a
 28 settlement where class counsel “reasonably concluded that the immediate benefits

represented by the Settlement outweighed the possibility—perhaps remote—of obtaining a better result at trial”); *Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) (the Ninth Circuit has a “strong judicial policy that favors settlements, particularly where complex class action litigation is concerned”). Based on the stage of the proceedings and the amount of investigation and discovery completed, the parties had developed a sufficient factual record to evaluate their chances of success at trial and the proposed settlement. In addition, the parties negotiated the benefits to the class before discussing Plaintiff’s claim to attorneys’ fees. *See In re Apple Deriv. Litig.*, No. 06-4128, 2008 U.S. Dist. LEXIS 108195, at *11-12 (N.D. Cal. Nov. 5, 2008) (parties’ negotiations free of collusion because, among other things, the parties negotiated the benefits to the class before discussing attorneys’ fees); *In re Midland Nat. Life Ins. Co. Annuity Sales Prac. Litig.*, No. 07-1825, 2012 WL 5462665, at *2-3 (C.D. Cal. Nov. 7, 2012) (same).

c. The support of Class Counsel, who are highly skilled in class action litigation such as this, and the Plaintiff, who has participated in this litigation and evaluated the proposed settlement, also favor final approval. *See Class Plaintiffs*, 955 F.2d at 1291; *Fernandez v. Victoria Secret Stores, LLC*, No. 06-04149, 2008 WL 8150856, at *7 (C.D. Cal. July 21, 2008); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D. Cal. 1979).

d. The Settlement provides meaningful relief to the Class, including cash relief, and injunctive relief, and certainly falls within the range of possible recoveries by the Class.

The Settlement is approved and all objections to the Settlement are overruled as without merit. The Parties and Class Members are hereby directed to implement and consummate the Agree in accordance with its terms and provisions. Class Counsel shall take all steps necessary and appropriate to provide Class Members with the benefits to which they are entitled under the terms of the Agreement.

1 10. Settlement Consideration.

2 a. As described in the Agreement, CJ will pay one million five hundred
3 thousand dollars (\$1,500,000.00) to create the Settlement Fund for the benefit of eligible
4 Class Members pursuant to the terms of the Agreement and the Settlement Fund shall be
5 administered and implemented as set forth in the Agreement.

6 b. The Residual Fund (if any) shall be paid in the form of a cash
7 donation to Consumers Union, which the Court finds to be an appropriate *cy prè*s
8 recipient.

9 c. In addition, CJ will implement the following changes in connection
10 with the Subject Products: CJ shall not order and/or print labels or packaging of the
11 Subject Products bearing the phrase “NO MSG ADDED,” and will otherwise not market
12 and/or advertise Subject Products shipped to distributors and/or retail customers after the
13 Effective Date as “NO MSG ADDED.” This Order shall not preclude CJ from making
14 further changes to its product labels that: (a) CJ reasonably believes are necessary to
15 comply with any statute, regulation, or other law of any kind; (b) are necessitated by
16 product and/or ingredient changes, and/or that are necessary to ensure that CJ provides
17 accurate descriptions of its products; or (c) are more detailed than those required by the
18 Agreement.

19 11. Binding Effect. The terms of the Agreement and of this Final Order and the
20 accompanying Final Judgment shall be forever binding on the Parties and all Class
21 Members, as well the their heirs, guardians, executors, administrators, representatives,
22 agents, attorneys, partners, successors, predecessors-in interest, and assigns, and those
23 terms shall have *res judicata* and other preclusive effect in all pending and future claims,
24 lawsuits or other proceedings maintained by or on behalf of any such persons, to the
25 extent those claims, lawsuits or other proceedings involve matters that were or could
26 have been raised in the Action or are otherwise encompassed by the release set forth in
27 the Agreement.

28 12. Release. The following release, which is also set forth in Section VII of the

1 Settlement Agreement, is expressly incorporated herein in all respects, including all
2 defined terms used therein, is effective as of the date of this Final Order and the
3 accompanying Final Judgment, and forever discharges the Released Parties from any
4 claims or liabilities arising from or related to the release:

5 a. Upon the Effective Date, the Releasing Parties shall be deemed to have, and
6 by operation of the Final Order and Final Judgment shall have, fully, finally and forever
7 released, relinquished, and discharged all Released Claims against the Released Parties.
8 In connection with the Released Claims, each Releasing Party shall be deemed as of the
9 Effective Date to have expressly, knowingly, and voluntarily waived any and all
10 provisions, rights, benefits conferred by Section 1542 of the California Civil Code, and
11 any statute, rule, and legal doctrine similar, comparable, or equivalent to Section 1542,
12 which provides as follows:

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

18 b) In connection with such waiver and relinquishment, the Releasing Parties
19 hereby acknowledge that they are aware that they or their attorneys may hereafter
20 discover claims or facts in addition to or different from those that they now know or
21 believe exist with respect to Released Claims, but that it is their intention to hereby fully,
22 finally, and forever settle and release all of the Released Claims, whether known or
23 unknown, suspected or unsuspected, that they have against the Released Parties. In
24 furtherance of such intention, the release herein given by the Releasing Parties shall be
25 and remain in effect as a full and complete general release notwithstanding the discovery
26 or existence of any such additional different claims or facts. Each of the Releasing
27 Parties expressly acknowledges that he/she/it has been advised by its attorney of the
28 contents and effect of Section 1542, and with knowledge, each of the Parties hereby
expressly waives whatever benefits he/she/it may have had pursuant to such section.
Plaintiff and Class Members are not releasing any claims for personal injuries. Plaintiff

1 acknowledges, and the Class Members shall be deemed by operation of the Final
2 Judgment to have acknowledged, that the foregoing waiver was separately bargained for
3 and a material element of the Settlement of which this release is a part.

4 13. Permanent Injunction. All Class Members and/or their representatives who
5 have not been timely excluded from the Class are hereby permanently barred and
6 enjoined from bringing, filing, commencing, prosecuting, maintaining, intervening in,
7 participating in, continuing or receiving any benefits from, as class members or
8 otherwise, any lawsuit (including putative class actions), arbitration, administrative,
9 regulatory or other proceeding in any jurisdiction that is covered by the Release. All
10 Class Members and all persons in active concert or participation with Class Members are
11 permanently barred and enjoined from organizing or soliciting the participation of any
12 Class Members who did not timely exclude themselves from the Class into a separate
13 class or group for purposes of pursuing a putative class action, any claim or lawsuit in
14 any jurisdiction that is covered by the Release. Pursuant to 28 U.S.C. §§ 1651(a) and
15 2283, the Court finds that issuance of this permanent injunction is necessary and
16 appropriate in aid of the Court's continuing jurisdiction and authority over the Action.

17 14. Enforcement of Settlement. Nothing in this Final Order or in the
18 accompanying Final Judgment shall preclude any action to enforce the terms of the
19 Agreement; nor shall anything in this Final Order or in the accompanying Final
20 Judgment preclude Plaintiff or other Class Members from participating in the claims
21 process described in the Agreement if they are entitled to do so under the terms of the
22 Agreement.

23 15. Attorneys' Fees and Expenses and Plaintiff's Incentive Award. The Court is
24 concurrently issuing a separate Order with respect to Attorneys' Fees and Expenses and
25 the Incentive Award to the representative Plaintiff, entitled Final Order Approving
26 Attorneys' Fees and Expenses and Incentive Award.

27 16. Modification of Settlement Agreement. The Parties are hereby authorized,
28 without needing further approval from the Court, to agree to written amendments,

1 modifications, or expansions of the Agreement and its implementing documents
2 (including all exhibits) without further notice to the Class or approval by the Court if
3 such changes are consistent with this Final Order and the accompanying Final Judgment
4 and do not materially alter, reduce, or limit the rights of Class Members under the
5 Agreement.

6 17. Retention of Jurisdiction. The Court has jurisdiction to enter this Final
7 Order, the Final Order Approving Attorneys' Fees and Expenses and Incentive Award,
8 and the accompanying Final Judgment. Without in any way affecting the finality of
9 these Final Orders and/or the accompanying Final Judgment, this Court expressly
10 retains jurisdiction as to all matters relating to the administration, consummation,
11 enforcement, and interpretation of the Agreement, and of these Final Orders and the
12 accompanying Final Judgment, and for any other necessary purpose, including, without
13 limitation (*see Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 381-82
14 (1994)):

15 a. enforcing the terms and conditions of the Agreement and resolving
16 any disputes, claims or causes of action that, in whole or in part, are related to or arise
17 out of the Agreement, this Final Order, the Final Order Approving Attorneys' Fees and
18 Expenses and Incentive Award, or the accompanying Final Judgment (including, without
19 limitation, whether a person or entity is or is not a Class Member; and whether claims or
20 causes of action allegedly related to this case are or are not barred by this Final Order
21 and the accompanying Final Judgment; and whether persons or entities are enjoined
22 from pursuing any claims against CJ);

23 b. entering such additional Orders, if any, as may be necessary or
24 appropriate to protect or effectuate this Final Order, the Final Order Approving
25 Attorneys' Fees and Expenses and Incentive Award, the accompanying Final Judgment,
26 and the Agreement (including, without limitation, orders enjoining persons or entities
27 from pursuing any claims against CJ), or dismissing all claims on the merits and with
28 prejudice, and permanently enjoining Class Members from initiating or pursuing related

1 proceedings, or to ensure the fair and orderly administration of this settlement; and

2 c. entering any other necessary or appropriate Orders to protect and
3 effectuate this Court's retention of continuing jurisdiction; provided, however, that
4 nothing in this paragraph is intended to restrict the ability of the Parties to exercise their
5 rights as provided in the Agreement.

6 18. No Admissions. Neither this Final Order, the accompanying Final Judgment
7 nor the Agreement (nor any other document referred to herein, nor any action taken to
8 carry out this Final Order or the accompanying Final Judgment) is, may be construed as,
9 or may be used as an admission or concession by or against CJ or the Released Parties of
10 the validity of any claim or defense or any actual or potential fault, wrongdoing or
11 liability whatsoever or the propriety of class certification. CJ continues to deny that the
12 Action meets the requisites for class certification under Fed. R. Civ. P. 23 for any
13 purpose other than settlement. Entering into or carrying out the Agreement, and any
14 negotiations or proceedings related to it, shall not in any event be construed as, or
15 deemed evidence of, an admission or concession as to CJ's denials or defenses and shall
16 not be offered or received in evidence in any action or proceeding against any Party
17 hereto in any court, administrative agency or other tribunal for any purpose whatsoever,
18 except as evidence of the Settlement or to enforce the provisions of this Final Order and
19 the accompanying Final Judgment and the Settlement Agreement; provided, however,
20 that this Final Order, the accompanying Final Judgment and the Settlement Agreement
21 may be filed in any action against or by CJ or Released Parties to support a defense of
22 *res judicata*, collateral estoppel.

23 19. Dismissal of Action. The Action (including all individual and Class claims
24 presented therein) are hereby dismissed on the merits and with prejudice, without fees
25 or costs to any Party except as otherwise provided in this Final Order, the Final Order
26 Approving Attorneys' Fees and Expenses and Incentive Award, and the accompanying
27 Final Judgment, and the Agreement.

