

1 **MAURIELLO LAW FIRM, APC**
Thomas D. Mauriello (SBN: 144811)
2 *tomm@maurlaw.com*
1181 Puerta Del Sol, Suite 120
3 San Clemente, CA 92673
Tel: (949) 542-3555
4 Fax: (949) 606-9690

5 **CENTER FOR SCIENCE IN THE PUBLIC INTEREST**
Maia C. Kats (to be admitted *pro hac vice*)
6 *mkats@cspinet.org*
Matthew Simon (to be admitted *pro hac vice*)
7 *msimon@cspinet.org*
1220 L Street, Northwest, Suite 300
8 Washington, District of Columbia 20005
Telephone: (202) 777-8381
9 Facsimile: (202) 265-4954

10
11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13
14
15 KIMBERLY BIRBROWER, individually
and on behalf of all others similarly
16 situated,

17 Plaintiff,

18 v.

19 QUORN FOODS, INC., et al.,

20 Defendants.

Case No. 2:16-cv-01346-DMG-AJW

**NOTICE OF MOTION AND
MOTION OF THE CENTER FOR
SCIENCE IN THE PUBLIC
INTEREST FOR LEAVE TO
FILE BRIEF AS *AMICUS*
CURIAE IN OPPOSITION TO
PROPOSED SETTLEMENT**

21
22 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

23 **PLEASE TAKE NOTICE** that, upon the accompanying Motion of the
24 Center for Science in the Public Interest for Leave to File Brief As *Amicus Curiae*
25 in Opposition to the Proposed Settlement, the Center for Science in the Public
26 Interest (“CSPI”), through their undersigned counsel, will and hereby do move this
27 Court before the Honorable Dolly M. Gee, United States District Judge for the
28 United States District Court for the Central District of California, at the United

1 States Courthouse, 50 West 1st Street, Los Angeles, CA, 90012, at a date that the
2 Court will determine, for an Order granting CSPI leave to appear as *amicus curiae*,
3 file the attached *amicus curiae* brief in opposition to the proposed settlement, and
4 appear at the Final Fairness Hearing.

5 CSPI makes this Motion pursuant to Rule 29 of the Federal Rules of Civil
6 Procedure on the grounds that it has a unique perspective on deceptive advertising
7 of the product at issue. This Motion is based upon this Notice of Motion, the
8 accompanying memorandum of law, all pleadings on file, and any additional
9 briefing and argument presented to the Court before or at the hearing on this
10 Motion.

11 Respectfully submitted,

12 DATED: March 23, 2017

MAURIELLO LAW FIRM, APC

13 By: /s/ Thomas D. Mauriello

14 Thomas D. Mauriello (SBN: 144811)

15 *tomm@maurlaw.com*

16 1181 Puerta Del Sol, Suite 120

17 San Clemente, CA 92673

Tel: (949) 542-3555

Fax: (949) 606-9690

18 **CENTER FOR SCIENCE IN THE PUBLIC
19 INTEREST**

20 Maia C. Kats (to be admitted *pro hac vice*)

mkats@cspinet.org

21 Matthew Simon (to be admitted *pro hac vice*)

msimon@cspinet.org

22 1220 L Street, Northwest, Suite 300

Washington, District of Columbia 20005

23 Telephone: (202) 777-8381

24 Facsimile: (202) 265-4954

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on March 23, 2017, I caused the document entitled “NOTICE OF MOTION AND MOTION OF THE CENTER FOR SCIENCE IN THE PUBLIC INTEREST FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* IN OPPOSITION TO PROPOSED SETTLEMENT” to be filed with the Court’s CM/ECF system, which sends notice of such filing to all parties registered with the CM/ECF system.

/s/ Thomas D. Mauriello
Thomas D. Mauriello

1 **MAURIELLO LAW FIRM, APC**
Thomas D. Mauriello (SBN: 144811)
2 *tomm@maurlaw.com*
1181 Puerta Del Sol, Suite 120
3 San Clemente, CA 92673
Tel: (949) 542-3555
4 Fax: (949) 606-9690

5 **CENTER FOR SCIENCE IN THE PUBLIC**
INTEREST
6 Maia C. Kats (to be admitted *pro hac vice*)
mkats@cspinet.org
7 Matthew Simon (to be admitted *pro hac vice*)
msimon@cspinet.org
8 1220 L Street, Northwest, Suite 300
Washington, District of Columbia 20005
9 Telephone: (202) 777-8381
Facsimile: (202) 265-4954

10
11
12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14
15 **KIMBERLY BIRBROWER,**
16 individually and on behalf of all others
similarly situated,

17 Plaintiff,

18 v.

19 **QUORN FOODS, INC., et al.,**

20 Defendants.
21
22
23
24
25
26
27
28

Case No. 2:16-cv-01346-DMG-AJW

**MEMORANDUM OF LAW IN
SUPPORT OF MOTION OF THE
CENTER FOR SCIENCE IN THE
PUBLIC INTEREST FOR LEAVE TO
FILE BRIEF AS AMICUS CURIAE IN
OPPOSITION TO PROPOSED
SETTLEMENT**

1 The Center for Science in the Public Interest (“CSPI”) respectfully requests
2 leave of the Court to appear as *amicus curiae*, file the attached *amicus curiae* brief
3 in the above-captioned case in opposition to the proposed settlement, and appear at
4 the Final Fairness Hearing.

5 **I. CSPI Advocates on Behalf of the Public on Issues of Nutrition and**
6 **Deceptive Advertising in Food**

7 CSPI is a 501(c)(3) nonprofit, nonpartisan organization whose mission is to
8 advocate on behalf of the public on issues of nutrition. As part of that mission,
9 CSPI Litigation seeks to protect consumers nationwide through the prevention of
10 false and deceptive marketing of food and supplements.

11 CSPI and its Executive Director, Michael Jacobson, are well-recognized for
12 their work, having received numerous awards and accolades, including, but not
13 limited to, the: Food Marketing Institute, Esther Peterson Consumer Service
14 Award; Food and Drug Administration, Commissioner’s Special Citation and
15 Harvey W. Wiley Medal; Time Magazine, One of the Nation’s 100 Innovators
16 (2000); Consumer Federation of America, Service Award for distinguished service
17 to consumers over the past three decades; American Diabetes Association,
18 C. Everett Koop Award for Health Promotion and Awareness; Centers for Disease
19 Control and Prevention, Pioneering Innovation Award; CDC Foundation, Hero
20 Award; and American Public Health Association, David P. Rall Award for
21 Advocacy in Public Health. *See* Declaration of Michael F. Jacobson, Ph.D.,
22 Executive Director, Center for Science in the Public Interest, dated March 23, 2017
23 (“Jacobson Decl.”), ¶ 3.

24 **II. CSPI’s Interest in this Action**

25 With respect to the instant case, CSPI seeks permission to appear as *amicus*
26 *curiae* because: 1) CSPI has a valuable perspective on deceptive advertising in
27 food; 2) CSPI has considerable expertise with the product at issue; 3) the likelihood
28

1 of an objection by any individual class member is small; and 4) the proposed
2 settlement is inadequate and fundamentally unfair to class members.

3 As a consumer advocacy organization working to advance public health and
4 nutrition, and by corollary to eradicate false and deceptive advertising in food,
5 CSPI has an important interest and a valuable perspective on the issues presented in
6 this case. As such, CSPI should be granted *amicus curiae* status. *See, e.g.,*
7 *Bostick v. Herbalife Int’l of Am., Inc.*, 2015 WL 12731932, at *11 n.13 (C.D. Cal.
8 May 24, 2015) (granting leave to object “*when the amicus has unique information*
9 *or perspective that can help the court beyond the help that the lawyers for the*
10 *parties are able to provide.*”) (emphasis in original) (quoting *Ryan v. CFTC*,
11 125 F.3d 1062, 1063 (7th Cir. 1997) (Posner, J.)); *True v. Am. Honda Motor Co.*,
12 749 F. Supp. 2d 1052, 1058, 1077–78 (C.D. Cal. 2010) (entertaining objections of
13 amici and denying motion for final approval where benefit to the class was minor
14 and fees disproportionately large); *see also Neonatology Assocs., P.A. v. Comm’r of*
15 *Internal Revenue*, 293 F.3d 128, 132 (3d Cir. 2002) (Alito, J.) (“Even when a party
16 is very well represented, an amicus may provide important assistance to the
17 court Some friends of the court are entities with particular expertise not
18 possessed by any party to the case.”) (internal quotation marks omitted); *Ryan*,
19 125 F.3d at 1063 (“An amicus brief should normally be allowed when . . . the
20 amicus has unique information or perspective that can help the court beyond the
21 help that the lawyers for the parties are able to provide.”); *Managing Class Action*
22 *Litigation: A Pocket Guide for Judges*, 3d ed., Federal Judicial Ctr. 2010, at 17
23 (“Generally, . . . nonprofit entities . . . have the class-oriented goal of ensuring that
24 class members receive fair, reasonable, and adequate compensation for any injuries
25 suffered. They tend to pursue that objective by policing abuses in class action
26 litigation. Consider allowing such entities to participate actively in the fairness
27 hearing.”)

28

1 More, CSPI has considerable expertise and experience with the precise
2 product at issue here: Quorn. CSPI has, since 2002, been tracking the experience of
3 consumers who purchased Quorn, including their reactions to the product. To date,
4 CSPI has received approximately 2500 complaints from consumers who have
5 experienced severe adverse reactions to Quorn products.

6 Finally, the need for CSPI to appear as *amicus curiae* is especially
7 pronounced given that the likelihood of an objection by any individual class
8 member is small because the size of their purchases and value of their respective
9 economic loss is small. Alexander Lahav, *Fundamental Principles For Class*
10 *Action Governance*, 37 IND. L. REV. 65, 86 (2003) (“[O]bjections may be limited
11 because even though a settlement is unfair, class members have made the cost-
12 benefit calculation that their potential individual recovery is too small to merit
13 involvement.”).

14 **III. The Basis for CSPI’s Objections**

15 In advance of filing this motion, CSPI reached out to counsel to request that
16 the parties consider its concerns and possible remedies. *See* Jacobson Decl.,
17 Exhibit A (Letter and emails of Maia Kats to Jason Frank, Eric Yuhl, and Eric
18 Kizirian). The concerns raised were either rebuffed entirely or met with vague
19 promises of future efforts by plaintiff’s counsel. With the deadline for filing an
20 objection fast approaching, the need to illuminate CSPI’s concerns directly to the
21 Court by way of an objection became clear.

22 CSPI’s *Amicus Curiae* Brief explains in detail why CSPI opposes the
23 proposed settlement. In chief, the proposed language of the settlement does not give
24 adequate insight into the proposed labeling changes, which are: 1) vague and
25 unclear as to the definition of “prominent” for the mold warning—it may require
26 negligible or no change from Quorn’s current labeling practices given standard
27 industry practice on interpreting the term “prominent”; 2) inadequate with respect
28 to the deceptive claim that mold causes “rare” allergic reactions, when Quorn

1 causes allergic reactions in a substantial number of consumers; and 3) inadequate
2 with respect to the false claim that too much protein and fiber causes “intolerance in
3 some people,” which diverts attention away from mold as the principal cause of
4 adverse reactions to the product. Also, CSPI’s informal survey of known Quorn
5 consumers also indicates a universal deficiency in notice of the proposed settlement
6 to them. Notwithstanding the above, the proposed agreement awards counsel
7 substantial fees while providing only minor if any (given proof of small purchase
8 requirements) compensation to the class.

9 For these reasons, CSPI moves for leave to appear as *amicus curiae*, file the
10 attached brief in opposition to the proposed settlement, and appear at the Final
11 Fairness Hearing.

