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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

AMENDED 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

ORDER PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT
Case No. 14-cv-02570-DMS-JLB

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 **September 30, 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 13A, 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 **September 7, 2016**. The Fairness Hearing may be

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

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

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

15 (a) Notice Date. No later than **May 20, 2016**, the Settlement
16 Administrator shall provide notice to the Class pursuant to the terms of the Superseding
17 Agreement and the deadlines set forth in Paragraph 15 below, in accordance with the
18 notice program set forth in the Declaration of the Settlement Administrator (attached as
19 Exhibit G to the Agreement). The Parties shall coordinate with the Settlement
20 Administrator to provide notice to the Class pursuant to terms therein.

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

24 (c) The Court finds that the form, content and method of disseminating
25 notice to the Class as described in Paragraphs 10 and 15 of this Order: (i) complies
26 with Rule 23(c)(2) of the Federal Rules of Civil Procedure as it is the best practicable
27 notice under the circumstances, and is reasonably calculated, under all the
28 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 **August 24, 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 **April 4, 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 **April 4, 2016**.

4 (d) The Settlement Website and Toll-Free Telephone Number shall be
5 established and become operational no later than **April 4, 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 **July 20,**
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 **August 24, 2016** (“the
12 Objection Deadline”).

13 (h) All Requests for Exclusion shall be postmarked and sent to the
14 Settlement Administrator no later than **August 24, 2016** (“the Opt Out Date”).

15 (i) A Fairness Hearing shall be scheduled for **September 30, 2016**, at
16 **1:30 p.m.**

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

22 (k) Plaintiff’s motion in support of final approval of the Superseding
23 Settlement and Class Counsel’s Fee Application shall be filed no later than **August 3,**
24 **2016**, and posted to the Settlement Website as soon as practicable thereafter, and may be
25 supplemented no later than seven (7) days prior to the Fairness Hearing.

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

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


1 Settlement does not become final and shall not be construed or used as an admission,
2 concession, or declaration by or against CJ of any fault, wrongdoing, breach, or liability,
3 or that any of the claims asserted in the Action meet the requisites for certification as a
4 class action under federal or California law. Nor shall this Order be construed or used as
5 an admission, concession, or declaration by or against Plaintiff or the other Class
6 Members that their claims lack merit or that the relief requested is inappropriate,
7 improper, or unavailable, or as a waiver by any party of any defenses or claims he, she,
8 or it may have in the Action or in any other lawsuit.

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

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

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

22 Dated: March 25, 2016

23 
24 Hon. Dana M. Sabraw
25 United States District Judge
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