28 20. Occurrence of Terminating Conditions. In the event that the Effective Date

1 does not occur, certification shall be automatically vacated and this Final Order, the
2 Final Order Approving Attorneys' Fees and Expenses and Incentive Award, and the
3 accompanying Final Judgment, and all other orders entered and releases delivered in
4 connection herewith, shall be vacated and shall become null and void.

5
6 DATED: _____

7 The Honorable Dana M. Sabraw
8 UNITED STATES DISTRICT JUDGE
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EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DENNIS PETERSEN, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

CJ AMERICA, INC.,

Defendant.

Case No. 3:14-cv-02570-DMS-JLB

[PROPOSED] FINAL JUDGMENT

Judge: Hon. Dana M. Sabraw

1 IT IS on this _____ day of _____, 2016, HEREBY ADJUDGED AND
 2 DECREED PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 58 THAT:

3 1. The Settlement of *Dennis Petersen vs. CJ America, Inc.*, Case No. 14-CV-
 4 2570 DMS JLB, pending in the United States District Court, Southern District of
 5 California (the “Action”), on the terms set forth in the parties’ Superseding Stipulation
 6 of Settlement, with exhibits (collectively, the “Agreement”), and definitions included
 7 therein, signed and filed with this Court on _____, 2016, is finally approved.

8 2. The following class is granted final certification, for settlement purposes
 9 only, under Fed. R. Civ. P. 23(a) and (b)(3): all persons in the United States and United
 10 States Territories who purchased at retail one or more of the Subject Products during
 11 the Class Period. Specifically excluded from the Class are: (a) CJ its employees,
 12 principals, officers, directors, agents, affiliated entities legal representatives, successors
 13 and assigns; (b) the judges to whom the Action has been or is assigned and any
 14 members of their immediate families; (c) those who purchased the Subject Products for
 15 the purpose of re-sale; and (d) all persons who have filed a timely Request for
 16 Exclusion from the Class. The “Subject Products” are the following products sold by
 17 CJ during the Class Period under the Annie Chun’s Noodle Bowl, Soup Bowl, and
 18 Ramen House product lines, that were labeled “NO MSG ADDED”: Chinese Chicken
 19 Soup Bowl, Hot & Sour Soup Bowl, Korean Kimchi Soup Bowl, Miso Soup Bowl,
 20 Thai Tom Yum Soup Bowl, Udon Soup Bowl, Vietnamese Pho, Garlic Scallion Noodle
 21 Bowl, Korean Sweet Chili Noodle Bowl, Kung Pao Noodle Bowl, Pad Thai Noodle
 22 Bowl, Peanut Sesame Noodle Bowl, Teriyaki Noodle Bowl, Soy Ginger Ramen, Spicy
 23 Chicken Ramen, and Spring Vegetable Ramen.

24 3. The dissemination of the Class Notice in accordance with the terms of the
 25 Agreement and this Court’s Preliminary Approval Order, as described in the Settlement
 26 Administrator’s Declaration filed before the Fairness Hearing: (a) constituted the best
 27 practicable notice to Class Members under the circumstances; (b) constituted notice that
 28 was reasonably calculated, under the circumstances, to apprise Class Members of the

pendency of the Action, the terms of the Settlement and their rights under the Settlement, including, but not limited to, their right to object to any aspect of the proposed Settlement or exclude themselves from the proposed Settlement and to appear at the Fairness Hearing, and the binding effect of the Final Orders and this Final Judgment on all persons and entities who did not request exclusion from the Class; (c) were reasonable and constituted due, adequate and sufficient notice to all persons entitled to be provided with notice; and (d) met all applicable requirements of law, including, but not limited to, the Federal Rules of Civil Procedure, 28 U.S.C. § 1715, the United States Constitution (including the Due Process Clause), and the Rules of this Court, as well as complied with the Federal Judicial Center's illustrative class action notices.

4. Only those persons listed in Exhibit A to this Final Judgment have submitted timely and valid requests for exclusion from the Class and are therefore not bound by this Final Judgment and the accompanying Final Order Approving Class Action Settlement.

5. The claims in the Action are dismissed on the merits and with prejudice pursuant to the terms (including the Release) set forth in the Parties' Agreement and in the Court's Final Order Approving Class Action Settlement and Final Order Approving Attorneys' Fees and Expenses and Incentive Awards, without costs to any party except as provided in these Final Orders.

6. Plaintiff and Class Members and/or their representatives, and all persons acting on behalf of, or in concert or participation with Plaintiff or Class Members (including but not limited to the Releasing Parties), who have not been timely excluded from the Class are hereby permanently barred and enjoined from: (a) filing, commencing, asserting, prosecuting, maintaining, pursuing, continuing, intervening in, or participating in, or receiving any benefits from, any lawsuit, arbitration, or administrative, regulatory or other proceeding or order in any jurisdiction based upon or asserting any of the Released Claims; and (b) bringing an individual action or class

1 action on behalf of Plaintiff or Class Members, seeking to certify a class that includes
 2 Plaintiff or Class Members, or continuing to prosecute or participate in any previously
 3 filed and/or certified class action, in any lawsuit based upon or asserting any of the
 4 Released Claims. Pursuant to 28 U.S.C. §§ 1651(a) and 2283, the Court finds that
 5 issuance of this permanent injunction is necessary and appropriate in aid of the Court's
 6 continuing jurisdiction and authority over the Action.

7 7. Class Counsel shall take all steps necessary and appropriate to provide
 8 Class Members with the benefits to which they are entitled under the terms of the
 9 Agreement and pursuant to the Orders of the Court.

10 8. Class Counsel shall be awarded \$_____ in attorneys' fees
 11 and \$_____ in costs and expenses, which amount is approved as fair
 12 and reasonable, in accordance with the terms of the Agreement.

13 9. Plaintiff Dennis Petersen, shall be awarded \$_____ as an
 14 Incentive Award in his capacity as a representative Plaintiff in the Action.

15 10. The Court will retain continuing jurisdiction over the parties and the
 16 Action for the reasons and purposes set forth in this Final Judgment, the Final Order
 17 Approving Class Action Settlement, and the Final Order Approving Attorneys' Fees
 18 and Expenses and Incentive Awards. Without in any way affecting the finality of these
 19 Final Orders and/or this Final Judgment, this Court expressly retains jurisdiction as to
 20 all matters relating to the administration, consummation, enforcement and interpretation
 21 of the Agreement and of these Final Orders and this Final Judgment, and for any other
 22 necessary purpose. *See Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375,
 23 381-82 (1994).

24
 25 DATED: _____

 The Honorable Dana M. Sabraw
 UNITED STATES DISTRICT JUDGE

Exhibit A – List of Persons Who Requested Exclusion

EXHIBIT C

SETTLEMENT CLAIM FORM

Petersen v. CJ America, Inc.

In the United States District Court for the Southern District of California

Case No. 3:14-CV-2570-DMS-JLB

If you are a Class Member and wish to receive a payment, your completed Claim Form must be postmarked on or before [REDACTED], or submitted electronically at www.noMSGaddedsettlement.com on or before [REDACTED].

Please read the full notice (or “Long Form Notice”) of this settlement (available at www.noMSGaddedsettlement.com) carefully before filling out this Claim Form.

To be eligible to receive any money from the settlement obtained in this class action lawsuit, **you must either:**

(1) Complete this Claim Form and mail it postmarked on or before [REDACTED] to: MSG Settlement, Settlement Claims Administrator, c/o Angeion Group, [REDACTED]; or

(2) Submit your Claim Form online at www.noMSGaddedsettlement.com on or before [REDACTED].

Failure to submit your completed Claim Form on time by U.S. Mail (properly addressed) or to fill out an online Claim Form by the deadline will result in the rejection of your Claim and you will not receive any money from this settlement.

PART 1: CLAIMANT INFORMATION

Claimant Name: _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

Daytime Phone Number: _____

Evening Phone Number: _____

Email Address: _____

PART 2: PURCHASE INFORMATION

State the **total number** of Subject Products (defined below) labeled “NO MSG ADDED” that you purchased between November 19, 2012 and **[Date of Preliminary Approval Order]**:

PART 3: ATTESTATION UNDER PENALTY OF PERJURY

I declare pursuant under penalty of perjury under the laws of the United States of America, including 28 U.S.C. § 1746, that I purchased the products listed above between November 19, 2012 and **[Date of Preliminary Approval Order]**, that such products were labeled “NO MSG ADDED” when purchased, and that all of the information on this Claim Form is true and correct to the best of my knowledge. I understand that my Claim Form may be subject to audit, verification, and Court review.

Signature of Claimant: _____

Date: _____

QUESTIONS? CALL _____ or VISIT www.noMSGaddedsettlement.com

EXHIBIT D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DENNIS PETERSEN, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

CJ AMERICA, INC.,

Defendant.

Case No. 3:14-cv-02570-DMS-JLB

**ORDER PRELIMINARILY
APPROVING CLASS ACTION
SETTLEMENT, PROVISIONALLY
CERTIFYING A SETTLEMENT
CLASS FOR SETTLEMENT
PURPOSES,
APPOINTING CLASS COUNSEL,
DIRECTING THE ISSUANCE OF
NOTICE TO THE CLASS, AND
SCHEDULING A FAIRNESS
HEARING**

Judge: Hon. Dana M. Sabraw

1 WHEREAS, on October 28, 2014, Plaintiff Dennis Petersen filed a putative
 2 nationwide class action lawsuit against CJ America, Inc. (“CJ”) in the United States
 3 District Court for the Southern District of California, Case No. 14-CV-2570-DMS-JLB,
 4 which asserted claims for violations of California’s False Advertising Law (Cal. Bus. &
 5 Prof. Code §§ 17500, *et seq.*) (the “FAL”), California’s Unfair Competition Law (Cal.
 6 Bus. & Prof. Code §§ 17200, *et seq.*) (the “UCL”), the California Consumers Legal
 7 Remedies Act (Cal. Civ. Code §§ 1750, *et seq.*) (“CLRA”), and for breach of express
 8 warranty, that related to the advertising, labeling, and marketing of the Subject Products
 9 as “NO MSG ADDED” (“the Action”).

10 WHEREAS, on February 11, 2015, CJ filed a motion to dismiss or strike the
 11 above-referenced complaint, which the Court granted in part (as to CJ’s motion to strike
 12 Plaintiff’s claims for injunctive relief) and denied in part (as to the remaining claims in
 13 the complaint). Accordingly, on August 18, 2015, Plaintiff filed an Amended Class
 14 Action Complaint, which is the operative pleading in the Action.

15 WHEREAS, CJ filed an answer to the Amended Class Action Complaint on June
 16 1, 2015, in which it expressly denied any and all wrongdoing alleged in the action, and
 17 neither admitted nor conceded any actual or potential fault, wrongdoing or liability in
 18 connection with any facts or claims that have been or could have been alleged against it
 19 in the Action.