12 Respectfully submitted,

13 DATED: March 23, 2017 MAURIELLO LAW FIRM, APC

14 By: /s/ Thomas D. Mauriello

15 Thomas D. Mauriello (SBN: 144811)
16 *tomm@maurlaw.com*
17 1181 Puerta Del Sol, Suite 120
18 San Clemente, CA 92673
19 Tel: (949) 542-3555
20 Fax: (949) 606-9690

21 **CENTER FOR SCIENCE IN THE PUBLIC
22 INTEREST**

23 Maia C. Kats (to be admitted *pro hac vice*)
24 *mkats@cspinet.org*
25 Matthew Simon (to be admitted *pro hac vice*)
26 *msimon@cspinet.org*
27 1220 L Street, Northwest, Suite 300
28 Washington, District of Columbia 20005
Telephone: (202) 777-8381
Facsimile: (202) 265-4954

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on March 23, 2017, I caused the document entitled “MEMORANDUM OF LAW IN SUPPORT OF MOTION OF THE CENTER FOR SCIENCE IN THE PUBLIC INTEREST FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE IN OPPOSITION TO PROPOSED SETTLEMENT” to be filed with the Court’s CM/ECF system, which sends notice of such filing to all parties registered with the CM/ECF system.

/s/ Thomas D. Mauriello
Thomas D. Mauriello

1 **MAURIELLO LAW FIRM, APC**
2 Thomas D. Mauriello (SBN: 144811)
3 *tomm@maurlaw.com*
4 1181 Puerta Del Sol, Suite 120
5 San Clemente, CA 92673
6 Tel: (949) 542-3555
7 Fax: (949) 606-9690

8 **CENTER FOR SCIENCE IN THE PUBLIC**
9 **INTEREST**
10 Maia C. Kats (to be admitted *pro hac vice*)
11 *mkats@cspinet.org*
12 Matthew Simon (to be admitted *pro hac vice*)
13 *msimon@cspinet.org*
14 1220 L Street, Northwest, Suite 300
15 Washington, District of Columbia 20005
16 Telephone: (202) 777-8381
17 Facsimile: (202) 265-4954

18 **UNITED STATES DISTRICT COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**

20 **KIMBERLY BIRBROWER,**
21 individually and on behalf of all others
22 similarly situated,

23 Plaintiff,

24 v.

25 **QUORN FOODS, INC., et al.,**

26 Defendants.

Case No. 2:16-cv-01346-DMG-AJW

**MEMORANDUM OF LAW IN
OPPOSITION TO THE PARTIES'
PROPOSED SETTLEMENT
AGREEMENT BY CENTER FOR
SCIENCE IN THE PUBLIC
INTEREST APPEARING AS AMICUS
CURIAE**

27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

	Page
I. INTRODUCTION.....	1
II. INTEREST OF <i>AMICUS CURIAE</i>	2
III. ARGUMENT	2
A. The Injunctive Relief in the Agreement Is Vague and Unclear Because the Term “Prominent” Is Never Defined.....	2
B. The Agreement Judicially Condones Continued Use of Certain Explicitly Deceptive Claims	5
1. The Agreement Condones Deceptive Competing Claims.....	5
2. The Agreement Allows Quorn to Falsely Claim Adverse Reactions Are “Rare”	7
3. Federal Courts Have Rejected Similar Agreements.....	8
C. The <i>Cy Pres</i> Recipient Is Not Consistent With the Class’s Interest.....	9
D. There Is Good Cause to Believe that Notice of the Settlement and Opportunity to Object Was Inadequate.....	11
IV. CONCLUSION.....	11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Page

CASES

Dennis v. Kellogg Co.,
697 F.3d 858 (9th Cir. 2012)..... 10

Pearson v. NBTY, Inc.,
772 F.3d 778 (7th Cir. 2014)..... 8, 9

Tait v. BSH Home Appliances Corp.,
2015 WL 4537463 (C.D. Cal. July 27, 2015)..... 9

Walter v. Hughes Commc’ns, Inc.,
2011 WL 2650711 (N.D. Cal. July 6, 2011)..... 9

STATUTES

21 C.F.R.
§ 101.13 4
§ 101.13(i)(2) 6
§ 101.54(b). 6

21 U.S.C.A.
§ 343(r)(6)(c)..... 3

OTHER AUTHORITIES

Asthma and Allergy Foundation of America, *Mold Allergens* 11

Broad Institute, *Fungal Genome Initiative* 11

FDA, GUIDANCE FOR INDUSTRY: A FOOD LABELING GUIDE (APPENDIX F)..... 6

Federal Judicial Center, Judges’ Class Action Notice and Claims
Process Checklist and Plain Language Guide..... 9

NICOLE NEGOWETTI, BROOKINGS INSTITUTE, FOOD LABELING LITIGATION:
EXPOSING GAPS IN THE FDA’S RESOURCES AND REGULATORY
AUTHORITY (June 2014), 2

1 The Center for Science in the Public Interest (“CSPI”) hereby submits the
2 following memorandum in opposition to the proposed settlement agreement (the
3 “Settlement” or “Agreement”) in the above-entitled action. For the reasons stated
4 herein, the parties’ forthcoming motion for final approval of the Agreement should
5 be denied.

6 **I. INTRODUCTION**

7 The Agreement in this case would allow Defendants to continue largely
8 unabated with the deceptive marketing practices that precipitated this litigation.

9 As Plaintiff alleged in the First Amended Complaint (“FAC”),
10 “‘mycoprotein’ is a term invented by Quorn to mislead consumers and hide the fact
11 that its products are actually made of mold.” FAC ¶ 1. Consequently, Plaintiff
12 demanded that “Defendants [] prominently disclose on the front of its product
13 packaging in bold print and large font that ‘THIS PRODUCT CONTAINS MOLD’
14 in order to cure the false advertising Defendants have been disseminating for
15 years.” See FAC, Prayer for Relief. But the Agreement fails to address this core
16 class claim with anything like the relief pled.

17 First, the intended labeling changes are unfair and unreasonable in that they
18 are: (A) vague and unclear as to the definition of “prominent” for the mold
19 clarification; and (B) condone further (1) false claims that too much protein and
20 fiber causes “intolerance in some people,” while omitting reference to mold, which
21 is the principal cause of adverse reactions, and (2) deceptive claims that mold
22 causes “rare” allergic reactions, when Quorn causes allergic reactions in a
23 substantial number of consumers.

24 Second, the Agreement identifies as a *cy pres* recipient an organization—
25 FARE—that declined to take action on behalf of consumers when notified of
26 serious concerns about Quorn products and extreme adverse reactions to it.

27 And third, CSPI’s informal sampling of California consumers who contacted
28 CSPI about Quorn indicates that not one of those answering the inquiry had

1 received notice of the Settlement (other than through CSPI)—despite indications by
2 some that they had contacted Quorn after their purchase—raising serious concern
3 about how many class members, if any, received actual notice.

4 Notwithstanding these serious deficiencies, and the relatively early stage of
5 this Agreement in the litigation, under the Agreement, plaintiff’s counsel seeks
6 \$1,350,000 in fees.

7 For these reasons, CSPI, a national consumer advocacy organization
8 dedicated to promoting nutrition and protecting consumers from false and deceptive
9 advertising, respectfully opposes the Settlement as being unfair, and urges the Court
10 to deny final approval.

11 **II. INTEREST OF *AMICUS CURIAE***

12 CSPI is a 501(c)(3) nonprofit, nonpartisan organization whose mission is to
13 advance nutrition and public health. As part of that mission, CSPI Litigation
14 protects consumers nationwide through the prevention of false and deceptive
15 marketing of food and supplements, focusing on those instances where the advertising
16 practice at issue is nutritionally significant and material to consumers.¹

17 As explained in detail in the attached Memorandum of Law in Support of
18 Motion of the Center for Science in the Public Interest for Leave to File Brief as
19 *Amicus Curiae* in Opposition to Proposed Settlement, CSPI has an important
20 interest in and a valuable perspective on the issues presented in this case.

21 **III. ARGUMENT**

22 **A. The Injunctive Relief in the Agreement Is Vague and Unclear**
23 **Because the Term “Prominent” Is Never Defined.**

24 There is only one provision in the Agreement that may help inform
25 consumers that mycoprotein is a deceptive and euphemistic term used to describe

26 _____
27 ¹ See, e.g., NICOLE NEGOWETTI, BROOKINGS INSTITUTE, FOOD LABELING
28 LITIGATION: EXPOSING GAPS IN THE FDA’S RESOURCES AND REGULATORY
AUTHORITY (June 2014), available at <https://goo.gl/EWGs82> (noting that CSPI
pioneered false advertising litigation in the food context) (last visited Mar. 18,
2017).

1 mold—common mold grown in large, industrial vats. Under the Agreement, Quorn
2 is required to indicate that “mycoprotein is a ‘mold (member of the fungi family)’
3 in a prominent location at or near the top of the back and/or side of the product
4 label (as applicable).” *See* Agreement pt. III(B). Further definition is given to this
5 charge under section III(B)(2)(ii), which specifies that such language is part of a
6 modified allergy notice that states, “There have been rare cases of allergic reactions
7 to products that contain mycoprotein, a mold (member of the fungi family).
8 Mycoprotein is high in protein and fiber, which may cause intolerance in some
9 people. We do not use any genetically modified ingredients in this product.” *Id.* pt.
10 III(B)(2)(ii). Subpart III(B)(1)(ii) also directs Defendants to state that “mycoprotein
11 (‘myco’ is Greek for ‘fungi’) . . . for more information on nutritious mycoprotein
12 check out our website above.” *Id.* pt. III(B)(ii).

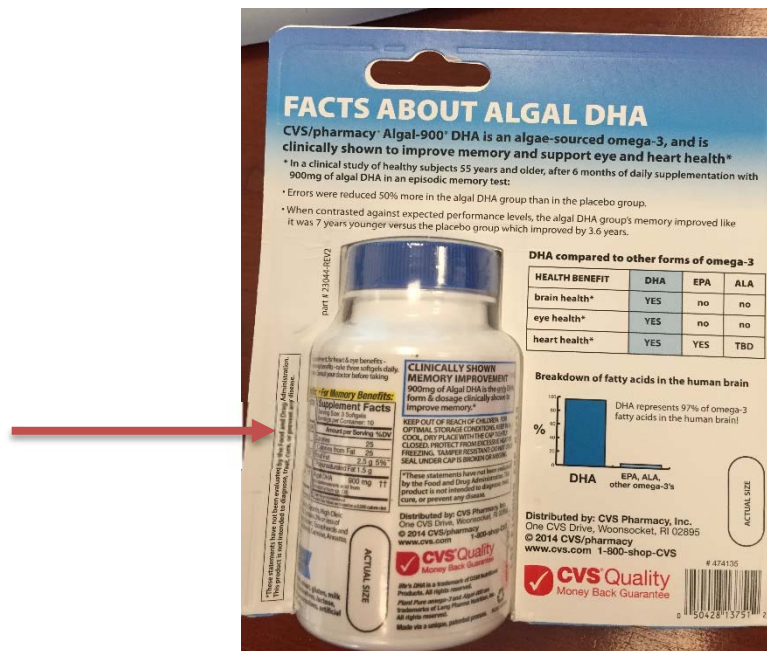
13 This injunctive relief is a far cry from the relief sought in the FAC, which
14 claimed in strong language that the term mycoprotein itself was intentionally
15 deceptive and demanded bold, large font notification of the products’ mold contents
16 on the *front* of packaging. Even accepting for settlement purposes, however, that a
17 back or side label disclaimer is adequate in lieu of the front, the impact of Subpart
18 III(B)(2)(ii) on Quorn’s deceptive advertising practices is woefully unclear. The
19 only term used in the Agreement to indicate the visibility of the mold clarification
20 is the term “prominent,” as per “in a prominent location,” which is never defined.

21 The term “prominent,” however, has connotations under current food
22 industry practices, which could readily gut any injunctive relief here. So-called
23 “prominent” notifications are often, if not typically, obscured by myriad competing
24 label claims and information, which are presented in larger, bolder, and higher-
25 contrast font.