20 WHEREAS, the Parties have entered into the Superseding Stipulation of
 21 Settlement (“Superseding Agreement”), the fairness, reasonableness, and adequateness
 22 of which is the subject of this Order, in which the Parties have agreed to settle the Action
 23 pursuant to the terms and conditions of the Superseding Agreement, and which will
 24 result in dismissal of the Action with prejudice;

25 WHEREAS, Class Counsel have conducted a thorough examination,
 26 investigation, and evaluation of the relevant law, facts, and allegations to assess the
 27 merits of the claims and potential claims to determine the strength of both defenses and
 28 liability sought in the Action, including pretrial discovery, defeating in part a motion to

dismiss, an inspection of the CJ products identified in the Action, the evaluation of documents and information provided by CJ, legal research as to the sufficiency of the claims and appropriateness of class certification, and an evaluation of the risks associated with continued litigation, trial, and/or appeal; and

WHEREAS, the Parties reached the Superseding Agreement as a result of extensive arms'-length negotiations that occurred over the course of two in-person mediation sessions on August 14, 2015 and August 18, 2015 with the Honorable Jill L. Burkhardt, and Counsel for the Parties are highly experienced in this type of litigation, with full knowledge of the risks inherent in the Action;

WHEREAS, the Court has carefully reviewed the Agreement, including the exhibits attached thereto and all file, records and prior proceedings to date in this matter, and good cause appearing based on the record,

IT IS hereby **ORDERED, ADJUDGED, AND DECREED** as follows:

1. Defined Terms. For purposes of this Order, except as otherwise indicated herein, the Court adopts and incorporates the definitions contained in the Superseding Stipulation of Settlement ("Superseding Settlement" or "Superseding Agreement").

2. Stay of the Action. All proceedings in the Action, other than proceedings necessary to carry out or enforce the terms and conditions of the Superseding Agreement and this Order, are hereby stayed.

3. Preliminary Class Certification for Settlement Purposes Only. The Action is preliminarily certified as a class action, for settlement purposes only, pursuant to Fed. R. Civ. P. 23(a) and (b)(3). The Court preliminarily finds for settlement purposes that: (a) the Class certified herein numbers at least in the tens of thousands of persons, and joinder of all such persons would be impracticable, (b) there are questions of law and fact that are common to the Class, and those questions of law and fact common to the Class predominate over any questions affecting any individual Class Member; (c) the claims of the Plaintiff are typical of the claims of the Class he seeks to represent for purposes of settlement; (d) a class action on behalf of the Class is superior to other

1 available means of adjudicating this dispute; and (e) as set forth below, Plaintiff and
 2 Class Counsel are adequate representatives of the Class. CJ retains all rights to assert
 3 that the Action may not be certified as a class action, other than for settlement purposes.
 4 The Court also concludes that, because the Action is being settled rather than litigated,
 5 the Court need not consider manageability issues that might be presented by the trial of a
 6 nationwide class action involving the issues in this case. *See Amchem Prods., Inc. v.*
 7 *Windsor*, 521 U.S. 591, 620 (1997).

8 4. Class Definition. The Class shall consist of all persons in the United States
 9 and United States Territories who purchased at retail one or more of the Subject
 10 Products during the Class Period. Specifically excluded from the Class are: (a) CJ its
 11 employees, principals, officers, directors, agents, affiliated entities legal representatives,
 12 successors and assigns; (b) the judges to whom the Action has been or is assigned and
 13 any members of their immediate families; (c) those who purchased the Subject Products
 14 for the purpose of re-sale; and (d) all persons who have filed a timely Request for
 15 Exclusion from the Class. The “Subject Products” are the following products sold by CJ
 16 during the Class Period under the Annie Chun’s Noodle Bowl, Soup Bowl and Ramen
 17 House product lines, that were labeled “NO MSG ADDED”: Chinese Chicken Soup
 18 Bowl, Hot & Sour Soup Bowl, Korean Kimchi Soup Bowl, Miso Soup Bowl, Thai Tom
 19 Yum Soup Bowl, Udon Soup Bowl, Vietnamese Pho, Garlic Scallion Noodle Bowl,
 20 Korean Sweet Chili Noodle Bowl, Kung Pao Noodle Bowl, Pad Thai Noodle Bowl,
 21 Peanut Sesame Noodle Bowl, Teriyaki Noodle Bowl, Soy Ginger Ramen, Spicy Chicken
 22 Ramen, and Spring Vegetable Ramen.

23 5. Class Representative and Class Counsel. Plaintiff Dennis Petersen is
 24 designated as representative of the conditionally certified Class. The Court preliminarily
 25 finds that he is similarly situated to absent Class Members and therefore typical of the
 26 Class, and that he will be an adequate class representative. Glancy Prongay & Murray
 27 LLP and Finkelstein Thompson LLP, whom the Court finds are experienced
 28 and adequate counsel for purposes of these Settlement approval proceedings, are hereby

1 designated as Class Counsel.

2 6. Preliminary Settlement Approval. Upon preliminary review, the Court
3 finds that the Superseding Agreement and the Settlement it incorporates, appears fair,
4 reasonable and adequate. *See generally* Fed. R. Civ. P. 23; *Manual for Complex*
5 *Litigation* (Fourth) § 21.632 (2004). Accordingly, the Agreement is preliminarily
6 approved and is sufficient to warrant sending notice to the Class.

7 7. Jurisdiction. The Court has subject-matter jurisdiction over the Action
8 pursuant to 28 U.S.C. §§ 1332 and 1367, and personal jurisdiction over the Parties
9 before it. Additionally, venue is proper in this District pursuant to 28 U.S.C. § 1391.

10 8. Fairness Hearing. A Fairness Hearing shall be held before this Court on
11 _____, 2016 at 1:30 p.m. at the United States District Court for the Southern
12 District of California, 333 West Broadway, 13th Floor, Courtroom 13, San Diego, CA
13 92101, to determine, among other things (a) whether the Action should be finally
14 certified as a class action for settlement purposes pursuant to Fed. R. Civ. P. 23(a), and
15 (b)(3); (b) whether the settlement of the Action pursuant to the terms and conditions of
16 the Superseding Agreement should be approved as fair, reasonable and adequate, and
17 finally approved pursuant to Fed. R. Civ. P. 23(e); (c) whether the Action should be
18 dismissed with prejudice pursuant to the terms of the Superseding Agreement; (d)
19 whether Class Members who do not timely request exclusion should be bound by the
20 Release set forth in the Superseding Agreement; (e) whether Class Members and related
21 persons should be subject to a permanent injunction; and (f) whether to grant Class
22 Counsel's application for an award of Attorneys' Fees and Expenses and an Incentive
23 Award for Plaintiff (the "Fee Application"). Papers in support of final approval of the
24 Superseding Agreement and the Fee Application shall be filed with the Court according
25 to the schedule set forth in Paragraph 15 below. Objections to the Superseding
26 Agreement or the Fee Application shall be filed with the Court on or before the
27 Objection Deadline set forth in Paragraph 15 below, and papers in response to such
28 objections must be filed on or before _____. The Fairness Hearing may be

postponed, adjourned, or continued by order of the Court without further notice to the Class. After the Fairness Hearing, the Court may enter a Final Order and Final Judgment in accordance with the Agreement that will fully and finally adjudicate the rights of the Class Members with respect to the proposed Released Claims.

9. Administration. In consultation with and with the approval of CJ, Class Counsel is hereby authorized to establish the means necessary to administer the proposed Settlement and implement the claim process, in accordance with the terms of the Agreement.

10. Class Notice. The form and content of the proposed Long Form Notice and Summary Notice, attached as Exhibits E” and F, respectively, to the Agreement, and the notice methodology described in the Agreement and the Declaration of the Settlement Administrator (attached as Exhibit G to the Agreement), are hereby approved. Pursuant to the Agreement, the Court appoints Angeion Group as the Settlement Administrator to help implement the terms of the Agreement.

(a) Notice Date. No later than _____, 2016, the Settlement Administrator shall provide notice to the Class pursuant to the terms of the Superseding Agreement and the deadlines set forth in Paragraph 15 below, in accordance with the notice program set forth in the Declaration of the Settlement Administrator (attached as Exhibit G to the Agreement). The Parties shall coordinate with the Settlement Administrator to provide notice to the Class pursuant to terms therein.

(b) Findings Concerning Notice. The Court finds that the Settlement is fair and reasonable such that the Long Form Notice and Summary Notice should be provided pursuant to the Superseding Agreement and this Order.

(c) The Court finds that the form, content and method of disseminating notice to the Class as described in Paragraphs 10 and 15 of this Order: (i) complies with Rule 23(c)(2) of the Federal Rules of Civil Procedure as it is the best practicable notice under the circumstances, and is reasonably calculated, under all the circumstances, to apprise the members of the Class of the pendency of the Action, the

terms of the Settlement, and their right to object to the Settlement or exclude themselves from the Settlement Class; (ii) complies with Rule 23(e) as it is reasonably calculated, under the circumstances, to apprise the Class Members of the pendency of the Action, the terms of the proposed Superseding Settlement, and their rights under the proposed settlement, including, but not limited to, their right to object to or exclude themselves from the proposed Superseding Settlement and other rights under the terms of the Superseding Agreement; (iii) constitute due, adequate, and sufficient notice to all Class Members and other persons entitled to receive notice; and (iv) meets all applicable requirements of law, including, but not limited to, 28 U.S.C. § 1715, Fed. R. Civ. P. 23(c) and (e), and the Due Process Clause(s) of the United States Constitution. The Court further finds that all of the notices are written in simple terminology, are readily understandable by Class Members, and comply with the Federal Judicial Center's illustrative class action notices.

12. Exclusion from Class. Any Class Member who wishes to be excluded from the Class must send to the Settlement Administrator by U.S. Mail a personally signed letter including their (a) full name, (b) current address, (c) a clear statement communicating that they elect to be excluded from the Class, do not wish to be a Class Member, and elect to be excluded from any judgment entered pursuant to the Settlement, (d) their signature, and (e) the case name and case number of the Action. A Class Member can exclude only himself or herself from the Class, and shall not be allowed to request that another individual or a group be excluded. "Mass" or "class" opt-outs are not permitted. Any such Request for Exclusion must be postmarked and set to the Settlement Administrator no later than _____, 2016 (the "Opt-Out Date"). The Settlement Administrator shall forward copies of any written requests for exclusion to Class Counsel and CJ's Counsel. The Settlement Administrator shall file a list reflecting all timely requests for exclusion with the Court no later than seven (7) days before the Fairness Hearing.

If the proposed Superseding Settlement is finally approved, any potential Class

Member who has not submitted a timely written Request for Exclusion on or before the Opt Out Date shall be bound by all terms of the Superseding Agreement and the Final Order and Final Judgment, regardless of whether they have requested exclusion from the Superseding Settlement, even if the potential Class Member previously initiated or subsequently initiates any litigation against any or all of the Released Parties relating to Released Claims. All persons or entities who properly exclude themselves from the Class shall not be Class Members and shall relinquish their rights or benefits under the Agreement, should it be approved, and may not file an objection to the Settlement or be entitled to any settlement benefits.

13. Objections and Appearances. Any Class Member who intends to object to the fairness, reasonableness, and/or adequacy of the Superseding Settlement must, in addition to filing the written objection with the Court through the Court's CM/ECF system (or any other method in which the Court will accept filings, if any) no later than the Objection Deadline, provide a copy of the written objection by U.S. mail or e-mail to the Settlement Administrator with a copy by U.S. Mail or e-mail to Class Counsel and Defense Counsel (at the addresses set forth below) postmarked no later than the Objection Deadline. Class Members who object must set forth: (a) their full name; (b) current address; (c) a written statement of their objection(s) and the reasons for each objection; (d) a statement of whether they intend to appear at the Fairness Hearing (with or without counsel); (e) their signature; (f) a statement, sworn to under penalty of perjury pursuant to 28 U.S.C. § 1746, attesting to the fact that he or she purchased one or more of the Subject Products during the Class Period; (f) details of their purchase of the Subject Products, including the Subject Products purchased, and the date and location of purchase; and (g) the case name and case number of the Action. Objections must be served on Class Counsel and Defense Counsel as follows:

Upon Class Counsel at:

Rosemary M. Rivas

FINKELSTEIN THOMPSON LLP

One California Street, Suite 900
 San Francisco, California 94111
 E-mail: RRivas@finkelsteinthompson.com

Marc L. Godino
GLANCY PRONGAY & MURRAY LLP
 1925 Century Park East, Suite 2100
 Los Angeles, CA 90067
 mgodino@glancylaw.com

Upon Defense Counsel at:

Carlos M. Lazatin
 Daniel J. Faria
O'MELVENY & MYERS LLP
 400 South Hope Street
 Los Angeles, California 90071-2899
 clazatin@omm.com
 dfaria@omm.com

Class Members or their attorneys who intend to make an appearance at the Fairness Hearing must deliver a notice of intention to appear to Class Counsel identified and to Defense Counsel, and file said notice with the Court, no later the date scheduled in paragraph 15 below, or as the Court may otherwise direct. Objections that are mailed to the Court (and not filed pursuant to the Court's CM/ECF system, or any other method in which the Court will accept filings, if any), or objections that are served on the Parties but not filed with the Court, shall not be received or considered by the Court at the Fairness Hearing. And any Class Member who fails to comply with the provisions in this Paragraph shall waive and forfeit any and all rights he or she may have to appear separately and/or to object, and shall be bound by all the terms of the Agreement, this Order, and by all proceedings, orders, and judgments, including, but not limited to, the release in the Agreement. The Settlement Administrator, Defense Counsel, and Class Counsel shall promptly furnish each other copies of any and all objections that might come into their possession.

14. Preliminary Injunction. All Class Members and/or their representatives,

who do not timely and properly exclude themselves from the Class are barred and enjoined from directly, indirectly, derivatively, in a representative capacity, or in any other capacity, filing, commencing, prosecuting, maintaining, intervening in, participating in, conducting, or continuing any action in any forum (state or federal) as individual actions, class members, putative class members, or otherwise against the Released Parties (as that term is defined in the Superseding Agreement) in any court or tribunal asserting any of the Released Claims (as that term is defined in the Superseding Agreement), and/or from receiving any benefits from any lawsuit, administrative or regulatory proceeding, or order in any jurisdiction, based on or relating to the Released Claims. In addition, all such persons are hereby barred and enjoined from filing, commencing, or prosecuting a lawsuit against CJ (or against any of its related parties, parents, subsidiaries, or affiliates) as a class action, a separate class, or group for purposes of pursuing a putative class action (including by seeking to amend a pending complaint to include class allegations or by seeking class certification in a pending action in any jurisdiction) on behalf of Class Members who do not timely exclude themselves from the Class, arising out of, based on or relating to the Released Claims. Pursuant to 28 U.S.C. §§ 1651(a) and 2283, the Court finds that issuance of this preliminary injunction is necessary and appropriate in aid of the Court's continuing jurisdiction and authority over the Action.

15. Summary of Deadlines. In summary, the deadlines set by this Order are as follows. If any deadline set forth in this Order falls on a Saturday, Sunday, or federal holiday, then such deadline shall extend to next Court day. These deadlines may be extended by order of the Court, for good cause shown, without further notice to the Class. Class Members must check the Settlement Website regularly for updates and further details regarding this settlement:

(a) The Long Form Notice shall be published on the Settlement Website no later than _____, 2016 (the "Notice Date");

(b) The Summary Notice shall be published in the soonest issue of

1 *Cooking Light Magazine* possible after the Notice Date;

2 (c) The Internet advertising portion of the Class Notice program shall
3 commence no later than _____, 2016.

4 (d) The Settlement Website and Toll-Free Telephone Number shall be
5 established and become operational no later than _____, 2016.

6 (f) All completed Claim Forms must be postmarked and mailed to the
7 Settlement Administrator or uploaded to the Settlement Website no later than _____,
8 2016 (“the Claim Deadline”).

9 (g) All written objections to the Agreement and written notices of an
10 objector’s intention to appear at the Fairness Hearing shall be filed with the Court and
11 served on Class Counsel and Defense Counsel no later than _____, 2016 (“the
12 Objection Deadline”).

13 (h) All Requests for Exclusion shall be postmarked and sent to the
14 Settlement Administrator no later than _____, 2016 (“the Opt Out Date”).

15 (i) A Fairness Hearing shall be scheduled _____, 2016 at 1:30 p.m.

16 (j) Not later than seven (7) calendar days before the date of the Fairness
17 Hearing, the Settlement Administrator shall file with the Court: (a) a list of those persons
18 who have opted out or excluded themselves from the Superseding Settlement; and (b)
19 the details regarding the number of valid Claim Forms received and processed by the
20 Settlement Administrator.

21 (k) Plaintiff’s motion in support of final approval of the Superseding
22 Settlement and Class Counsel’s Fee Application shall be filed no later than _____,
23 2016 and posted to the Settlement Website as soon as practicable thereafter, and may be
24 supplemented no later than seven (7) days prior to the Fairness Hearing.

25 16. Termination of Settlement. In the event the Court does not grant
26 final approval to the Superseding Settlement, or for any reason the parties fail to obtain a
27 Final Order and Final Judgment as contemplated in the Superseding Agreement, or the
28 Superseding Agreement is terminated pursuant to its terms for any reason or the

Effective Date does not occur for any reason, then the following shall apply:

(a) All orders and findings entered in connection with the Superseding Agreement shall become null and void and have no force and effect whatsoever, shall not be used or referred to for any purposes whatsoever, and shall not be admissible or discoverable in this or any other proceeding;

(b) The conditional certification of the Class pursuant to this Order shall be vacated automatically, and the Action shall proceed as though the Class had never been certified pursuant to the Superseding Agreement and such findings had never been made;

(c) Nothing contained in this Order is, or may be construed as, a presumption, concession or admission by or against CJ or Plaintiff of any default, liability or wrongdoing as to any facts or claims alleged or asserted in the Action, or in any actions or proceedings, whether civil, criminal or administrative, including, but not limited to, factual or legal matters relating to any effort to certify the Action as a class action;

(d) Nothing in this Order or pertaining to the Superseding Agreement, including any of the documents or statements generated or received pursuant to the claims administration process, shall be used as evidence in any further proceeding in this case, including, but not limited to, motions or proceedings seeking treatment of the Action as a class action;

(e) Nothing in this Order or pertaining to the Superseding Agreement is, or may be construed as, a presumption, concession or admission by or against CJ that the Action meets the requisites for certification as a class action under federal or California law; and

(f) All of the Court's prior Orders having nothing whatsoever to do with the Settlement shall, subject to this Order, remain in force and effect.

17. Use of Order. This Order shall be of no force or effect if the Superseding Settlement does not become final and shall not be construed or used as an admission,

1 concession, or declaration by or against CJ of any fault, wrongdoing, breach, or liability,
 2 or that any of the claims asserted in the Action meet the requisites for certification as a
 3 class action under federal or California law. Nor shall this Order be construed or used as
 4 an admission, concession, or declaration by or against Plaintiff or the other Class
 5 Members that their claims lack merit or that the relief requested is inappropriate,
 6 improper, or unavailable, or as a waiver by any party of any defenses or claims he, she,
 7 or it may have in the Action or in any other lawsuit.

8 18. Alteration of Exhibits. Class Counsel and Defense Counsel are hereby
 9 authorized to use all reasonable procedures to further the administration of the
 10 Superseding Settlement that are not materially inconsistent with this Order or the
 11 Superseding Agreement, including making, without further approval of the Court, minor
 12 changes to the form or content of the Long Form Notice, Summary Notice, and other
 13 exhibits that they jointly agree are reasonable or necessary.

14 19. Retaining Jurisdiction. This Court shall maintain continuing jurisdiction
 15 over these settlement proceedings to assure the effectuation thereof for the benefit of the
 16 Class, and for any other necessary purpose.

17 20. Extension of Deadlines. Upon application of the Parties and good cause
 18 shown, the deadlines set forth in this Order may be extended by order of the Court,
 19 without further notice to the Class. Class Members must check the Settlement website
 20 regularly for updates and further details regarding settlement deadlines.

21
 22 DATED: _____

 The Honorable Dana M. Sabraw
 UNITED STATES DISTRICT JUDGE

EXHIBIT E

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA**IF YOU BOUGHT CERTAIN ANNIE CHUN'S PRODUCTS LABELED "NO MSG ADDED" BETWEEN NOVEMBER 19, 2012 AND [DATE], YOU COULD RECEIVE A CASH PAYMENT FROM A CLASS ACTION SETTLEMENT.**

Para una notificación en Español, por favor llame o visite nuestro website.

READ THIS NOTICE CAREFULLY. YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DO NOT ACT. PLEASE CHECK THE SETTLEMENT WEBSITE AT www.noMSGaddedsettlement.com REGULARLY FOR UPDATES AND FURTHER DETAILS

A federal court authorized this notice. This is not a solicitation from a lawyer.

- This notice informs you of a proposed settlement in a class action lawsuit alleging that CJ America, Inc. ("CJ") mislabeled certain Annie Chun's products as "NO MSG ADDED." (See Question 2.) CJ denies that it did anything wrong or unlawful, and asserts that the product labels at issue were truthful, not misleading, and consistent with the law. Plaintiff believes the alleged claims are strong. The Court did not rule in favor of either party. Plaintiff entered into the settlement to avoid the delay, risks, and increased costs associated with continued litigation and believes the settlement is in the best interests of the Class. CJ entered into a settlement solely to avoid the further expense, inconvenience, and distraction of any burdensome and protracted litigation and to eliminate future controversy with respect to this lawsuit. Accordingly, the parties have agreed to a proposed settlement, and CJ has agreed, under the terms of the settlement, to provide you with an opportunity to submit a valid and timely Claim Form through which you may be eligible to receive monetary compensation.
- All persons in the United States and United States Territories who purchased at retail, from the period November 19, 2012 through [DATE], certain **Annie Chun's Noodle Bowls, Soup Bowls, and Ramen House products** labeled "NO MSG ADDED" (the "Subject Products") are included in the proposed settlement. (See Question 7.)
- If you are eligible, you may be entitled to a cash payment of up to \$15.00 if you do not have Proof of Purchase. If you have valid Proof of Purchase for each Subject Product you purchased during the Class Period, you may be entitled to receive more than a \$15.00 cash reward. The "Class Period" is the period from November 19, 2012 through [DATE].
- Your legal rights are affected whether you act or not. **Read this notice carefully because it explains decisions you must make and actions you must take now.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	Get no payment. Give up your rights to sue CJ regarding any of the claims at issue in this case.
SUBMIT A CLAIM FORM	Submitting a Claim Form by [DATE] is the only way to get a payment. (See Question 14.)
EXCLUDE YOURSELF	Exclude yourself by [DATE] and get no payment from the proposed settlement. This is the only choice that allows you to ever be part of any other lawsuit against CJ about the claims at issue in this case. (See Question 17.)
OBJECT	You can write to the Court by [DATE] about why you don't like the settlement and why you don't think it should be approved. (See Question 22.)