26 For example, under the same regulatory framework that governs food
27 labeling, manufacturers of dietary supplements are required to provide prominent
28 disclaimers on their products. *See, e.g.*, 21 U.S.C.A. § 343(r)(6)(c) (“[A] statement

1 for a dietary supplement may be made if—the statement contains, *prominently*
 2 *displayed and in boldface type*, [a disclaimer.]” (emphasis added). To industry, this
 3 means something other than what one expects. For example, CVS’s approach to
 4 “prominent” is illustrated in Image 1 below—that is, wording that is sideways and
 5 almost illegible despite that it is also “prominently” boxed and bolded. *See also*
 6 Declaration of Michael F. Jacobson, Ph.D., Executive Director, Center for Science
 7 in the Public Interest, dated March 23, 2017 (“Jacobson Decl.”), ¶¶ 12–14. Such an
 8 interpretation of “prominent” would do little to apprise consumers that mycoprotein
 9 is commercially-grown mold by another name.

10
 11 **Image 1**



24 The potential for Defendants to “comply” with the Settlement yet maintain a
 25 low visibility clarification is magnified by the fact that the term “prominent” is
 26 modified by the term “location.” As noted above, the visibility of a disclaimer has
 27 as much to do with font size, contrast, style, and competing text, as it does with
 28 “location.” For this reason, the FDA frequently provides exacting detail about the
 font size of claims with comparisons to competing text. *See, e.g.*, 21 C.F.R.

1 § 101.13 (“A nutrient content claim shall be in type size no larger than two times
2 the statement of identity and shall not be unduly prominent in type style compared
3 to the statement of identity.”).

4 The simple solution to any ambiguity over the visibility of the statement on
5 mold is to either attach a mock label to the Agreement showing an acceptably
6 prominent mold clarification, or to provide further definition of the term
7 “prominent” as applied in the context of other labeling information.² CSPI has used
8 a similar methodology in past settlement agreements. *See, e.g., Lipkind v. PepsiCo*,
9 Case No. 16cv5506 (EDNY), Settlement Agreement at 4–6, *available at*
10 <https://goo.gl/bGwYX0> (last visited Mar. 18, 2017) (specifying placement and font
11 characteristics in different contexts; “[T]he font size of the ‘juices from’ text will
12 match the font size, style, color, and contrast of the listed ingredients.”).

13 At bottom, the current Settlement could offer the class nothing more in terms
14 of notification that mycoprotein is mold than Quorn’s *current* label does—in other
15 words, no meaningful injunctive relief to the class whatsoever. *See infra* at 7,
16 Image 2 (current mold notification).

17 **B. The Agreement Judicially Condones Continued Use of Certain**
18 **Explicitly Deceptive Claims**

19 The Agreement also expressly retains deceptive labeling language about the
20 origins of any adverse reactions to Quorn products and how common these
21 reactions are among consumers.

22 **1. The Agreement Condones Deceptive Competing Claims**

23 The Agreement allows Quorn to deceptively claim that “Mycoprotein is high
24 in protein and fiber, which may cause intolerance in some people.” Agreement

25 _____
26 ² CSPI requested from the parties a mockup of the label to ensure that “prominent”
27 would be used in a manner commonly understood, and suggested that such a mock
28 label be attached to the Agreement. The parties were unwilling to provide a mockup
or more specificity on “prominent” in advance of the objection deadline. *See, e.g.,*
Exhibit A (letter from Maia Kats to Jason Frank and Eric Kizirian (Feb. 17, 2017);
email exchange between Maia Kats and Eric Kizirian (March 18-20, 2017); email
from Maia Kats to Eric Yuhl, Jason Frank, and Eric Kizirian (March 18, 2017)).

1 pt. III(B)(2)(ii). However, most Quorn products contain only a small percentage of
2 the recommended daily intake (“RDI”) of protein and fiber per reference amount
3 customarily consumed (“RACC”). For example, Quorn’s meatless breakfast
4 sausage patties contain 5 grams of protein and 2 grams of fiber per RACC, or
5 approximately 10 percent and 8 percent of the RDI per RACC, respectively.³ See
6 FDA, GUIDANCE FOR INDUSTRY: A FOOD LABELING GUIDE (APPENDIX F), available
7 at <https://goo.gl/IJN15w> (last visited Mar. 19, 2017). To give some further context,
8 the FDA requires that products contain at least 20 percent of the RDI per RACC of
9 a given nutrient to claim that the product is “high” in that nutrient.⁴ See 21 C.F.R.
10 § 101.54(b).

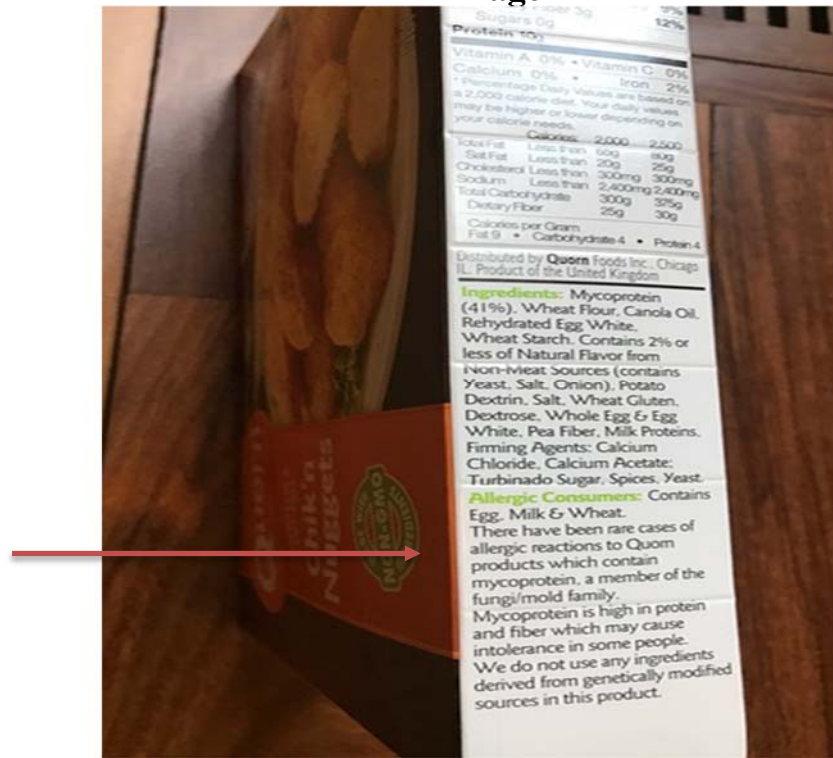
11 At least equally, the claim diverts attention away from mold as the principal
12 cause of adverse reactions to the product. In the world of food labeling, claims
13 compete for coveted space on packaging. Where several claims are made and only
14 one is pertinent to consumers, the pertinent claim is drowned out by competing
15 claims and is necessarily made less prominent. The relatively low levels of fiber
16 and protein in Quorn products would not be the source of intolerance to the product.
17 See Jacobson Decl. ¶ 17. Instead, the source of the approximately 2,500 adverse
18 reaction complaints that we have received is, in all likelihood, mold, as evidenced
19 by clinical research, including one study sponsored by the developer of
20 mycoprotein. See *id.* ¶ 18. Thus, the inclusion of the statement suggesting that high
21 levels of protein and fiber are the cause of adverse reactions is deceptive and
22 misleading, reduces the visibility of the statement regarding mold, encourages
23 consumers to draw a false equivalency between the two disclaimers, and suggests
24

25 ³ Quorn, *Meatless Breakfast Sausage Patties*, <https://goo.gl/u1QfAW> (last visited
Mar. 19, 2017).

26 ⁴ While not the principal basis of our objection here, Quorn’s protein and fiber
27 claim likely violates this FDA regulation. See 21 C.F.R. § 101.13(i)(2) (Where a
28 claim “implicitly characterizes the level of the nutrient in the food and is not
consistent with such a definition, . . . the label [must] carr[y] a disclaimer adjacent
to the statement that the food is not . . . [high in] the nutrient.”).

1 that the product contains a substantial amount of healthful nutrients when it does
2 not.⁵

Image 2



16 **2. The Agreement Allows Quorn to Falsely Claim Adverse**
17 **Reactions Are “Rare”**

18 The Agreement continues to allow Quorn to state that “there have been *rare*
19 cases of allergic reactions” to their products. Agreement pt. III(B)(2)(ii) (emphasis
20 added). CSPI’s evidence strongly suggests that this statement is deceptive and
21 could readily be proven so by plaintiff’s counsel.

22 Indeed, CSPI created a website to document adverse reactions to Quorn
23 products. *See* Jacobson Decl. ¶¶ 8–10. Utilizing only that website, CSPI has
24 received approximately 2,500 adverse reaction reports, which included reports of

25 _____
26 ⁵ The same can be said of the inclusion in the allergen warning of the claim “[w]e
27 do not use any ingredients derived from genetically modified sources in this
28 product.” *See* Agreement pt. III(B)(2)(ii). This claim, while potentially accurate,
draws attention away from the mold notification and has no place in the “Allergic
Consumers Statement.” At minimum, it should be given substantially less visibility
than the statement concerning Quorn’s mold content. *See* Jacobson Decl. ¶ 20.

1 more than 350 skin and respiratory problems, including 1 death (of a young
2 California boy who had asthma), and over 2,100 gastrointestinal reactions (diarrhea,
3 cramps, vomiting). *See id.* ¶ 9. Moreover, in 2003, CSPI commissioned a telephone
4 survey of 1,000 people in the United Kingdom. Of the 400 people that confirmed
5 they had consumed Quorn products, five percent said they suffered adverse
6 reactions. This is higher than rates of adverse reactions to other common allergens,
7 such as peanuts, and does not qualify as “rare.” *See id.* ¶ 11.

8 **3. Federal Courts Have Rejected Similar Agreements**

9 The Seventh Circuit roundly rejected a settlement with similarly deficient
10 injunctive relief. In *Pearson v. NBTY, Inc.*, 772 F.3d 778 (7th Cir. 2014), Judge
11 Posner explained that because the injunctive relief required only “cosmetic” label
12 changes, the benefits inured solely to defendants, not the consumers who were, and
13 will continue to be, deceived:

14 A larger objection to the injunction is that it’s superfluous—or even
15 adverse to consumers. Given the emphasis that class counsel place on
16 the fraudulent character of [defendant]’s claims, [defendant] might
17 have an incentive even without an injunction to change them. The
18 injunction actually gives it protection by allowing it, with a judicial
19 imprimatur (because it’s part of a settlement approved by the district
20 court), to preserve the substance of the claims by making—as we’re
21 about to see—purely cosmetic changes in wording. . . . We see no
22 substantive change.

23 *Pearson*, 772 F.3d at 785.

24 The same criticism is appropriately leveled at the Settlement in this case,
25 which is to say that the injunctive relief is substantively empty because Defendants
26 will be able to continue the deceptive marketing of Quorn products. For these reasons,
27 the Agreement is unfair to the class and should be rejected.

28

1 **C. The *Cy Pres* Recipient Is Not Consistent With the Class’s Interest**

2 In this case, the choice of *cy pres* recipient is paramount because the vast
3 majority of the guaranteed Settlement Funds will likely revert to that recipient.