QUESTIONS? VISIT www.noMSGaddedsettlement.com, OR CALL [NUMBER] TOLL FREE

GO TO A HEARING

You can ask by **[DATE]** to speak in Court about the fairness of the proposed settlement. (See Question 26.)

- These rights and options—**and the deadlines to exercise them**—are explained in this notice. The deadlines may be moved, cancelled or otherwise modified, so please check the Settlement Website at www.noMSGaddedsettlement.com regularly for updates and further details.
- The Court in charge of this case still has to decide whether to approve the proposed settlement. If it does, and after any appeals are resolved in favor of the settlement, payments will be distributed to those who qualify. Please be patient.
- If you do not exclude yourself from the Class, the proposed settlement (if approved) will release certain claims and will affect your right to start or continue any other lawsuit or proceeding involving the Eligible Products. The release is set forth in a settlement agreement called the “Stipulation of Settlement,” available at www.noMSGaddedsettlement.com, and has been reprinted in full below. (See Question 12).

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BASIC INFORMATION

1. Why was this notice issued?

This notice, given pursuant to an Order of the Court dated [DATE], describes a proposed settlement of a class action against CJ America, Inc. (“CJ”), *Dennis Petersen v. CJ America, Inc.*, Case No. 3:14-CV-2570-DMS-JLB. The Court in charge of this lawsuit is the United States District Court for the Southern District of California. The person who sued is called the “Plaintiff” and CJ is the “Defendant.”

This notice is provided because you have the right to know about a proposed settlement of a class action lawsuit, and about your rights and options, before the Court decides whether to approve the proposed settlement.

Plaintiff’s Amended Class Action Complaint and the settlement agreement, called the “Superseding Stipulation of Settlement” or “Agreement,” are available at www.noMSGaddedsettlement.com and provide greater detail concerning this lawsuit and the rights and duties of the parties and Class Members.

If you are a Class Member, your legal rights are affected whether you act or do not act, so please read this notice carefully.

2. What is this lawsuit about?

The lawsuit claims that CJ mislabeled the Subject Products as “NO MSG ADDED,” despite the fact that the Subject Products allegedly contained ingredients that have or are known to have MSG. CJ denies that it did anything wrong or unlawful, or that the Subject Products contain added MSG, and asserts that the product labels at issue were truthful, not misleading, and consistent with the law. The Court has not decided who is right. Both sides have agreed to settle the dispute and give benefits to Class Members.

3. Why is this a class action?

In a class action, one or more people called “Class Representatives” (in this case Dennis Petersen) sue on behalf of themselves and other people who have similar claims. Together, all of these people are “Class Members.” One Court resolves the issues for all Class Members in a class action, except for those who exclude themselves from the Class. (See Question 17.) United States District Court Judge Dana M. Sabraw presides over this action.

4. Why is there a settlement?

The Court has not decided in favor of the Plaintiff or CJ. Instead, both sides have agreed to the proposed settlement. By agreeing to the proposed settlement, they avoid the costs and uncertainty of a trial, and Class Members receive the benefits described in this notice. The proposed settlement does not mean that any law was broken or that CJ did anything wrong, or that the Plaintiff and the Class would or would not win their case if it were to go to trial. The parties believe that the proposed settlement is fair, reasonable, and adequate, and will provide substantial benefits to the Class.

WHO IS PART OF THE SETTLEMENT?

5. Who is included in the proposed settlement?

The Class includes all persons in the United States and United States Territories who bought at retail one or more of the Subject Products (defined further under Question 7) during the period November 19, 2012 through **[DATE]** (the “Class Period”).

6. Are there exceptions to being included?

Specifically excluded from the Class are:

- (a) CJ its employees, principals, officers, directors, agents, affiliated entities legal representatives, successors and assigns;
- (b) The judges to whom the Action has been or is assigned and any members of their immediate families;
- (c) those who purchased the Subject Products for the purpose of re-sale; and
- (d) All persons who have filed a timely Request for Exclusion from the Class.
(Explained further under Questions 17-19 below.)

The proposed settlement does not include a release of any claims for personal injury relating to the use of the Subject Products. (See Question 12 below.)

7. Which products are included?

The Subject Products in this settlement are the following products sold by CJ during the Class Period under the **Annie Chun’s Noodle Bowl, Soup Bowl, and Ramen House** product lines, that were labeled “NO MSG ADDED”:

- Annie Chun’s Chinese Chicken Soup Bowl
- Annie Chun’s Hot & Sour Soup Bowl
- Annie Chun’s Korean Kimchi Soup Bowl
- Annie Chun’s Miso Soup Bowl
- Annie Chun’s Thai Tom Yum Soup Bowl
- Annie Chun’s Udon Soup Bowl

- Annie Chun’s Vietnamese Pho
- Annie Chun’s Garlic Scallion Noodle Bowl
- Annie Chun’s Korean Sweet Chili Noodle Bowl
- Annie Chun’s Kung Pao Noodle Bowl
- Annie Chun’s Pad Thai Noodle Bowl
- Annie Chun’s Peanut Sesame Noodle Bowl
- Annie Chun’s Teriyaki Noodle Bowl

- Annie Chun’s Soy Ginger Ramen
- Annie Chun’s Spicy Chicken Ramen
- Annie Chun’s Spring Vegetable Ramen

8. What if I'm still not sure if I'm included?

If you are not sure whether you are a Class Member, or have any other questions about the settlement, visit the website, www.noMSGaddedsettlement.com, or call the toll free number, [NUMBER]. You may also send questions to the Settlement Administrator at [ADDRESSES].

THE SETTLEMENT BENEFITS – WHAT YOU CAN GET**9. What does the Settlement provide?**

If the settlement is approved and becomes final, CJ will pay no more than \$1,500,000.00 to create a Settlement Fund. This \$1,500,000.00 represents CJ's total financial commitment under the settlement, and will be used to make payments to Class Members who file valid and timely claims by submitting a Claim Form (*see* Question 14), as well as to pay for costs associated with the notice and administration of the Settlement, Attorneys' Fees and Expenses (*see* Question 21), and a special service payment (or "Incentive Award") to the Class Representative (*see* Question 21).

While CJ believes that the Subject Products' labels and packaging were truthful and not in violation of the law, in addition to the creation of the Settlement Fund, CJ has removed the "NO MSG ADDED" language from the Subject Products' labels and will not, for the next three years, use such language on the Subjects Products' labels unless (a) CJ reasonably believes label changes are necessary to comply with any statute, regulation, or other law of any kind; or (b) label changes are necessitated by product and/or ingredient changes, and/or that are necessary to ensure that CJ provides accurate descriptions of its products.

The settlement agreement, called the "Stipulation of Settlement" or "Agreement," available at www.noMSGaddedsettlement.com, has more information regarding the settlement.

10. What can I get from the Settlement?

You may be entitled to a \$1.50 cash payment for each Subject Product you purchased during the Class Period, up to a maximum of ten (10) claims (or \$15.00 in cash) if you do not have Proof of Purchase. Class Members who claim more than \$15.00 in cash awards must submit Proof of Purchase establishing purchase(s) during the Class Period for each Subject Product claimed in excess of ten (10) products.

If the total value of all approved claims is greater than the amount of money available to pay claims (after costs and fees have been deducted), eligible Class Members' payments will be reduced proportionally. Thus, the amount of your payment will depend on the total amount of money you spent on the Subject Products during the Class Period, whether you have Proof of Purchase for the products you bought, and on the number of Class Members who choose to make a claim.

The actual amount available for each eligible Class Member who submits a valid and timely Claim Form (or "Authorized Claimant"), whether or not proof of purchase is submitted with a Claim Form, will not be determined until after all Claims Forms have been received, and may not be determined until after the proposed settlement is final. The values above (\$1.50 per Subject Product purchased, \$15.00 maximum without Proof of Purchase, etc.) are the maximum amounts a Class Member could receive assuming there is no reduction in the value of the claims as explained above.

11. What happens if there are any funds remaining?

Any funds remaining after all claims are processed and paid, and after all Settlement Administration Expenses, Incentive Awards, and Attorneys' Fees and Expenses are paid will comprise the "Residual Fund," which will be distributed in the form of a cash donation to Consumers Union. The remaining funds will not be returned to CJ under any circumstances.

12. What am I giving up if I stay in the Class?

If you meet the definition of a Class Member you are part of the Class unless you exclude yourself.

This means that you can't sue, continue to sue, or be part of any other lawsuit, arbitration, or other proceeding against CJ or any other "Released Party" about the legal issues in this case. It also means that all of the Court's orders will apply to you and legally bind you. **You are a Class Member and bound by the settlement whether or not you file a Claim Form or receive a payment.**

When and if the settlement is approved, Plaintiff and Class Members who do not validly exclude themselves from the Class pursuant to the settlement, will be deemed to have released CJ and other "Released Parties" (as defined in the Agreement) from any all any Released Claims (as defined in the Agreement).

A word-for-word copy of the Release sections from the Agreement is copied below. Please carefully read the following excerpts from the Agreement regarding "Released Claims":

"Released Claims" means and includes any and all claims, demands, rights, damages, obligations, suits, debts, liens, and causes of action under common law or statutory law (federal, state, or local) of every nature and description whatsoever, ascertained or unascertained, suspected or unsuspected, existing or claimed to exist, including Unknown Claims as of the Notice Date by Plaintiff and all Class Members (and Plaintiff's and Class Members' respective heirs, guardians, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, and assigns) that:

- (i) were asserted or that could have been reasonably asserted in the Action against the Released Parties (as hereinafter defined), or any of them, and that arise out of or are related in any way to any or all of the acts, omissions, facts, matters, transactions, or occurrences that were or could have been directly or indirectly alleged or referred to in the Action (including, but not limited to, alleged violations of Cal. Bus. & Prof. Code § 17200 et seq., Cal. Bus. & Prof. Code § 17500 et seq., Cal. Civ. Code § 1750 et seq., and breach of express warranty); or
- (ii) relate in any way to communications, disclosures, representations, statements, claims, nondisclosures and/or omissions, packaging, advertising, labeling, and/or marketing of or concerning the Subject Products related to the alleged MSG or glutamate content of the Subject Products, including, but not limited to "NO MSG ADDED" and "100% all natural ingredients," made through any medium.