4 The Agreement creates a “Settlement Fund” of \$2,500,000 “that will be used
5 to pay for Claims, Class Counsel’s Fees and Expenses, Administrative Costs, the
6 Service Award and any and all other ‘all-in’ costs associated with the Settlement.”
7 Agreement pt. I(41). While plaintiff’s counsel has sought \$1,350,000 in attorneys’
8 fees, *see* ECF No. 45, only \$1,000,000, or 40 percent, of the Settlement Fund is
9 guaranteed to either go to claims by class members or to a *cy pres* recipient, *id.*
10 pt. (I)(11), (23). Because of the relatively small economic recovery to individual
11 consumers and the difficulty of making a claim, it is highly unlikely that the claims
12 will exceed \$1,000,000, or even \$200,000.⁶ In fact, based on CSPI’s experience,
13 most of the \$1,000,000 will likely revert to the *cy pres* recipient. *See Tait*, 2015 WL
14 4537463, at *7–8 (Considering potential claims for \$55, stating that there was a
15

16 ⁶ The Agreement inappropriately requires class members to provide proof of
17 purchase for their past grocery items—something few people retain or care to labor
18 to reconstruct with their respective credit card companies. *See, e.g.*, Agreement
19 pt. I(3); *Walter v. Hughes Commc’ns, Inc.*, 2011 WL 2650711, at *15 (N.D. Cal.
20 July 6, 2011) (“But the vast majority of class members who would receive any cash
21 payment under the settlement would receive a mere \$5. Many class members will
22 likely find that given the size of the cash benefit and the amount of time required to
23 submit a claim, it simply is not worth the time and effort to submit a claim.”);
24 *Tait v. BSH Home Appliances Corp.*, 2015 WL 4537463, at *7–8 (C.D. Cal.
25 July 27, 2015) (“[E]conomic reality should be taken into account when assessing
26 the adequacy of the settlement. . . . Put another way, the proposed settlement buys a
27 release from approximately 650,000 class members for the price of \$1.65 per class
28 member (\$55 x 19,469 claims submitted ÷ 650,000 class members.)”); *Pearson*,
772 F.3d at 783 (“As experienced class action lawyers, class counsel in the present
case must have known that the notice and claim forms, and the very modest
monetary award that the average claimant would receive, were bound to discourage
filings.”); *see also* Federal Judicial Center, Judges’ Class Action Notice and Claims
Process Checklist and Plain Language Guide, <https://goo.gl/IASw5D> (last visited
Mar, 19, 2017) (“Watch for situations where class members are required to produce
documents or proof that they are unlikely to have access to or to have retained. A
low claims rate resulting from such unreasonable requirements may mean that your
eventual fairness decision will overstate the value of the settlement to the class and
give plaintiff attorneys credit for a greater class benefit than actually achieved.”).
Indeed, in this instance, proof of purchase is required just to lodge an objection to
the proposed settlement. This high hurdle renders CSPI’s Objection even more
vital.

1 three percent claims rate, and noting “[i]t [was] patently unrealistic to expect that
2 all—or close to all—class members would submit a claim.”).

3 The Agreement designates as its *cy pres* recipient FARE (Food Allergy
4 Research Education). Agreement pt. III(a)(3). While FARE may be a reputable
5 organization that has done important research and educational work on allergens, its
6 designation as the *cy pres* recipient, in these circumstances, is not in the class’s
7 interest.

8 The Ninth Circuit has noted that “[n]ot just any worthy recipient can qualify
9 as an appropriate *cy pres* beneficiary.” *See Dennis v. Kellogg Co.*, 697 F.3d 858,
10 865 (9th Cir. 2012) (internal quotation marks omitted). Indeed, “[t]o avoid the
11 many nascent dangers to the fairness of the distribution process, we require that
12 there be a driving nexus between the plaintiff class and the *cy pres* beneficiaries.”
13 *Id.* Further, the Ninth Circuit has held that it is an abuse of discretion to designate a
14 *cy pres* recipient where there is “no reasonable certainty” that the class members
15 will benefit from the *cy pres* recipients use of the funds. *Id.* (quoting *Six (6)*
16 *Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1308 (9th Cir. 1990)).

17 Here, it is reasonably certain that FARE will *not* utilize these funds to
18 conduct research on or educate the public on the risks associated with consuming
19 mold. Indeed, on several occasions, CSPI communicated to FARE, then called
20 FAAN, its concerns about Quorn, including the large number of reported adverse
21 reactions to the product, but the organization failed to take action on behalf of
22 consumers. *See Jacobson Decl.*, ¶¶ 22–23. To this day, FARE does not include
23 mold among its list of allergens.⁷ Thus, there is no requisite reasonable certainty
24 here about FARE benefitting class members, and it may even take positions adverse
25 to significant numbers of them. As such, its status as *cy pres* recipient should be
26 denied. By contrast, the Broad Institute at Harvard or the Asthma and Allergy

27 _____
28 ⁷ FARE, *Other Allergens*, <https://goo.gl/CF0dkK> (last visited Mar. 19, 2017).

1 Foundation of America are highly reputable organizations that have done work
2 related to mold, and there are no doubt many others.⁸

3 **D. There Is Good Cause to Believe that Notice of the Settlement and**
4 **Opportunity to Object Was Inadequate**

5 Finally, to assess preliminarily whether notice of the settlement is adequate,
6 CSPI reached out to a sampling of 38 individuals who had contacted it after having
7 consumed Quorn products and suffered an adverse reaction. Of the 14 apparent
8 class members who received and responded to our email (in the two-day period
9 before this filing), some of whom had contacted Quorn directly to complain about
10 its products, not one reported having received notice of the Settlement from the
11 parties or the claims administrator. *See* Jacobson Decl. ¶ 24. This raises serious
12 concerns about the adequacy of the Notice concerning the Settlement, including the
13 claims, opt-out, and objection processes. Notably, the total for all claims
14 administration functions, including but not limited to notice and claims processing
15 and administration, were capped at \$150,000, or \$.15 million, in contrast to
16 \$1.35 million in class attorneys' fees and \$1 million for FARE.

17 **IV. CONCLUSION**

18 For the reasons above, we respectfully urge this Court to deny approval of
19 the proposed Settlement as unfair.

20 Respectfully submitted,

21 DATED: March 23, 2017 **MAURIELLO LAW FIRM, APC**

22 By: /s/ Thomas D. Mauriello

23 Thomas D. Mauriello (SBN: 144811)
24 *tomm@maurlaw.com*
25 1181 Puerta Del Sol, Suite 120
26 San Clemente, CA 92673
27 Tel: (949) 542-3555
28 Fax: (949) 606-9690

27 ⁸ *See, e.g.,* Broad Institute, *Fungal Genome Initiative*, <https://goo.gl/E4M5Iq>;
28 Asthma and Allergy Foundation of America, *Mold Allergens*,
<http://www.aafa.org/page/mold-allergy.aspx> (both last visited Mar. 19, 2017).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CENTER FOR SCIENCE IN THE PUBLIC INTEREST

Maia C. Kats (to be admitted *pro hac vice*)
mkats@cspinet.org

Matthew Simon (to be admitted *pro hac vice*)
msimon@cspinet.org

1220 L Street, Northwest, Suite 300
Washington, District of Columbia 20005

Telephone: (202) 777-8381

Facsimile: (202) 265-4954

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on March 23, 2017, I caused the document entitled “MEMORANDUM OF LAW IN OPPOSITION TO THE PARTIES PROPOSED SETTLEMENT AGREEMENT BY CENTER FOR SCIENCE IN THE PUBLIC INTEREST APPREARING AS *AMICUS CURIAE*” to be filed with the Court’s CM/ECF system, which sends notice of such filing to all parties registered with the CM/ECF system.

/s/ Thomas D. Mauriello
Thomas D. Mauriello

1 **MAURIELLO LAW FIRM, APC**
Thomas D. Mauriello (SBN: 144811)
2 *tomm@maurlaw.com*
1181 Puerta Del Sol, Suite 120
3 San Clemente, CA 92673
Tel: (949) 542-3555
4 Fax: (949) 606-9690

5 **CENTER FOR SCIENCE IN THE PUBLIC INTEREST**
Maia C. Kats (to be admitted *pro hac vice*)
6 *mkats@cspinet.org*
Matthew Simon (to be admitted *pro hac vice*)
7 *msimon@cspinet.org*
1220 L Street, Northwest, Suite 300
8 Washington, District of Columbia 20005
Telephone: (202) 777-8381
9 Facsimile: (202) 265-4954

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

KIMBERLY BIRBROWER, individually
and on behalf of all others similarly
situated,

Plaintiff,

v.

QUORN FOODS, INC., et al.,

Defendants.

Case No. 2:16-cv-01346-DMG-AJW

**DECLARATION OF MICHAEL F.
JACOBSON, PH.D., EXECUTIVE
DIRECTOR, CENTER FOR
SCIENCE IN THE PUBLIC
INTEREST**

I, Michael F. Jacobson, being duly sworn, hereby depose and say as follows:

I. QUALIFICATIONS

1. I am a founder of the Center for Science in the Public Interest
("CSPI") and have been its executive director since 1978.

2. CSPI is a 501(c)(3) nonprofit, nonpartisan organization whose mission
is to advocate on behalf of the public on issues of nutrition. As part of that mission,

1 CSPI Litigation represents consumers in deceptive labeling cases in the food and
2 supplement context.

3 3. CSPI and I have been well-recognized for our work, having received
4 numerous awards and accolades, including, but not limited to, the: Food Marketing
5 Institute, Esther Peterson Consumer Service Award; Food and Drug
6 Administration (“FDA”), Commissioner’s Special Citation and Harvey W. Wiley
7 Medal; Time Magazine, One of the Nation’s 100 Innovators (2000); Consumer
8 Federation of America, Consumer Service Award for distinguished service to
9 consumers over the past three decades; American Diabetes Association, C. Everett
10 Koop Award for Health Promotion and Awareness; CDC Foundation, Hero
11 Award; the Centers for Disease Control and Prevention, Pioneering Innovation
12 Award; and American Public Health Association, David P. Rall Award for
13 Advocacy in Public Health.

14 4. I am also a frequent speaker on nutrition and food labeling, including
15 in the next two months, on: March 29, 2017, at the American Bar Association
16 Annual Antitrust Spring Meeting in Washington, DC; April 11, 2017, at the
17 Consumer Federation of America Food Policy Conference in Washington, DC;
18 April 19, 2017, at the Healthy Eating Research Conference in Minneapolis,
19 Minnesota; May 12, 2017, at the 2nd Annual CLE Food Law Conference in
20 Austin, Texas; and May 24, 2017, at the Inaugural ACI Food Law & Regulation
21 Forum in Chicago, Illinois.

22 5. I hold a Ph.D. in microbiology from the Massachusetts Institute of
23 Technology.

24 6. I have studied food regulation, food additives, and nutrition, and
25 written books about those topics, since 1971.

26 **II. QUORN PRODUCTS**

27 7. Mycoprotein (a euphemism for industrially-grown and processed
28 mold) is a principal ingredient in Quorn-brand foods.

1 8. In or about 2002, after learning that a significant number of consumers
2 were experiencing strong adverse reactions to Quorn products, CSPI set up a Web-
3 based means of enabling people to submit reports of adverse reactions to Quorn
4 products.

5 9. Since that time, CSPI has received approximately 2,500 such reports.
6 These include reports of more than 350 skin and respiratory problems, 1 death (of
7 a young California boy who had allergic asthma), and over 2,100 gastrointestinal
8 reactions (diarrhea, cramps, vomiting). Some reports did not fit into precise
9 categories, such as headaches.

10 10. While CSPI has received approximately 2,500 complaints, I believe
11 that the number of people who suffered a reaction is far greater, because only those
12 actively searching online for assistance or information relating to Quorn would
13 have located our website and repository for their complaints.

14 11. Concerned about the reports we were receiving, in 2003, CSPI
15 commissioned a telephone survey of 1,000 people in the United Kingdom. Of the
16 400 people who said they ate Quorn, 5 percent reported suffering an adverse
17 reaction. By comparison, our survey found that between 0.5 percent (soy) and 2
18 percent (peanuts) of people said they were allergic to common food allergens.
19 Michael Jacobson, *Adverse Reactions to a New Food Ingredient*, 115 Am. J. Med.
20 334 (2003).

21 12. The proposed settlement agreement (the “Agreement”) in this matter
22 requires that the “Allergic Consumers” statement — which will provide the only
23 indicator on the label that mycoprotein is “mold, a member of the fungi family” —
24 be placed in a “prominent location.” Agreement pt. III(B).

25 13. I have worked actively in the field of food labeling for almost 50
26 years, and am widely considered a leading expert. I am aware that “prominent”
27 and “prominent location” are terms susceptible to widely-varied interpretations.
28

1 14. For example, though barely legible, the interpretation of the statutory
2 requirement of “prominent” by CVS Corp., as illustrated by Image 1 of CSPI’s
3 Brief in Support of Objection, is common among food and drug manufacturers.

4 15. I have reviewed and/or participated in communications to counsel of
5 record in this matter requesting that they provide a mock label clarifying their
6 definition of the term “prominent location.” To date, they have refused to provide
7 such illustration or further specificity. *See, e.g.*, Exhibit A (letter from Maia Kats
8 to Jason Frank and Eric Kizirian (Feb. 17, 2017); email exchange between Maia
9 Kats and Eric Kizirian (March 18–20, 2017); email from Maia Kats to Eric Yuhl,
10 Jason Frank, and Eric Kizirian (March 18, 2017)).