Notwithstanding any other provision of this Agreement, "Released Claims" do not include claims for personal injuries. Plaintiff and Class Members are not releasing any claims, demands, rights, damages, obligations, suits, debts, liens, and causes of action relating to personal injuries.

“Released Parties” shall be defined and construed broadly to effectuate a complete and comprehensive release, and means CJ and any entity that made, manufactured, tested, inspected, audited, certified, purchased, distributed, supplied, licensed, transported, donated, marketed, advertised, promoted, sold or offered for sale any Subject Product, or contributed to any labeling, sale, distribution, supply, advertising, marketing, or packaging of any Product, including all of their respective predecessors, successors, assigns, parents, subsidiaries, divisions, departments, and affiliates, and any and all of their past, present and future officers, directors, employees, shareholders, partners, principals, agents, servants, successors, attorneys, insurers, representatives, licensees, licensors, customers, subrogees and assigns. It is expressly understood that, to the extent a Released Party is not a Party to this Agreement, all such Released Parties are intended third party beneficiaries of this Agreement.

“Releasing Parties” means Plaintiff, Plaintiff’s Counsel, and all Class Members, and any person claiming by or through each Class Member, including but not limited to spouses, children, wards, heirs, devisees, legatees, invitees, employees, associates, co-owners, attorneys, agents, administrators, predecessors, successors, assignees, representatives of any kind, shareholders, partners, directors, or affiliates.

Upon the Effective Date, the Releasing Parties shall be deemed to have, and by operation of the Final Order and Final Judgment shall have, fully, finally and forever released, relinquished, and discharged all Released Claims against the Released Parties. In connection with the Released Claims, each Releasing Party shall be deemed as of the Effective Date to have expressly, knowingly, and voluntarily waived any and all provisions, rights, benefits conferred by Section 1542 of the California Civil Code, and any statute, rule, and legal doctrine similar, comparable, or equivalent to 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.

In connection with such waiver and relinquishment, the Releasing Parties hereby acknowledge that they are aware that they or their attorneys may hereafter discover claims or facts in addition to or different from those that they now know or believe exist with respect to Released Claims, but that it is their intention to hereby fully, finally, and forever settle and release all of the Released Claims, whether known or unknown, suspected or unsuspected, that they have against the Released Parties. In furtherance of such intention, the release herein given by the Releasing Parties shall be and remain in effect as a full and complete general release notwithstanding the discovery or existence of any such additional different claims or facts. Each of the Releasing Parties expressly acknowledges that he/she/it has been advised by its attorney of the contents and effect of Section 1542, and with knowledge, each of the Parties hereby expressly waives whatever benefits he/she/it may have had pursuant to such section. Plaintiff and Class Members are not releasing any claims for personal injuries. Plaintiff acknowledges, and the Class Members shall be deemed by operation of the Final Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a material element of the settlement of which this release is a part.

The Agreement is available at www.noMSGaddedsettlement.com and describes the claims that you give up if you remain in the settlement in further detail.

13. When will I get my payment, if any?

The Court will hold a Fairness Hearing on [DATE] during which it will decide whether it will finally approve all terms of the settlement. If the Court approves the settlement, there may be appeals or other challenges. Payment is contingent upon the Court's final approval of the proposed settlement. After the Court enters an order and judgment finally approving the settlement and all objections and appeals (if any) are resolved, the checks will be mailed within forty-five (45) calendar days.

The progress of the approval process and expected dates of payment will be updated periodically on www.noMSGaddedsettlement.com and can also be obtained by calling [NUMBER] toll free.

If there are appeals, resolving them can take time (potentially more than a year). Please be patient.

HOW TO RECEIVE A PAYMENT**14. How can I get a payment?**

To get a payment under the settlement, you must send in a Claim Form. A Claim Form and directions are attached as **Appendix A** to this notice. You may also obtain and print a Claim Form and other relevant documents by visiting www.noMSGaddedsettlement.com.

Please read the instructions carefully, and fill out the form completely and accurately.

Claim Forms can be submitted two ways: electronically or by mail. Your Claim Form must be submitted electronically at www.noMSGaddedsettlement.com no later than [DATE] or by mail postmarked no later than [DATE] and mailed to: [ADDRESS].

15. What is the claim process?

The Settlement Administrator will review each Claim Form.

Claim Forms that do not meet the terms and conditions of the Agreement shall be rejected by the Settlement Administrator. The Settlement Administrator shall have forty-five (45) days from the date the settlement is final (if there have been no appeals, or if any appeals have been withdrawn or rejected) to exercise the right of rejection. The Settlement Administrator shall notify the Class Member using the contact information provided in the Claim Form of the rejection, including via electronic mail.

Class Counsel and Defense Counsel shall be provided with copies of all such notifications to Class Members. If any claimant whose Claim Form has been rejected, in whole or in part, desires to contest such rejection, the claimant must, **within fifteen (15) business days from receipt of the rejection**, transmit to the Settlement Administrator by e-mail or U.S. mail a notice and statement of reasons indicating the claimant's grounds for contesting the rejection, along with any supporting documentation, and requesting further review by the Settlement Administrator, in consultation with Class Counsel and Defense Counsel, of the denial of the claim. If Class Counsel and Defense Counsel cannot agree on a resolution of claimant's notice contesting the rejection, the disputed claim shall be presented to the Court or a referee appointed by the Court for summary and non-appealable resolution. No person shall have any claim against CJ, Defense Counsel, Plaintiff, Plaintiff's counsel, the Class, Class Counsel, and/or the Settlement Administrator based on any eligibility determinations, distributions, or awards made in accordance with this Agreement.

If a Claim is not contested, you will receive payment for that Claim in accordance with the terms of the Agreement. All usual and customary steps to prevent fraud and abuse in the Claim Process will be taken. This includes denying claims in whole or in part to prevent fraud or abuse. Class Counsel and CJ will be provided a report on the denial of any claim due to insufficient documentation and may recommend additional action including payment.

The Court will hold a Fairness Hearing on **[DATE, TIME]** to decide whether or not to approve the proposed settlement. The Court must finally approve the proposed settlement before any payments can be made. The Court will grant its approval only if it finds that the proposed settlement is fair, reasonable, and adequate. In addition, the Court's order may be subject to appeals. It is always uncertain whether these appeals can be resolved, and resolving them takes time, sometimes more than a year.

16. What if I do nothing?

If you are a Class Member and you do nothing, you will not get any payment from the settlement and you will be bound by the Court's decisions and the settlement's release. (See Question 12.)

To receive a payment, you must complaint and submit a Claim Form on or before **[DATE]**. (See Question 14.)

Unless you exclude yourself from the Class, if the settlement is approved you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against CJ or the "Released Parties" about the claims in this lawsuit, **ever again**, regardless of whether you submit a Claim Form.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want a payment from this settlement, but you want to keep the right to sue or continue to sue CJ on your own about the legal issues in this case, then you must take steps to get out of the Class. This is called excluding yourself—or it is sometimes referred to as "opting out" of the Class.

17. How can I get out of the settlement?

To exclude yourself from the Class (or "opt out"), you must send by U.S. mail a letter or written request to the Settlement Administrator. Your request must include all of the following:

1. Your full name and current address;
2. A clear statement that you wish to be excluded from the Class;
3. The case name and case number: *Dennis Petersen v. CJ America, Inc.*, Case No. 3:14-CV-2570-DMS-JLB); and
4. Your signature (you must personally sign the letter).

Please write **"REQUEST FOR EXCLUSION"** on the lower left-hand corner of the front of the envelope.

Your exclusion request must be postmarked no later than **[DATE]**. Send your request to: **[ADDRESS]**.

18. If I exclude myself, can I still get a payment?

No. You will not get a payment if you exclude yourself from the settlement. If you request exclusion from the Class, then:

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

However, if your request for exclusion is late or not complete, you will still be a part of the Class, you will be bound by the settlement and by all other orders and judgments in this lawsuit, and you will not be able to participate in any other lawsuits based on the claims in this case.

19. If I don't exclude myself, can I sue CJ for the same thing later?

No. If the Court approves the proposed settlement and you do not exclude yourself from the Class, you give up (or “fully, finally and forever release, relinquish, and discharge”) all Released Claims against the Released Parties, as set forth above in response to Question 12.

As part of this settlement, the Court has preliminarily stopped all Class Members and/or their representatives (who do not timely exclude themselves from the Class) from filing, participating in, or continuing litigation against CJ (or against any of its related parties or affiliates), and/or from receiving any benefits from any other lawsuit relating to the claims being resolved in this case.

If you have a pending lawsuit, arbitration, or other proceeding against CJ, speak to your lawyer in that lawsuit or proceeding. You must exclude yourself from the Class to continue litigating the claims this settlement resolves. Remember, the exclusion deadline (or “Opt Out Date”) is **[DATE]**.

Upon final approval of the settlement, Plaintiff and CJ will ask the Court to enter a permanent ruling forbidding all Class Members and/or their representatives and/or personnel from suing, or continuing to sue CJ regarding any of the Released Claims. All Class Members will be bound by this order.

The representative Plaintiff and his lawyers will not represent you as to any claims you choose to pursue against CJ.

THE LAWYERS REPRESENTING THE CLASS

20. Do I have a lawyer in this case?

The Court has appointed attorneys at the law firm of Finkelstein Thompson LLP and Glancy Prongay & Murray LLP to represent you and the other Class Members in this lawsuit. The lawyers representing you and the Class Members are called “Class Counsel.” You will not be charged for the services of these lawyers. You may contact Class Counsel as follows:

Marc L. Godino Glancy Prongay & Murray LLP 1925 Century Park East, # 2100 Los Angeles, CA 90067 mgodino@glancylaw.com Tel: 310-201-9150	Rosemary M. Rivas Finkelstein Thompson, LLP 1 California Street, # 900 San Francisco, CA 94111 RRivas@finkelsteinthompson.com Tel: 415-398-8700
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You have the right to retain your own lawyer to represent you in this case, but you are not obligated to do so. If you do hire your own lawyer, you will have to pay his or her fees and expenses. You also have the right to represent yourself before the Court without a lawyer.

Class Counsel, Defense Counsel, or the Settlement Administrator may **not** advise you on the tax consequences of participating or not participating in the settlement.

21. How will the lawyers be paid?

Class Counsel have worked on this case since 2014 and have not been paid anything to date for their work on this case. Class Counsel will request attorneys' fees not to exceed \$375,000.00, and reimbursement of costs and expenses not to exceed \$5,000.00, which will be paid using a portion of the \$1,500,000.00 Settlement Fund, prior to the distribution of settlement benefits to Class Members who submit valid and timely Claim Forms.

Class Counsel will also ask the Court for a special service payment (or "Incentive Award") of up to \$5,000.00 for the Class Representative, Dennis Petersen, for his work on behalf of the Class. Any special service payment also must be approved by the Court and any awarded amounts also will be paid using a portion of the \$1,500,000.00 Settlement Fund, prior to the distribution of settlement benefits to Class Members who submit valid and timely Claim Forms.