11 16. Per the Agreement, the modified “Allergic Consumers” statement will
12 read, “Mycoprotein is high in protein and fiber which may cause intolerance in
13 some people. . . .” Agreement pt. III(B)(2)(ii).

14 17. Mycoprotein is *not* especially “high in protein and fiber,” nor would its
15 amount of protein and fiber constitute the source of most, if any, reactions to
16 Quorn. Quorn products typically contain 5–13 grams of protein and 2–4 grams of
17 dietary fiber per serving. That amount of protein is much less than would be found
18 in a small hamburger patty (22 grams of protein per 3 ounces of broiled 90%-lean
19 ground beef), and the amount of fiber is about as much as is in two slices of whole
20 wheat bread (4 grams of fiber). The modest amount of fiber and protein in Quorn
21 is not causing reactions.

22 18. Scientific research demonstrates a link between mycoprotein and
23 adverse reactions. *See, e.g.*, Michael Hoff, *et al.*, *Immediate-type Hypersensitivity*
24 *Reaction to Ingestion of Mycoprotein (Quorn) in a Patient Allergic to Molds*
25 *Caused by Acidic Ribosomal Protein P2*, 111 J. ALLERGY CLIN.
26 IMMUNOLOGY 1106, 1110, available at <https://goo.gl/e3uak8> (last visited
27 Mar. 22, 2017) (“[mycoprotein] may be an allergen with a high clinical
28 relevance.”) (emphasis supplied); R.H.M. Research Limited, *Large Scale*

1 *Volunteer Trial on Mycoprotein (A3/5) (1977)* (document on file at the FDA);
2 R.H.M. Research Limited, *Limited Supplementary Studies on Subjects who*
3 *Consumed A3/5 Mycoprotein in a Large Scale Volunteer Trial Conducted*
4 *November/December 1977 (1978)* (documents on file at the FDA) (double-blind,
5 placebo-controlled studies conducted in 1977–78 by the developer of mycoprotein;
6 finding that 9 of 200 people who were fed mycoprotein two times in each of four
7 weeks suffered GI symptoms that appeared to be due to mycoprotein, including
8 five “minor” symptoms and four “more severe” (mostly violent vomiting,
9 difficulty breathing, severe abdominal pains) or a rash, while only 1 out of 100
10 people fed a control food reported significant symptoms).

11 19. Per the Agreement, the modified “Allergic Consumers” statement will
12 also state: “We do not use any ingredients derived from genetically modified
13 sources in this product.” Agreement pt. III(B)(2)(ii).

14 20. There is no scientific basis for the claim that ingredients produced
15 from genetically modified crops cause allergic reactions.

16 21. The Agreement designates as its *cy pres* recipient Food Allergy
17 Research & Education (“FARE”).

18 22. When CSPI began receiving complaints about Quorn products, I
19 communicated with representatives of FARE (then called FAAN), including to
20 Scott M. Sicherer, M.D., who was a member of FAAN’s medical advisory board. I
21 expressed my concerns about Quorn, including the large number of reported
22 adverse reactions to the product. *See* Exhibit B (email exchanges with FAAN
23 representatives). The organization failed to take action on behalf of consumers.

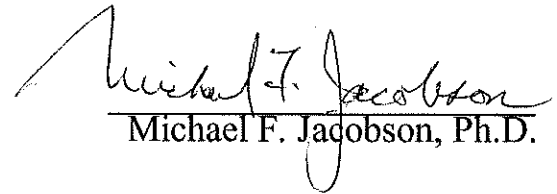
24 23. To my knowledge, to this date, FARE has done no educational or
25 research-related work on the risks associated with consuming mycoprotein or
26 Quorn foods.

27 24. In order to test whether consumers of Quorn products received notice
28 of this proposed settlement in this case, two days ago, I emailed approximately

1 38 California consumers who had submitted complaints to CSPI about reactions to
2 Quorn. Of the 14 apparent class members who responded to date, not one reported
3 receiving direct notice of the Agreement, and all confirmed that they would not
4 have purchased or eaten the product had they known that its main ingredient was
5 mold. Copies of the responses for which we have permission (to date) to attach,
6 with contact information redacted, are attached hereto as Exhibit C.

7 I declare under penalty of perjury that the following is true and correct.

8 Executed this 23rd day of March 2017, at Washington, District of Columbia.

9
10
11 
12 Michael F. Jacobson, Ph.D.
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

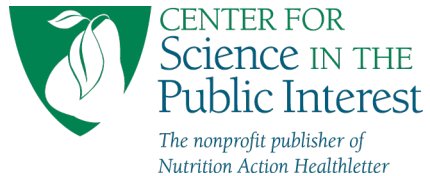
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on March 23, 2017, I caused the document entitled “DECLARATION OF MICHAEL F. JACOBSON, PH.D., EXECUTIVE DIRECTOR, CENTER FOR SCIENCE IN THE PUBLIC INTEREST” to be filed with the Court’s CM/ECF system, which sends notice of such filing to all parties registered with the CM/ECF system.

/s/ Thomas D. Mauriello
Thomas D. Mauriello

EXHIBIT A



February 17, 2017

Via Email (JFrank@lawfss.com)

Jason Frank, Esq.
Frank Sims and Stolper LLP
19800 MacArthur Blvd., Suite 855
Irvine, CA 92612

Via Email (Eric.Kizirian@lewisbrisbois.com)

Eric Kizirian, Esq.
Louis Brisbois Bisgaard & Smith LLP
633 West 5th Street, Suite 4000
Los Angeles, CA 90071

Re: *Birbrower v. Quorn Foods Inc.* 2:16-cv- 01346 (C.D. Cal.)

Dear Mssrs. Frank and Kizirian:

The Center for Science in the Public Interest (“CSPI”) is carefully reviewing the proposed settlement in the above-referenced matter. In conjunction with that review, and to ensure that we understand the proposed settlement correctly, we write to ask if you would clarify a few points for us. Our hope is that your answers will allay our concerns and obviate the need for further action. CSPI has long been of the view that the packaging of Quorn products is deceptive. And as you know, CSPI maintains a large database of complaints from consumers who purchased the product not understanding that it was mold.

First, we note that the principal claim, set forth in paragraph one of the first amended complaint (“FAC”), is that,

In truth, ‘mycoprotein’ is a term invented by Quorn to mislead consumers and hide the fact that its products are actually made of mold.

FAC ¶ 1. Consistent with this, in their prayer for relief, plaintiffs demand that “Defendants [] prominently disclose on the front of its product packaging in bold print and large font that ‘THIS PRODUCT CONTAINS MOLD’ in order to cure the false advertising Defendants have been disseminating for years.” FAC, Prayer for Relief.

Mssrs. Frank and Kizirian

February 17, 2017

Page 2 of 3

We are thus confused by the changes to labeling envisioned by the proposed settlement. Our understanding is that there would be no reference to mold, bolded or otherwise, on the front of package. And with respect to the back package, the lead paragraph would still use the term mycoprotein without any reference to mold. Instead of purchase-point transparency, the label would refer consumers to a website where they could learn the truth about mycoprotein as mold. We are perplexed as to how this resolves the deception that you showcased in the FAC and would appreciate your explanation.

Second, instead of identifying the product as mold in the prominent explanatory verbiage on mycoprotein (the “romance language”), the settlement proposes that the word mold be tucked into a less prominent allergen warning about “fungi/mold,” even though such notification predates this proposed settlement, and notwithstanding that Quorn has always maintained that mycoprotein is not technically an allergen. It seems to us that identification of mycoprotein as mold ought also to appear in the romance language given the deception outlined in the FAC. More, while the allergen warning must be “prominent,” that term is otherwise undefined and is subject to vastly different interpretations. This uncertainty could be redressed by way of attaching a demonstrative mock label showing the “prominent” mold warning.

Third, the proposed warning on mold states that reactions are “rare,” and the romance language claims that mycoprotein is especially high in protein. To our knowledge, neither of these claims is truthful, and so we are curious as to the bases for these assertions.

Fourth, with respect to the monetary relief, we are concerned about the requirement of proof of purchase for claims, especially in the context of the large attorney fee award for a brief litigation, here. Proof of purchase is not the norm for small item consumer cases, nor do we understand why such proof, as opposed to an attested to claim of purchase, should be required here. It is unlikely to result in material relief to the class. We are interested to hear your thoughts on this as well.

Fifth, we are unclear about the notice plan and whether it is limited to just the website, in which case very few class members would ever learn of the proposed settlement, which is relevant to claims filing as well as opt outs. We are curious as to whether you have an expert affidavit on the sufficiency of your notice plan.

And sixth, we are concerned about the selection of FARE as the intended *cy pres* recipient of what would likely be a large unclaimed claims fund (given the apparent lack of notice and requirement of proof of purchase). FARE and its predecessor, FAAN, were contacted repeatedly about Quorn following news of deaths and serious medical incidents linked to consumption of Quorn products. To our knowledge, they did nothing to assist Quorn consumers, including but not limited to advocating for sterner warnings or commissioning a study on whether GI reactions are allergic in nature, despite multiple opportunities to become active. Therefore, the selection of FARE seems inappropriate and is possibly even contrary to consumer interest in this particular instance.

Mssrs. Frank and Kizirian

February 17, 2017

Page 3 of 3

We write with the hope that this settlement process results in an authentic and meaningful settlement for consumers, and in that spirit, look forward to hearing back from you soon.

Sincerely,

/s/

Maia Kats
Litigation Director

cc: Michael Jacobson

From: Maia Kats <mkats@cspinet.org> **Date:** Monday, March 20, 2017 at 12:10 PM **To:** "Kizirian, Eric" <Eric.Kizirian@lewisbrisbois.com> **Cc:** "Eric Yuhl (eyuhl@yuhlcarr.com)" <eyuhl@yuhlcarr.com>, "jfrank@lawfss.com" <jfrank@lawfss.com>, "ssims@lawfss.com" <ssims@lawfss.com>, Mike Jacobson <mjacobson@cspinet.org> **Subject:** quQuonr

Greetings Eric,

Thank you for your response.

Perhaps I need to be more clear. We need to see the mock label to preempt an objection from being filed, because without such label, we cannot determine if it addresses the deceptive labeling.

I had also asked whether all of you would consent to our filing as an amicus, and asked to hear by noon today. I have not heard back from any of you on that.

You should also know that we have contacted a small sampling of Quorn purchasers in our database. As you all are well are, we have a large database – about 2,500 – Quorn consumers. To date, we have not reached any who received notice of the settlement other than via CSPI.

We are preparing our objection now.

Regards.

Maia Kats
Director of Litigation
Center for Science in the Public Interest
1220 L Street, NW, Suite 300
Washington, DC 20005
(202) 777-8381 (direct line)
www.cspinet.org

CONFIDENTIALITY NOTICE

The information contained in this electronic message is confidential information intended only for the named recipient(s) and may contain information that, among other protections, is the subject of attorney-client privilege, attorney work product or exempt from disclosure under applicable law. If the reader of this electronic message is not the named recipient, you are hereby notified that any dissemination, distribution, copying or other use of this communication is strictly prohibited and that no privilege is waived. If you have received this communication in error, please immediately notify the sender by replying to this electronic message and then deleting it from your computer. Thank you.

From: "Kizirian, Eric" <Eric.Kizirian@lewisbrisbois.com> **Date:** Monday, March 20, 2017 at 12:03 PM **To:** Maia Kats <mkats@cspinet.org> **Cc:** "Eric Yuhl (eyuhl@yuhlcarr.com)" <eyuhl@yuhlcarr.com>, "jfrank@lawfss.com" <jfrank@lawfss.com>, "ssims@lawfss.com" <ssims@lawfss.com> **Subject:** RE: Request for consent to participate as amicus curiae

Maia:

Thank you for the email below.

Quorn and Plaintiff are willing to have half of any *cy pres* go to the "Asthma and Allergy Foundation of America" provided you represent in writing that CSPI does not own or control the Asthma and Allergy Foundation of America and will not receive any funds from this foundation if it is designated as a *cy pres* recipient.

A copy of the mock label will be attached to the final approval papers.

Regards,
Eric



Eric Y. Kizirian

Partner | Co-Chair, Class Action & Mass Torts Practice

Eric.Kizirian@lewisbrisbois.com T: 213.580.3981 F: 213.250.7900

reet, Suite 4000, Los Angeles, CA 90071 | LewisBrisbois.com [Representing clients from coast to coast. View our](#)
contain or attach privileged, confidential or protected information intended only for the use of the intended recipient. If you are
d. If you have received this e-mail in error, you are required to notify the sender, then delete this email and any attachment from
age is stored.

From: Maia Kats [<mailto:mkats@cspinet.org>] **Sent:** Saturday, March 18, 2017 6:01 AM **To:** Kizirian, Eric **Subject:** Request for consent to participate as amicus curiae **Importance:** High

Greetings Eric:

To be clear and fair to you (directly), I want to ensure that you are aware of our key concerns and proposals for remedy.

First, that a mock label be attached as an exhibit to the settlement revealing the size, place, and

formatting of the mold notification. As you may be aware, interpretations of the term “prominent” vary widely in the food labeling context — you could conceivably comply with the “prominent” requirement by making a very minor or insignificant change to your existing label. At the least, you would have a colorable claim of compliance requiring more litigation to disprove. This issue could easily be remedied, and the request strikes us as infinitely reasonable. And second, the intended cy pres recipient – FARE – was demonstrably inactive when it came to working with Quorn to amend its labeling even after it was apprised of thousands of complaints. Instead of FARE as cy pres recipient, we have suggested the Broad Institute at Harvard and/or The Asthma and Allergy Foundation of America. We provided plaintiffs’ counsel with substantial information on both of these organizations.

Given our discussions with plaintiffs’ counsel, who conveyed your position to us, it does not appear that resolution has a chance. If this is in error, I invite you to contact me promptly by email and arrange for a discussion call this weekend. As I have made clear to plaintiffs’ counsel, scheduling demands mandate that we proceed with our objection papers first thing on Monday. I underscore that we have provided more than a month’s notice of our concerns in an effort to avoid objecting.

Thank you,

Maia Kats
Director of Litigation
Center for Science in the Public Interest
1220 L Street, NW, Suite 300
Washington, DC 20005
(202) 777-8381 (direct line)
www.cspinet.org

CONFIDENTIALITY NOTICE

The information contained in this electronic message is confidential information intended only for the named recipient(s) and may contain information that, among other protections, is the subject of attorney-client privilege, attorney work product or exempt from disclosure under applicable law. If the reader of this electronic message is not the named recipient, you are hereby notified that any dissemination, distribution, copying or other use of this communication is strictly prohibited and that no privilege is waived. If you have received this communication in error, please immediately notify the sender by replying to this electronic message and then deleting it from your computer. Thank you.

From: Maia Kats <mkats@cspinet.org>
Date: Saturday, March 18, 2017 at 9:00 AM
To: "eric.kizirian@lewisbrisbois.com" <eric.kizirian@lewisbrisbois.com>
Subject: FW: Request for consent to participate as amicus curiae

Maia Kats
Director of Litigation
Center for Science in the Public Interest
1220 L Street, NW, Suite 300
Washington, DC 20005
(202) 777-8381 (direct line)
www.cspinet.org

CONFIDENTIALITY NOTICE

The information contained in this electronic message is confidential information intended only for the named recipient(s) and may contain information that, among other protections, is the subject of attorney-client privilege, attorney work product or exempt from disclosure under applicable law. If the reader of this electronic message is not the named recipient, you are hereby notified that any dissemination, distribution, copying or other use of this communication is strictly prohibited and that no privilege is waived. If you have received this communication in error, please immediately notify the sender by replying to this electronic message and then deleting it from your computer. Thank you.

From: Maia Kats
Date: Saturday, March 18, 2017 at 8:36 AM
To: "Eric.kizarian@lewisbrisbois.com", "eyuhl@yuhlcarr.com", Jason Frank
Cc: Matthew Simon
Subject: Request for consent to participate as amicus curiae

Greetings:

As you are all well aware, over a month ago, on February 17, 2017, CSPI wrote to the plaintiffs' attorneys in the Quorn matter informing them of our concerns about the proposed settlement. Our hope was that the

parties would seek to address some of our concerns voluntarily. During a call with plaintiffs' counsel yesterday, however, it became apparent that such address would not be forthcoming and that no amendments were genuinely under consideration. It was also apparent that further discussions would not be productive, and that the parties must respectfully agree to disagree over the adequacy of the proposed settlement terms.

We will therefore file objection papers on Monday or Tuesday of this coming week, and seek your consent thus to our participation as amicus curiae in the final approval process. Given work loads and impending vacation next week, and of course the objection filing deadline, I request that you indicate your consent by noon PST on Monday, or we will need to indicate a lack of consent in our papers.

Thank you for your prompt attention to this request.

Maia Kats
Director of Litigation
Center for Science in the Public Interest
1220 L Street, NW, Suite 300
Washington, DC 20005
(202) 777-8381 (direct line)
www.cspinet.org

CONFIDENTIALITY NOTICE

The information contained in this electronic message is confidential information intended only for the named recipient(s) and may contain information that, among other protections, is the subject of attorney-client privilege, attorney work product or exempt from disclosure under applicable law. If the reader of this electronic message is not the named recipient, you are hereby notified that any dissemination, distribution, copying or other use of this communication is strictly prohibited and that no privilege is waived. If you have received this communication in error, please immediately notify the sender by replying to this electronic message and then deleting it from your computer. Thank you.

EXHIBIT B

From: FAAN Member Services <faan@foodallergy.org>
Sent: Thursday, September 24, 2009 4:22 PM
To: Mike Jacobson <mjacobson@cspinet.org>
Subject: RE: Makers of Quorn, the Chicken-Flavored Fungus, Sued for Not Disclosing Dangerous Reactions

Dear Michael

Thank you for your e-mail. I will pass it along.

Sincerely,

CC Schnabel

Member Communications Correspondent
The Food Allergy & Anaphylaxis Network
11781 Lee Jackson Highway, Suite 160
Fairfax, VA 22033

Phone: 800-929-4040
Fax: 703-691-2713
www.foodallergy.org
e-mail: faan@foodallergy.org

Did your child attend camp this past summer? If so, please tell us about his/her experience managing food allergies at camp by taking this brief survey. Thank you for sharing with us.
http://www.surveymonkey.com/s.aspx?sm=usP8Bzn9t3HPKNdrAEYOBw_3d_3d

Raise money for FAAN just by searching the Internet with GoodSearch,
www.goodsearch.com, powered by Yahoo!

From: Mike Jacobson [<mailto:mjacobson@cspinet.org>]
Sent: Thursday, September 17, 2009 11:35 AM
To: FAAN Member Services
Subject: Fw: Makers of Quorn, the Chicken-Flavored Fungus, Sued for Not Disclosing Dangerous Reactions

Dear FAAN,

Quorn "mycoprotein" causes higher rates (percentages) of allergic reactions than any of the more common food ingredients. If Quorn foods become more widely used, the prevalence of allergic reactions will increase significantly.

We're not aware of deaths, but Quorn has caused many cases of hives and anaphylaxis. I would hope that FAAN, at long last, would warn its members (and the general public) about this allergen. See the press release below and

<http://www.cspinet.org/quorn/> for further information.

Sincerely,

Michael F. Jacobson, Ph.D.
Executive Director
Center for Science in the Public Interest
1875 Connecticut Ave. NW #300
Washington, DC 20009

(o) 202-777-8328
(f) 202-265-4954
CSPI web site: www.cspinet.org

Make your voice heard on important health and nutrition issues! Join CSPI's online action network at www.takeaction.cspinet.org.

CONFIDENTIALITY NOTICE: This message is intended only for the use of the individual or entity to which it is addressed and may contain confidential information. If the reader of this message is not the intended recipient, please be aware that any dissemination, distribution, or copying of this communication or other use of a transmission received in error is strictly prohibited. If you have received this transmission in error, please immediately notify me at (202) 777-8328.

----- Forwarded by Mike Jacobson/Program/CSPI on 09/17/2009 11:32 AM -----

News from CSPI/Program/CSPI

09/17/2009 09:08 AM

To: News from CSPI/Program/CSPI@CSPI
Subject: Makers of Quorn, the Chicken-Flavored Fungus, Sued for Not Disclosing Dangerous Reactions

[IMAGE]

FOR IMMEDIATE RELEASE: Thursday, September 17, 2009
Contact: Jeff Cronin, 202-777-8370, or Stacey Greene, 202-777-8316

Makers of Quorn, the Chicken-Flavored Fungus, Sued for Not Disclosing Dangerous Reactions

Vat-Grown Mold Tastes Like Chicken but Makes Some Violently I

WASHINGTON—An Arizona woman has filed a class action lawsuit accusing Quorn

Foods of not disclosing on labels the fact that some people have serious allergic reactions to the main ingredient in its Quorn line of meat substitutes. That ingredient happens to be a fungus—mold, actually—discovered in the 1960s in a British dirt sample. The company grows the fungus in vats and processes it into a fibrous, proteinaceous paste. But more than a thousand people have reported to the Center for Science in the Public Interest that they have suffered adverse reactions, including nausea, violent vomiting, uncontrollable diarrhea, and even life-threatening anaphylactic reactions after eating the patties, cutlets, tenders and other products made with Quorn’s fungus.

The nonprofit food safety and nutrition watchdog group is serving as co-counsel in the case. Connecticut State Marshals are serving the company, whose U.S. headquarters are in that state, with the suit today. The case is filed in Superior Court in the Judicial District of Stamford-Norwalk.

Kathy Cardinale, a 43-year-old advertising executive, ate Quorn’s Chik’n Patties on three separate occasions in 2008. Each time, within two hours of eating the product, Cardinale became violently ill. Thinking she had had a stomach virus, Cardinale didn’t realize that she was reacting to the Quorn until the third time she ate one of the patties, after which she vomited seven or eight times within two hours.

“I felt like the soles of my feet were going to come out of my mouth, I was vomiting so hard,” said Cardinale. “Once I began to research Quorn online I realized I wasn’t alone and that other people had similar stories. It was unbelievable to me that the company knew this was going on and wasn’t warning consumers about these problems.”

Quorn Foods, which is British-owned, markets its signature organism as being related to mushrooms, truffles, and morels, since all of those are fungi. While that’s true, it’s as misleading as claiming that humans are related to jellyfish since they’re both animals, according to CSPI. Quorn’s fungus is named *Fusarium venenatum*—“venenatum” is Latin for “venomous.”

As early as 1977, a study found that some people have adverse reactions to *Fusarium venenatum*. That unpublished study conducted by Quorn’s developer found that 10 percent of 200 test subjects who ate the fungus experienced nausea, vomiting, or other gastrointestinal symptoms, compared with five percent in a control group. The company claims the rate of illness is trivial, though a 2005 telephone survey of consumers in Britain—where the products have been marketed longer and more widely than in the United States—commissioned by CSPI found that almost five percent of Quorn eaters experienced adverse reactions. That was a higher percentage of people than that of those who reported allergies to shellfish, milk, peanuts or other common food allergens. Since 2002, more than 1,400 British and American consumers have filed adverse

reaction reports on a website maintained by CSPI, quorncomplaints.org.

“It’s almost unheard of for a company to market something as healthy when it actually makes a significant percentage of its customers sick within minutes or hours,” said CSPI litigation director Steve Gardner. “It is the company’s legal obligation to warn consumers about these serious adverse reactions, and getting the company to meet that obligation is the purpose of this lawsuit.”

“Quorn Foods should either find a fungus that doesn’t make people sick, or place prominent warning labels about the vomiting, diarrhea, breathing difficulties, and other symptoms Quorn causes in some consumers,” said CSPI executive director Michael F. Jacobson.