The Court has to approve any Attorneys' Fees and Expenses and Incentive Award requested by Class Counsel and Plaintiff in this case. Class Counsel's motions for these Attorneys' Fees and Expenses or Incentive Awards will be filed on or before **[DATE]** and posted at www.noMSGaddedsettlement.com.

OBJECTING TO THE SETTLEMENT

You have the right to tell the Court that you do not agree with the Settlement or any or all of its terms.

22. How can I tell the Court if I do not like the Settlement?

If you are a Class Member but do not like the proposed settlement and think the Court should not approve it, you may object. Objecting is simply telling the Court that you don't like something about the settlement. The Court will consider your views.

You can object only if you stay in the Class (i.e., if you do not "opt out" or exclude yourself). As a Class Member, you will be bound to the Agreement and Court orders regardless of your objection and regardless of whether you believe the terms of the settlement are favorable to the Class. You will be bound even if you have another claim, lawsuit, arbitration or other proceeding pending against CJ.

To object, you must **file** a timely, written, compliant, objection with the Court, through the Court's Case Management/Electronic Case Files ("CM/ECF") system) or through any other method in which the Court will accept filings, if any, send the written objection by fax, U.S. mail, or e-mail to the Settlement Administrator, and send by U.S. mail or e-mail a copy to Class Counsel and Defense Counsel postmarked no later than **[DATE]**. Members of the Class who fail to file and serve timely and fully-compliant written objections as described here and in the Agreement shall be deemed to have waived all objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the settlement.

Your written objection **must** include:

- (1) your full name;
- (2) your current address;
- (3) a written statement of your objection(s) and the reasons for each objection;
- (4) a statement of whether you intend to appear at the Fairness Hearing;
- (5) your signature;
- (6) a statement, sworn to under penalty of perjury pursuant to 28 U.S.C. § 1746, attesting to the fact that you purchased one or more of the Subject Products during the Class Period;
- (7) details of your purchase of the Subject Products, including the Subject Products purchased, and the date and location of purchase; and
- (8) the case name and case number: *Petersen v. CJ America, Inc.*, No. 3:14-CV-2570-DMS-JLB.

Objections that are mailed to the Court (and not filed pursuant to the Court's CM/ECF system, or any other method in which the Court will accept filings, if any), or objections that are served on the Parties but not filed with the Court, shall not be received or considered by the Court at the Fairness Hearing. Objections that do not contain all of the information itemized above shall not be considered by the Court at the Fairness Hearing.

Class Members or their attorneys who intend to make an appearance at the Fairness Hearing must deliver a Notice of Intention to Appear to Class Counsel identified and to Defense Counsel, and file said notice with the Court, no later than **[DATE]**, or as the Court may otherwise direct.

Objections and notices of intention to appear must be served:

Upon Settlement Administrator at:

[ADDRESS]

Upon Class Counsel at:

Marc L. Godino
GLANCY PRONGAY & MURRAY LLP
1925 Century Park East, Suite 2100
Los Angeles, CA 90067
Email: mgodino@glancylaw.com

Rosemary M. Rivas
FINKELSTEIN THOMPSON, LLP
1 California Street, Suite 900
San Francisco, California 94111
E-mail: RRivas@finkelsteinthompson.com

Upon Defense Counsel at:

Carlos M. Lazatin
Daniel J. Faria
O'MELVENY & MEYERS LLP
400 S. Hope Street
Los Angeles, California 90071
E-mail: dfaria@omm.com

If you file objections, but the Court approves the settlement as proposed, you can still complete a Claim Form to be eligible for payment under the settlement, subject to the terms and conditions discussed in this Notice and in the settlement agreement called the “Stipulation of Settlement.”

23. What is the difference between objecting and asking to be excluded?

Objecting is simply a way of telling the Court that you don’t like something about the settlement. You can only object if you stay in the Class. You will also be bound by any subsequent rulings in this case and you will not be able to file or participate in any other lawsuit based upon or relating to the claims of this lawsuit. If you object to the settlement, you still remain a Class Member and you will still be eligible to submit a Claim Form. Excluding yourself is telling the Court that you don’t want to be a part of the Class. If you exclude yourself, you have no basis to object to the settlement and appear at the Fairness Hearing because it no longer affects you.

THE COURT’S FAIRNESS HEARING

The Court will hold a final hearing (called a Fairness Hearing) to decide whether to finally approve the settlement. You may attend and ask to speak, but you don’t have to.

24. When and where will the Court decide whether to approve the settlement?

On **[DATE, TIME]** the Court will hold a Fairness Hearing at the United States District Court for the Southern District of California, before the Honorable Dana Sabraw, District Judge, in Courtroom 13A, 13th Floor, 333 West Broadway, San Diego, California 92102.

The hearing may be moved to a different date or time without additional notice, so it is a good idea to check www.noMSGaddedsettlement.com for updates. At this hearing the Court will consider whether the settlement is fair, reasonable, and adequate. The Court will also decide whether to award Attorneys’ Fees and Expenses and Plaintiff’s Incentive Award.

If there are objections, the Court will consider them at that time. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

25. Do I have to come to the hearing?

No. Class Counsel will answer questions the Court may have at the Fairness Hearing. But you are welcome to come at your own expense. Please note that the Court has the right to change the date and/or time of the Fairness Hearing without further notice, so it is a good idea to check the settlement website www.noMSGaddedsettlement.com for updates. If you are planning to attend the hearing, you should confirm the date and time on this website before going to the Court.

26. May I speak at the fairness hearing?

Yes, you may ask the Court for permission to speak at the hearing. To do so, you must **file** a document called a “Notice of Intention to Appear” through the Court’s Case Management/Electronic Case Files (“CM/ECF”) system) or through any other method in which the Court will accept filings, if any.

If you or your attorney wants to appear and speak at the Fairness Hearing, you (or your attorney) must also mail a Notice of Intention to Appear at the Fairness Hearing to the addresses listed above in Question 22.

Your Notice of Intention to Appear at the Fairness Hearing must be filed and received by the Court, and mailed and/or e-mailed to the Settlement Administrator, CJ's Counsel, and Class Counsel no later than **[DATE]**.

GETTING ADDITIONAL INFORMATION

27. How can I get more information?

This notice summarizes the proposed settlement. More details are in the settlement agreement which is called the "Stipulation of Settlement" or "Agreement." For a complete, definitive statement of the settlement terms, refer to the Agreement at **www.noMSGaddedsettlement.com**. You also may write with questions to the Settlement Administrator at **[ADDRESS]** or call **[NUMBER]** toll free.

PLEASE DO NOT CALL THE COURT

EXHIBIT F

LEGAL NOTICE

IF YOU BOUGHT CERTAIN ANNIE CHUN'S PRODUCTS LABELED "NO MSG ADDED" BETWEEN NOVEMBER 19, 2012 AND [DATE], YOU COULD RECEIVE A CASH PAYMENT FROM A CLASS ACTION SETTLEMENT.

Para una notificación en Español, por favor llame o visite nuestro website.

A settlement has been proposed in a class action lawsuit alleging that CJ America mislabeled certain Annie Chun's products as "NO MSG ADDED."

The United States District Court for the Southern District of California authorized this notice. Before any money is paid, the Court will have a hearing to decide whether to approve the settlement.

WHO IS INCLUDED IN THE PROPOSED SETTLEMENT?

All persons in the United States and United States Territories who purchased at retail, from the period November 19, 2012 through [DATE], certain Annie Chun's Noodle Bowl, Soup Bowl, and Ramen House products labeled "NO MSG ADDED."

A full list of the "Subject Products" at issue in the settlement is available at the website www.noMSGaddedsettlement.com or by calling [NUMBER].

WHAT IS THIS CASE ABOUT?

The lawsuit claims that CJ mislabeled the Subject Products as "NO MSG ADDED," despite the fact that the Subject Products allegedly contained ingredients that have or are known to have MSG. Plaintiff believes the alleged claims are strong. Plaintiff entered into the settlement to avoid the delay, risks, and increased costs associated with continued litigation and believes the settlement is in the best interests of the Class. CJ denies that it did anything wrong or unlawful, and asserts that the product labels at issue were truthful, not misleading, and consistent with the law. CJ entered into a settlement solely to avoid the further expense, inconvenience, and distraction of any burdensome and protracted litigation and to eliminate future controversy with respect to this lawsuit.

WHAT DOES THE PROPOSED SETTLEMENT PROVIDE?

The settlement provides a total fund of \$1.5 million to resolve the lawsuit. This Settlement Fund has been set up to pay (i) money to Class Members who submit valid Claim Forms on or before [DATE], (ii) Settlement Administration Expenses, (iii) an Incentive Award to the Class Representative, and (iv) Attorneys' Fees and Expenses.

Class Members who submit valid Claim Forms, on or before [DATE], may be entitled to receive a \$1.50 cash payment from the Settlement Fund for each Subject Product purchased from the period November 19, 2012 through [DATE], up to a total of a \$15.00 cash payment, without providing Proof of Purchase. Class Members who claim more than \$15.00 in cash awards must submit Proof of Purchase establishing purchase(s) during the Class Period for each Subject Product claimed in excess of ten (10) products. CJ has also agreed not to use the phrase "NO MSG ADDED" on the Subject Products for a period of three years.

Full details about the proposed settlement, including Claim Forms and the settlement agreement, are available at www.noMSGaddedsettlement.com.

WHO REPRESENTS YOU?

The Court appointed the law firms Glancy Prongay & Murray LLP and Finkelstein Thompson LLP to represent you as "Class Counsel."

WHAT ARE YOUR OPTIONS?

If you are a Class Member, you may (1) do nothing; (2) exclude yourself; (3) send in a Claim Form; (4) object to the settlement; and/or (5) go to a hearing about the fairness of the settlement.

If you do not want to be legally bound by the settlement, you must exclude yourself by letter postmarked by [DATE].

If you exclude yourself, you cannot receive a cash payment from this settlement, but you can sue, or continue to sue, CJ regarding the claims in this case. If you do not exclude yourself from the Class, you may submit a Claim Form and/or object to the settlement by [DATE].

The detailed or “Long Form” notice, which can be found at www.noMSGaddedsettlement.com, explains how to exclude yourself or object. You may also call [NUMBER] for details.

The Court will hold a hearing in this case on [DATE] at [TIME] in Courtroom 13A of the James M. Carter and Judith N. Keep United States Courthouse, 333 West Broadway, San Diego, California 92101. At this hearing, the Court will consider whether to approve the settlement and whether to approve Class Counsel’s application for attorneys’ fees not to exceed \$375,000.00, expenses not to exceed \$5,000, and an Incentive Award not to exceed \$5,000.00 for the Plaintiff.

The motion(s) by Class Counsel for those fees and costs and the incentive award will be available on the Settlement Website after they are filed and before the hearing.

You may appear at the hearing, but you do not have to. You do not need to retain an attorney to appear at the hearing, but you have the right to do so.

HOW CAN YOU GET MORE INFORMATION?

To receive more information about the settlement, you can get a detailed notice and other information, including details on how to object and/or exclude yourself from the settlement, by visiting www.noMSGaddedsettlement.com, calling [NUMBER], and writing to [ADDRESS].