While the U.S. Food and Drug Administration does not disagree that Quorn products cause sometimes-severe allergic reactions, the agency still considers the Quorn ingredient to be “generally recognized as safe.”

“At a time when the public and doctors are deeply concerned about the rise in food allergies, it is deeply distressing that the FDA knowingly permitted a powerful new allergen into the food supply,” said Jacobson. “We call on the FDA to revisit its policy.”

CSPI’s litigation department has, since its founding in 2004, sued a number of leading national food companies and has secured agreements improving food labeling, marketing, or product formulation with Anheuser Busch, Frito-Lay, Kellogg, KFC, Kraft, Sara Lee and other companies. CSPI’s litigation activities helped spur the removal of artificial trans fat from restaurant food and helped return millions of dollars to consumers from makers of the dietary supplement Airborne.

Daniel Blinn of the Connecticut firm Consumer Law Group is serving as co-counsel in the case alongside CSPI’s litigation unit.

###

The Center for Science in the Public Interest is a nonprofit health advocacy group based in Washington, DC, that focuses on nutrition, food safety, and pro-health alcohol policies. CSPI is supported by the 900,000 U.S. and Canadian subscribers to its Nutrition Action Healthletter and by foundation grants.

To unsubscribe from CSPI news releases, reply to this message with the word 'unsubscribe' in the subject line.

To edit your preferences, visit:

<http://www.cspinet.org/new/newsjournal.html>

Communications Department
Center for Science in the Public Interest
1875 Connecticut Avenue, NW Suite 300
Washington, DC 20009
(202) 332-9110
cspineews@cspinet.org - image001.gif

Subject: FW: Quorn mycoprotein

Date: Friday, February 24, 2017 at 10:25:38 AM Eastern Standard Time

From: Mike Jacobson

To: Maia Kats

This was an email to a prominent food allergist who was probably on FAAN's board or science advisory board in 2003. Nothing came of this.

Michael F. Jacobson, Ph.D.
President
Center for Science in the Public Interest
1220 L St. NW #300
Washington, DC 20005

Phone: 202-777-8328; fax 202-265-4954; mjacobson@cspinet.org; www.cspi.net

-----Original Message-----

From: Mike Jacobson/Program/CSPI

Sent: Thursday, March 06, 2003 4:19 PM

To: "Sicherer, Scott" <scott.sicherer@mssm.edu>

Subject: RE: Quorn mycoprotein

Good to hear from you, Scott. Yes, the AAAAI wrote to me last July. It referred to the Miller/Dwyer paper, which was paid for by Marlow Foods and failed to discuss the company's own clinical study that demonstrated that Quorn causes nausea, vomiting, and diarrhea. Also, we had many fewer reports and much weaker statistics at that point. We now have more than 500 reports of adverse reactions and statistics on frequency of symptoms.

It sounds like the AAAAI does not wish to make safety assessments and communicate them to the FDA. However, professional organizations, industry, consumer groups, and citizens constant provide the FDA with information and recommendations. Here's an opportunity for the AAAAI to be proactive on behalf of its members' patients and advise the FDA of its concerns (if, indeed, it is concerned).

Regardless of AAAAI's position, FAAN should be able to -- and, I think, has a responsibility to -- alert consumers to the fact that (as even Marlow Foods acknowledges) some people are sensitive to Quorn and that such people should submit a report to www.quorncomplaints.org. It's crazy for the country's leading consumer food-allergy group to fail to acknowledge that a new problem has been introduced into the food supply!

I look forward to seeing what transpires. Thanks for your help...and please let me know if you would like any additional information from me.

Sincerely,

Michael F. Jacobson, Ph.D.
Executive Director
Center for Science in the Public Interest
1875 Connecticut Ave. NW #300
Washington, DC 20009

(o) 202-777-8328

(f) 202-265-4954

e-mail: mjacobson@cspinet.org

CSPI web site: www.cspinet.org

CONFIDENTIALITY NOTICE: This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is confidential. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication or other use of a transmission received in error is strictly prohibited. If you have received this transmission in error, immediately notify me at (202) 777-8328.

Subject: FW: Quorn/Fusarium venenatum
Date: Friday, February 24, 2017 at 10:26:29 AM Eastern Standard Time
From: Mike Jacobson
To: Maia Kats
Attachments: Attachment.doc, Attachment

Another email to the same doctor several months later.

Michael F. Jacobson, Ph.D.
President
Center for Science in the Public Interest
1220 L St. NW #300
Washington, DC 20005

Phone: 202-777-8328; fax 202-265-4954; mjacobson@cspinet.org; www.cspi.net

-----Original Message-----

From: Mike Jacobson/Program/CSPI
Sent: Wednesday, June 11, 2003 2:51 PM
To: scott.sicherer@mssm.edu
Subject: Quorn/Fusarium venenatum

Dear Scott,

Thanks for spending time with me on the phone this morning to discuss Quorn.

As I mentioned, though Quorn foods cause asthma attacks, nausea, vomiting, diarrhea, hives, and anaphylaxis, the FDA still considers Quorn mycoprotein to be "generally recognized as safe" (GRAS) A Reuters story (4/23/03) stated: "The FDA said it has contacted many of the people who have reported falling ill from Quorn products, but found no evidence of it being a serious threat to consumers."

"If we thought it was dangerous, we would definitely take action now," said George Pauli, associate director of FDA's Office of Food Additive Safety. "We are not in a position to reach that conclusion."

I find the FDA's thinking shocking both in the case of Quorn and for the precedent it sets. How hard will it be to keep other ingredients -- GE foods, additives, etc. -- out of the food supply if they cause adverse reactions in "only" several percent of consumers.

These are the current figures for 597 adverse reaction reports:

Vomiting 67%

Diarrhea 33%

GI symptoms with blood (e.g., Mallory Weiss syndrome) 3% Fainted or felt faint 6% Hives, facial swelling, etc. 6%

Difficulty breathing 3% Anaphylaxis 0.7%

As for precedents for other food additives, here are some examples

sulfites: asthma attacks (including 15-20 deaths identified by CSPI in the 1980s) in perhaps a couple of percent of people with asthma and much smaller percentage of the general population. The FDA banned the most dangerous uses of sulfites (salads at restaurants) and required labeling on all packaged foods in which it was used. The FDA allowed sulfites as a food additive but did not confirm it's being GRAS. By the way, CSPI originally brought this matter to the FDA's attention and pressed the issue for several years.

olestra: causes loose stools, diarrhea, stomach cramps (no exact percentage: the more one eats and the more often one eats it, the likelier one is to have symptoms; daily consumption of modest amounts for eight weeks caused symptoms in, as I recall, about half the subjects). Not allergic, but physical; some people complained of hives, but that has not been proven. The FDA allowed olestra, but with a small "information label" stating that it might cause loose stools and cramps, with an 800 number somewhere on the label, and a requirement that food processors report to the FDA about any adverse reactions they learn of. (The FDA has been sent 20,000 reports, including 2,000 from CSPI.)

sugar alcohols, like sorbitol, mannitol, lactitol, etc. The more one consumes, the greater the chance that one would have diarrhea, which can be severe.

Again, the mechanism is clearly physical, not immunologic or toxicologic. The FDA allows those ingredients, but requires a "laxative" notice if the products contain more than a given number of grams per serving.

carmine: a natural coloring that causes severe reactions in a small number of people. We've asked the FDA to either require the ingredient to be listed by name on labels or to ban it. The FDA has not taken action.

peanuts, etc. are considered GRAS when they are ingredients in foods (like peanut butter cookies). Obviously, the FDA doesn't require anything other than normal label disclosure -- except when they are used in flavorings, when the FDA does not require disclosure. The legislation being considered would require disclosure.

Yellow 5: that was recognized to cause adverse reactions in about 50,000 aspirin-sensitive individuals. The FDA required that artificial coloring (but not others) to be listed on labels. Subsequently, a law required all artificial dyes to be listed by name on labels.

I hope that is helpful...and I hope that you'll write a letter of concern to the FDA. The commissioner's address is in one of the letters I've attached below. It would also be most useful if you encouraged FAAN, in its newsletter and on its web site, to inform people that Quorn foods cause adverse reactions and that any victims should file reports at www.quorncomplaints.org. Finally, of course, expressions of concern from professional organizations could be useful.

Please let me know if you'd like any additional information.

Sincerely,
Mike Jacobson

Sincerely,

Michael F. Jacobson, Ph.D.
Executive Director
Center for Science in the Public Interest
1875 Connecticut Ave. NW #300
Washington, DC 20009

(o) 202-777-8328
(f) 202-265-4954
e-mail: mjacobson@cspinet.org
CSPI web site: www.cspinet.org

CONFIDENTIALITY NOTICE: This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is confidential. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication or other use of a transmission received in error is strictly prohibited. If you have received this transmission in error, immediately

notify me at (202) 777-8328.

EXHIBIT C

I. Email Exchange with Karen Katsiyiannis

From: Karen Katsiyiannis <karenkats@gmail.com>

Date: Sunday, March 19, 2017 at 11:25 AM

To: Maia Kats <mkats@cspinet.org>

Subject: Re: Your comments on Quorn

No, I definitely would not have purchased it if I had known that.

Sent from my iPhone

On Mar 19, 2017, at 6:44 AM, Maia Kats <mkats@cspinet.org> wrote:

Greetings Karen,

Thank you for your response.

An additional query. Would you have purchased the Quorn product had you known that it was comprised of mold grown in industrial vats?

Thank you.

Maia Kats
Director of Litigation
Center for Science in the Public Interest
1220 L Street, NW, Suite 300
Washington, DC 20005
(202) 777-8381 (direct line)
www.cspinet.org

----- Forwarded message -----

From: karen katsiyiannis <karenkats@gmail.com>

Date: Sat, Mar 18, 2017 at 1:47 PM

Subject: Quorn lawsuit

To: bgoldburg@cspinet.org

Mr. Goldberg,

I was contacted via email by Michael Jacobson regarding the Quorn settlement. I filed a complaint with Quorn in June 2015 after my daughter became violently ill twice after eating two different types of Quorn products. I received an email acknowledgment from Quorn and them basically telling me that my daughter must have some type of sensitivity to the type of "protein" that they use.

My daughter was an in patient in UCLA's Adolescent Eating Disorders Unit at the time of the first illness. Beverly, my daughter was being treated for severe anorexia nervosa. She had just

reached a milestone in her recovery there that allowed for me to bring a meal from home for her to eat. She chose to have me fix her a chili/sloppy joe using the Quorn "meatless & soy free grounds". Within an hour and a half after she ate the meal she vomited three times over a couple hour period. At that time we didn't think anything of it. It could've been a bug... About a month later, I fixed my daughter, the Quorn "meatless chicken pieces" for lunch. Again, within an hour or two after eating, she started feeling very nauseated and then vomited uncontrollably for the next 6-8 hours. She was much sicker the second time. We started thinking about what she had eaten and then we put the two instances together when she had the Quorn products. I then looked up complaints with the Quorn products and discovered the so called "protein", MOLD that they use in their products. I filed a complaint the next day with Quorn.

The crucial part of my daughter's Quorn illnesses was that she was being treated for anorexia and every pound of weight she gained was critical in her recovery. She ended up losing weight both times of her their products and then vomiting. It set back her discharge from the hospital; she had to make it to a certain weight before discharge. She ended up spending a total of 86 days in the hospital for her anorexia recovery. Between the two Quorn illnesses she lost 5 pounds, which may not sound like a lot but for someone with anorexia and trying to gain, it equals about 2 1/2 weeks of time in the hospital.

I've probably given you more background information then you need, but it was quite upsetting to find out what their products contain.

Here is the pertinent information I believe you need:

Karen Katsiyiannis
karenkats@gmail.com
[REDACTED]

Quorn products purchased - Meatless & soy free grounds and meatfree chicken pieces
Purchased April/May 2015 from either Barons, Whole Foods, Ralphs or Gelsons

I would like to receive information about the suit and objection filed. This is my first time hearing anything about a suit/settlement of any type with Quorn.

Thank you.