Do not contact the Court or CJ concerning this notice or this lawsuit.

EXHIBIT G

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

DENNIS PETERSEN, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

CJ AMERICA, INC.,

Defendant..

Case No. 14-CV-2570 DMS JLB

**DECLARATION OF CHRISTOPHER
D. CHIMICLES, ESQ., ON ADEQUACY
OF NOTICE PLAN**

1 I, Christopher D. Chimicles, hereby declare as follows:

2 1. I submit this declaration for the purpose of providing the Court with
3 information regarding the design, implementation and adequacy of the notice program
4 proposed in this case to reach unknown class members.

5 2. By way of background, Angeion Group is a class action notice and claims
6 administration company formed by a team of executives with more than 60 combined
7 years of experience implementing claims administration and notice solutions for class
8 action settlements and judgments. With executives that have had extensive tenures at five
9 other nationally recognized claims administration companies, collectively, the
10 management team at Angeion has overseen more than 2,000 class action settlements and
11 distributed over \$10 billion to class members.

12 3. I am the President and founder of Angeion Group and as such, I am
13 responsible for all facets of class action notification, claims administration and damages
14 distribution. Prior to my executive position at Angeion, I served as Managing Director of
15 Heffler Claims Group and as Senior Vice President at Rust Consulting, Inc. where I
16 administered some of the largest class action settlements in recent history, including AIG
17 (\$1 Billion) and Marsh & McLennan (\$400 million). Previously, I was Senior Vice
18 President of the Law Firm Banking Group of RBS Citizens Bank and worked with class
19 action law firms in institutional investment management and distribution of class action
20 settlement funds. I hold a Master's Degree in Business Administration from Drexel
21 University's LeBow College of Business and a Bachelor's degree in History from Hobart
22 College.

23 4. This declaration will describe the notice program that my staff and I propose
24 for this case, including the considerations that informed the development of the plan and
25 why we believe it will be effective.

26 //

27 //

SUMMARY OF NOTICE PLAN

5. The notice program that we developed in conjunction with counsel of record in this case utilizes Internet banner advertisements and national print publication to notify the Class of the settlement framework, and will effectively reach 70.2% of the Class, approximately 3 times. While not reflected in calculable reach figures, the notice program also contemplates a toll-free telephone line and informational website which will further apprise Class members of their rights and options in the settlement.

6. The reach of the notice program was specifically designed to meet due process requirements and is consistent with other effective court approved notice programs.

CLASS DEFINITION AND TARGET

7. This matter contemplates a nationwide settlement class encompassing: all persons in the United States and United States Territories who purchased at retail one or more of the Subject Products¹ during the Class Period.

8. To verify the notice program's effectiveness we relied upon and utilized syndicated research data using the GfK MRI 2014 Doublebase survey². Neither CJ

¹ The Subject Products are Annie Chun's: Chinese Chicken Soup Bowl, Hot & Sour Soup Bowl, Korean Kimchi Soup Bowl, Miso Soup Bowl, Thai Tom Yum Soup Bowl, Udon Soup Bowl, Vietnamese Pho, Garlic Scallion Noodle Bowl, Korean Sweet Chili Noodle Bowl, Kung Pao Noodle Bowl, Pad Thai Noodle Bowl, Peanut Sesame Noodle Bowl, Teriyaki Noodle Bowl, Soy Ginger Ramen, Spicy Chicken Ramen, and Spring Vegetable Ramen.

² GfK MRI is a leading supplier of publication readership and product usage data for the communications industry. GfK MRI offers complete demographic, lifestyle, product usage and exposure to all forms of advertising media. As the leading U.S. source of multimedia audience research, GfK MRI provides information to magazines, television and radio networks and stations, internet sites, other media, leading national advertisers, and over 450 advertising agencies – including 90 of the top 100 in the U.S. MRI's national syndicated data is widely used by companies as the basis for the majority of the media and marketing plans that are written for advertised brands in the U.S.

America, Inc., CJ Foods Inc., nor Annie Chun's was measured in MRI; however, some Nissin products are measured. Since Nissin has a similar product line to Annie Chun's products, these products were chosen as a baseline target proxy. In addition, a qualifier of "Organic foods used in the last 6 months" was added to better reach our target audience. Consequently, to verify the audience, the Nissin product line was used in combination with behavior statements that would best reflect the desired "natural" snack foods audience. The specific target definition utilized to profile the class is as follows:

- Nissin Cup Noodles; *or*
- Nissin Top Ramen; *or*
- Nissin Chow Mein; *and*
- Organic Foods used in the last 6 months [Any Food]

We chose this definition because it is our opinion that this comprehensive, over inclusive target group best represents the Class.

8. Understanding the socio-economic characteristics, interests and practices of a target group aids in the proper selection of media to reach that target. Here, just below half of the target group are married (49%). Most are between the ages of 18 and 54, with an average age of 41. 65.8% live in households with total income below 75,000.00 55.0% have a child/children under the age of 17 living in the household and 53% are employed, with most working full time (40.8%).

9. In order to identify the best vehicles to deliver messaging to the target audience, we reviewed the media quintiles, which measure the degree to which an audience uses media relative to the general population. Here it shows our target audience are Internet users, utilizing the Internet on average of 14 hours per week. Likewise, the frequency with which they read newspaper is commensurate with the general population, reading approximately 9 issues over a standard 28 day period. Therefore, we recommended those platforms through which to reach potential class members. Given the degree of internet usage observed, we recommend using online as the primary

1 communications platform. This medium can be used in a highly targeted manner, while
2 delivering strong reach to the class. To supplement online advertising, we recommend a
3 contextually relevant national publication, *Cooking Light*. This combination of media
4 tactics will allow us to deliver an effective reach level for notice messaging while also
5 maximizing efficiencies.

6 **INTERNET BANNER NOTICE**

7 10. We will utilize programmatic Internet purchasing as the primary
8 means of notice messaging for online media. Purchasing display and mobile inventory
9 programmatically provides the highest reach, allows for multiple targeting layers, and
10 offers the most cost-efficient rates. Multiple targeting layers will be implemented to help
11 ensure delivery to the most appropriate users, inclusive of search targeting, social
12 demographic targeting, category contextual targeting, keyword contextual targeting and
13 site retargeting. Search terms will be relevant to food and eating while a focus will also
14 be placed on terms relevant to the brands marketed under CJ America, Inc. Targeting
15 users who are currently browsing or have recently browsed content in categories such as
16 Food & Beverage will also help qualify impressions to ensure messaging is served to the
17 most relevant audience. Both desktop and mobile impressions will be served to reach the
18 most qualified audience. We recommend implementing a 4-week desktop and mobile
19 campaign, utilizing standard IAB sizes (160x600, 300x250, 728x90, 300x600, 320x50,
20 300x50). A 3x frequency cap will be imposed to maximize reach.

21 11. In order to track campaign success and optimize digital efforts, we
22 recommend implementing conversion pixels throughout various webpages to better
23 understand audience behavior and key conversion points. The algorithm will change
24 based on successful conversions generated throughout the campaign timeframe.

25 **PUBLICATION NOTICE**

26 12. To identify the best print vehicle for delivering the message to the
27
28

target audience, over 200 measured titles were analyzed in GfK MRI (2014 Doublebase). While coverage, or reach, was the most critical factor in title selection, other considerations were taken into account, including audience composition, pricing efficiencies and editorial relevancy.

13. *Cooking Light* provides a targeted approach to the desired audience. Accordingly, this is the only title that is recommended for notice messaging. We recommend placement of one 1/2-Page B/W insertion.

RESPONSE MECHANISMS

14. We will establish a toll-free telephone line to provide settlement-related information to Settlement Class Members. The toll-free telephone number will be included in the Summary Notice, Long Form Notice and will be capable of receiving requests for Claim Forms, and/or the Long Form Notice, as well as providing general information concerning deadlines for opting out of the Settlement or objecting to it, relevant court documents such as the Stipulation of Settlement, and the dates of the relevant court proceedings, including the Final Approval Hearing.

15. Likewise, we will establish an informational case website, www.noMSGaddedsettlement.com, where Class members can view relevant court documents, operative dates and a frequently asked questions page (“The Settlement Website”). The case website will have any easy to remember web address and will be prominently displayed on all notice materials.

REACH AND FREQUENCY

16. The notice program will deliver 70.2% reach of the Class with an average frequency of 3.0 times each. In laymen’s terms, this means that 70.2% of our target audience will be exposed to the Notice messaging, on average, three different times.

17. The reach of the target audience and the number of exposure opportunities complies with due process and exceeds the Federal Judicial Center’s threshold as to reasonableness in notification programs designed to reach unidentified class members.

CONCLUSION

18. In my opinion, the notice program meets the expressed requirements of Rule 23 of the Federal Rules of Civil Procedure and will provide members of the Settlement Class the best notice practicable under the circumstances. Further, the notice program provides reach and frequency evidence which courts systematically rely upon in reviewing class action notice programs for adequacy and that evidence shows that this plan meets or exceeds the guidelines as set forth in the Federal Judicial Center's *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide*.

19. At the conclusion of the Notice Program, we will provide a final report verifying the notice program's adequacy and implementation.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 30th day of October, 2015 in Philadelphia, Pennsylvania.



Christopher D. Chimicles

1 ROSEMARY M. RIVAS (S.B.#209147)

rrivas@finkelsteinthompson.com

2 **FINKELSTEIN THOMPSON LLP**

One California Street, Suite 900

3 San Francisco, California 94111

Telephone: (415) 398-8700

4 Facsimile: (415) 398-8704

5 MARC L. GODINO (S.B.#182689)

mgodino@glancylaw.com

6 **GLANCY PRONGAY & MURRAY LLP**

7 1925 Century Park East, Suite 2100

Los Angeles, California 90067

8 Telephone: (310) 201-9150

9 Facsimile: (310) 201-9160

10 *Attorneys for Plaintiff*

Dennis Petersen

11
12 **UNITED STATES DISTRICT COURT**

13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 DENNIS PETERSEN, on behalf of himself
15 and all others similarly situated,

16 Plaintiff,

17 v.

18 CJ AMERICA, INC.,

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20 Defendants.
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Case No.: 3:14-cv-02570 DMS JLB

PROOF OF SERVICE

PROOF OF SERVICE

I, Taylor Warren, declare as follows:

I am employed by Finkelstein Thompson LLP, 1 California Street, Suite 900, San Francisco, California 94111. I am over the age of eighteen years and am not a party to this action. On February 5, 2016, I served the following document(s) via the Court's electronic filing system on all case participants:

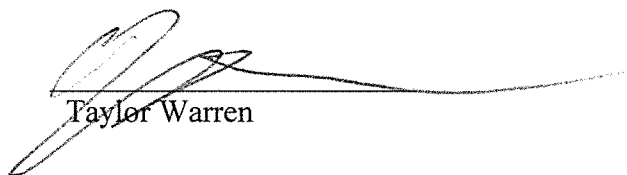
**PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

DECLARATION OF ROSEMARY M. RIVAS

PROOF OF SERVICE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed this 5th day of February 2016 at San Francisco, California.


Taylor Warren