Karen Katsiyiannis

II. Email Exchange with Terri Larsen

From: Terri Larsen [<mailto:gedgusa@gmail.com>]
Sent: Sunday, March 19, 2017 4:09 AM
To: Mike Jacobson <mjacobson@cspinet.org>
Subject: Re: Please help on a matter related to Quorn

Hi Mike,

I just tried emailing Ben and it was returned, could you forward my info to him?

Terri Larsen
[REDACTED]

After he contacts me I will forward info on my experience with this product.

Thank you.

On Sun, Mar 19, 2017 at 1:02 AM, Terri Larsen <gedgusa@gmail.com> wrote:

and no, I would have never purchased this product if I had known it was made of mold. As a non meat eater I am always looking for healthy substitutes for meat, and try almost everything at least once, but would have avoided this if I had know it could make me ill.

On Sun, Mar 19, 2017 at 1:00 AM, Terri Larsen <gedgusa@gmail.com> wrote:

BTW I never got any notice about this suit, and I did contact Quorn directly about my experience.

On Sun, Mar 19, 2017 at 1:00 AM, Terri Larsen <gedgusa@gmail.com> wrote:

Absolutely!! They are still selling it in our grocery store and when I told them about what it did to me, they just stared at me blankly, ugh. I will be happy to cooperate with you on this as much as possible, I lost two days of work each time I got sick, which was twice, and it was horrible. Thank you for taking a stand against this product, I still have two packages in my freezer I would like to be compensated for as well.

Let me know what I need to do next.

Terri Larsen

III. Email Exchange with Alexandra Howard

From: Alexandra Howard <ash89@me.com>
Date: Wednesday, March 22, 2017 at 11:50 AM
To: Maia Kats <mkats@cspinet.org>
Subject: Re: Quorn

I haven't received any notice.

Sure, you can use my email description

Allie

On Mar 22, 2017, at 8:23 AM, Maia Kats <mkats@cspinet.org> wrote:

Greetings:

Could you kindly inform if you received notice of the proposed Quorn class action settlement, other than through us?

Also, could we attach your email description, along with others that we have permission to attach, to Mike Jacobson's affidavit objecting to the settlement?

Thank you.
Maia Kats
Director of Litigation
Center for Science in the Public Interest
1220 L Street, NW, Suite 300
Washington, DC 20005
(202) 777-8381 (direct line)
www.cspinet.org

On Mar 19, 2017 at 4:51 PM, Alexandra Howard <ash89@me.com> wrote:

My name is Allie. I bought quorn in the fall of 2016 and if it had been properly labeled, I would not have purchased it. They use obscure wording and tiny print to get away selling poisonous food. I had a severe allergic reaction that woke me up in the middle of night ,(I fell asleep shortly after eating Quorn nugget

Allie

IV. Email Exchange with Sarah Moser

From: Sarah Moser <sparcgirl@yahoo.com>
Date: March 22, 2017 at 12:05:14 PM EDT
To: Maia Kats <mkats@cspinet.org>
Subject: Re: <no subject>

Hi-

1. No
2. Yes

Thanks!

Sarah

Sent from my iPhone

On 22 Mar 2017, at 16:21, Maia Kats <mkats@cspinet.org> wrote:

Greetings:

Thank you for responding to our query on Quorn.

Two quick follow up questions for you.

One, did you receive official notice of the proposed settlement from the lawyers in the Quorn litigation (ie., not through us at CSPI)?

Two, could we please attach your email (along with other reports) to Michael Jacobson's affidavit in support of our objection to the Settlement?

Thank you!

Maia Kats

Director of Litigation

Center for Science in the Public Interest

1220 L Street, NW, Suite 300

Washington, DC 20005

(202) 777-8381 (direct line)

www.cspinet.org

Sarah M sparcgirl@yahoo.com

Monday, March 20, 2017 at 4:30 PM

Re: Please help protect others from the harm that Quorn foods can cause!

hi:

It's been a while since I first reported this but as I recall:

- My first bad reaction to Quorn was in the spring or summer of 2009. I was about 5 months pregnant with my daughter and I ate a Quorn veggie burger - I think for a late lunch - and was violently ill later that evening. At first I thought I had food poisoning from dinner but I had shared food with friends and no one else got sick. The Quorn patty (it was sort of like a veggie burger) was frozen and I believe my mom had bought it for me. Knowing her, she probably got it at Rainbow grocery in San Francisco. I had no idea what Quorn was - I am sure I figured it was soy. I certainly would not have eaten it while pregnant if I knew what it was.

- My second reaction was probably in 2011 or 2012, maybe summer or fall but I don't really remember. We had dinner with friends who made us some chill and mentioned in passing that it had Quorn in it and I remember they described it as "mushrooms." I was intrigued b/c I recalled eating it once before - although it wasn't until later i realised I had gotten sick - and was excited to try a new veggie protein source. Dinner was on the early side, maybe 5 pm, and by 9 pm (again, this was ages ago and I am working from sort of hazy memory) or so I was throwing up. My husband had eaten it as well and he was fine. I don't remember if my daughter ate any or if she had something else, but either way she didn't get sick. I have no idea where they got the Quorn but I wouldn't be surprised if it was at Whole Foods in Noe Valley in San Francisco since that's where we/they usually shopped. Like the first time, I was VERY sick - vomiting, dizzy, shaking, it was awful. But the weird part is that it was horrible and then it was over. It wasn't like the stomach flu or normal food poisoning that can go on/off for 12-24 hours. After this episode I googled Quorn and learned more and I think that's when I filed the report.

I do hope this helps! I am now living overseas - in Germany - and have kept an eye out for Quorn here (so I can avoid it!).

best,

Sarah Moser
[REDACTED]

PLEASE NOTE: That was my address when I got sick from Quorn the second time (the first time we were living at [REDACTED] CA 94110). However, we moved last month to Berlin, Germany: [REDACTED].

V. Email From Lissa Flack

From: Lissa Flack [<mailto:lissacole@live.com>]

Sent: Monday, March 20, 2017 8:19 PM

To: Mike Jacobson <mjacobson@cspinet.org>

Subject: RE: Please help protect others from the harm that Quorn foods can cause!

I never saw anything regarding a settlement. I purchased this product from Raley's supermarket in Manteca. I purchased it several times before I put 2 and 2 together that it was causing the problems with my husband. I had no idea it was made out of mold and probably would never have even considered buying it if I had known. My husband suffered greatly when he ate this product, and I thought he might die. I have never seen him so sick. Let me know if you need any other info. Thanks

My contact info:

[REDACTED]

Lissa Flack

1 **MAURIELLO LAW FIRM, APC**
2 Thomas D. Mauriello (SBN: 144811)
3 *tomm@maurlaw.com*
4 1181 Puerta Del Sol, Suite 120
5 San Clemente, CA 92673
6 Tel: (949) 542-3555
7 Fax: (949) 606-9690

8 **CENTER FOR SCIENCE IN THE PUBLIC INTEREST**
9 Maia C. Kats (to be admitted *pro hac vice*)
10 *mkats@cspinet.org*
11 Matthew Simon (to be admitted *pro hac vice*)
12 *msimon@cspinet.org*
13 1220 L Street, Northwest, Suite 300
14 Washington, District of Columbia 20005
15 Telephone: (202) 777-8381
16 Facsimile: (202) 265-4954

17 **UNITED STATES DISTRICT COURT**
18 **CENTRAL DISTRICT OF CALIFORNIA**

19 KIMBERLY BIRBROWER, individually
20 and on behalf of all others similarly
21 situated,

22 Plaintiff,

23 v.

24 QUORN FOODS, INC., et al.,

25 Defendants.

Case No. 2:16-cv-01346-DMG-AJW

**NOTICE OF INTENT
TO APPEAR AT FINAL
FAIRNESS HEARING**

26 The Center for Science in the Public Interest (“CSPI”), by and through its
27 counsel, hereby notifies the Court of its intent to appear at the Final Fairness
28 Hearing in the above-entitled case, currently scheduled for September 1, 2017.

CSPI will be appearing as *amicus curiae* to present its unique perspective on
deceptive advertising of the product at issue. As set forth in CSPI’s memorandum
of law in opposition to the proposed settlement agreement, CSPI believes that: the
injunctive relief is unfair and unreasonable; designation of the current *cy pres*

1 recipient is inconsistent with the interests of the putative class; and notice is
2 inadequate.

3 Respectfully submitted,

4 DATED: March 23, 2017 **MAURIELLO LAW FIRM, APC**

5 By: /s/ Thomas D. Mauriello

6 Thomas D. Mauriello (SBN: 144811)
7 *tomm@maurlaw.com*
8 1181 Puerta Del Sol, Suite 120
9 San Clemente, CA 92673
10 Tel: (949) 542-3555
11 Fax: (949) 606-9690

12 **CENTER FOR SCIENCE IN THE PUBLIC
13 INTEREST**

14 Maia C. Kats (to be admitted *pro hac vice*)
15 *mkats@cspinet.org*
16 Matthew Simon (to be admitted *pro hac vice*)
17 *msimon@cspinet.org*
18 1220 L Street, Northwest, Suite 300
19 Washington, District of Columbia 20005
20 Telephone: (202) 777-8381
21 Facsimile: (202) 265-4954
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on March 23, 2017, I caused the document entitled “NOTICE OF INTENT TO APPEAR AT FINAL FAIRNESS HEARING” to be filed with the Court’s CM/ECF system, which sends notice of such filing to all parties registered with the CM/ECF system.

/s/ Thomas D. Mauriello
Thomas D. Mauriello

1 **MAURIELLO LAW FIRM, APC**
2 Thomas D. Mauriello (SBN: 144811)
3 *tomm@maurlaw.com*
4 1181 Puerta Del Sol, Suite 120
5 San Clemente, CA 92673
6 Tel: (949) 542-3555
7 Fax: (949) 606-9690

8 **CENTER FOR SCIENCE IN THE PUBLIC INTEREST**
9 Maia C. Kats (to be admitted *pro hac vice*)
10 *mkats@cspinet.org*
11 Matthew Simon (to be admitted *pro hac vice*)
12 *msimon@cspinet.org*
13 1220 L Street, Northwest, Suite 300
14 Washington, District of Columbia 20005
15 Telephone: (202) 777-8381
16 Facsimile: (202) 265-4954

17 **UNITED STATES DISTRICT COURT**
18 **CENTRAL DISTRICT OF CALIFORNIA**

19 KIMBERLY BIRBROWER, individually
20 and on behalf of all others similarly
21 situated,

22 Plaintiff,

23 v.

24 QUORN FOODS, INC., et al.,

25 Defendants.

Case No. 2:16-cv-01346-DMG-AJW

**[PROPOSED] ORDER
GRANTING MOTION FOR THE
CENTER FOR SCIENCE IN THE
PUBLIC INTEREST TO APPEAR
AS AMICUS CURIAE**

26 **DOLLY M. GEE**, United States District Judge:

27 Having reviewed the Motion of the Center for Science in the Public Interest
28 (“CSPI”) for Leave to File Brief as *Amicus Curiae* in Opposition to the Proposed
Settlement; and

Having concluded that the CSPI has shown sufficient cause to so appear
because they have a valuable perspective on deceptive advertising in food and
considerable expertise with the product at issue;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS HEREBY ORDERED that:

1. CSPI may enter an appearance as *amicus curiae* in the above-entitled action;
2. CSPI’s Memorandum of Law Opposing the Parties Proposed Settlement Agreement, ECF No. 46-1, shall be deemed filed *nunc pro tunc* to March 23, 2017; and
3. CSPI may appear as *amicus curiae* at the Final Fairness Hearing in the above-entitled action, currently scheduled for September 1, 2017.

IT IS SO ORDERED.

Dated: _____

DOLLY M. GEE
United States District Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on March 23, 2017, I caused the document entitled “[PROPOSED] ORDER GRANTING MOTION FOR THE CENTER FOR SCIENCE IN THE PUBLIC INTEREST TO APPEAR AS *AMICUS CURIAE*” to be filed with the Court’s CM/ECF system, which sends notice of such filing to all parties registered with the CM/ECF system.

/s/ Thomas D. Mauriello
Thomas D. Mauriello