

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* (admitted *pro hac vice*)
12 msimon@cspinet.org
13 1220 L Street, Northwest, Suite 300
14 Washington, DC 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 CONDITIONAL
INTENT TO WITHDRAW
CSPI OBJECTION PENDING
AMENDMENTS TO
PROPOSED SETTLEMENT
AGREEMENT**

26 The Center for Science in the Public Interest (“CSPI”) hereby submits this
27 Notice of Intent to Withdraw Objection (“Notice”), which withdrawal is
28 conditioned on the completion of two amendments to the parties’ proposed
settlement agreement (the “Settlement”). The parties and CSPI were not able to
finalize documents requisite to withdrawal in advance of various August vacation
schedules. However, mindful of the burdens placed on the Court by their dispute,

* Admitted only in New York; supervised by Maia Caplan Kats, a D.C. Bar Member.

1 CSPI files this notice apprising it of the anticipated agreement with the parties,
2 thereby obviating the need for judicial resolution of its objection.

3 The first amendment that is to be effected by the parties concerns the mock
4 label. The parties shall either: 1) expressly incorporate the mock label negotiated by
5 the parties and CSPI into the Settlement; or 2) seek and obtain the Court's final
6 approval of the Settlement contingent on attachment of the mock label as an exhibit
7 to the Court's final approval order, if such order is forthcoming. Under either
8 scenario, incorporation of the mock label expressly shall be for two purposes—to
9 illustrate a) what constitutes "prominent" for purposes of the size, bolding, and font
10 contrast of the mold statement; and b) in what type of overall labeling context the
11 mold statement suffices to remedy any consumer confusion. With respect to the
12 latter, CSPI has made the point to the parties that the totality of claims on the box is
13 material to any such determination. For example, CSPI expressly rejected claims
14 indicating that gastric reactions from consuming Quorn products are linked to the
15 products allegedly high protein or fiber contents, instead of to mold, or that likened
16 mycoprotein to "beer or yogurt," explaining that both are derived from an "age-old"
17 fermentation process. A mold statement just above the nutrition facts panel (NFP)
18 would not remedy any consumer deception if obfuscated thus by new, deceptive
19 claims.

20 The second amendment to be effected is that, wherever the label uses the
21 term "mycoprotein," it shall place an asterisk in the same font, in a type size not less
22 than is displayed in the mock label attached as Exhibit 1 hereto, immediately
23 adjacent to the final "TM" that links to an asterisk at the start of the mold statement.
24 Notably, in the mock label, the term mycoprotein does not appear on the front of
25 pack label—it is intended to appear only on the side and/or back panel(s). In this
26 way, and in the spirit of compromise, consumers will be alerted by the asterisk to
27 the fact that mycoprotein—a contrived and fanciful term for mold—is defined
28

1 elsewhere on the label.

2 CSPI leaves the logistics to the parties, simply notifying herein that it will
3 withdraw its objection on completion of the amendments outlined above. Once
4 completed, CSPI will provide notification that it has withdrawn its objection to any
5 objectors who incorporated CSPI's objections into their own.

6 Finally, CSPI notes that its efforts have improved this Settlement beyond one
7 that appeared to bind the class to an agreement without meaningful injunctive relief.
8 In pursuit of such amendments, CSPI has accrued \$54,000 in counsel fees,
9 exclusive of those incurred by the Mauriello Law Firm, CSPI's local counsel.

10 Dated: July 27, 2017

11 Respectfully submitted,

12 By: /s/ Thomas D. Mauriello

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

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

Exhibit 1

224mm



Quorn Nuggets are delicious, easy to prepare and are sure to be loved by the whole family.



Mycoprotein™ is a nutritious form of quality protein that's naturally low in saturated fat and high in protein and fiber.

- It is produced by the age-old process of fermentation
- It is a source of all 9 essential amino acids
- We do not use any ingredients derived from genetically modified sources. To learn more about our sustainability credentials please visit quorn.com/sustainability

For Best Results...



Oven: Pre-heat to 425°F. Place one layer of frozen **Quorn** Nuggets on a cookie sheet. Bake for 12-15 minutes, turning over halfway through heating time.



Microwave: Line a microwaveable plate with two layers of paper towels. Place one layer of frozen **Quorn** Nuggets on top. **6-8 Nuggets:** Heat on high for 2 minutes, turning halfway through heating time. **Full box of Nuggets:** Heat on high for 3-3½ minutes turning halfway through heating time.

All ovens vary, heating times are approximate. Always cook until piping hot before eating.

See storage

Best when used by

KEEP FROZEN
For Best Before, see side of pack
NET WT 10.6 OZ (300g)

3 BILLION Delicious Meals ENJOYED WORLDWIDE

Meat-free
Chicken Nugget

Serving Suggestion

Dedicated to MEAT-FREE

Quorn™



* **Mycoprotein™** Mycoprotein is a mold (member of the fungi family). There have been rare cases of allergic reactions to products that contain Mycoprotein.

Nutrition Facts

Serving Size 3-4 Nuggets (85g)
Servings per Container 3.5

| Amount Per Serving | | Calories from Fat 80 | |
|---------------------------|------------|----------------------|--|
| | | %Daily Value* | |
| Total Fat | 9g | 14% | |
| Saturated Fat | 1g | 5% | |
| Trans Fat | 0g | | |
| Cholesterol | 5mg | 2% | |
| Sodium | 410mg | 17% | |
| Total Carbohydrate | 26g | 9% | |
| Dietary Fiber | 3g | 12% | |
| Sugars | 0g | | |
| Protein | 10g | | |

Vitamin A 0% • Vitamin C 0%
Calcium 0% • Iron 2%

* Percentage Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs.

| | Calories: 2,000 | 2,500 |
|---------------------------|-------------------|---------|
| Total Fat | Less than 65g | 80g |
| Sat Fat | Less than 20g | 25g |
| Cholesterol | Less than 300mg | 300mg |
| Sodium | Less than 2,400mg | 2,400mg |
| Total Carbohydrate | 300g | 375g |
| Dietary Fiber | 25g | 30g |

Calories per Gram
Fat 9 • Carbohydrate 4 • Protein 4

Ingredients: Mycoprotein™ (41%), Wheat Flour, Canola Oil, Rehydrated Egg White, Wheat Starch. Contains 2% or less of Natural Flavor from Non-Meat Sources (contains Yeast, Salt, Onion), Potato Dextrin, Salt, Wheat Gluten, Dextrose, Whole Egg & Egg White, Pea Fiber, Milk Proteins, Firming Agents: Calcium Chloride, Calcium Acetate; Turbinado Sugar, Spices, Yeast.

Allergy Advice: Contains Egg, Milk & Wheat.

Storage Instructions: Freeze below -18 degrees. Do not refreeze once thawed. Once cooked, **Quorn** Nuggets will keep for up to 24 hours when refrigerated.

Our Promise to you
We hope you enjoyed this **Quorn** product. But if you're not totally satisfied, please return all packaging to **Quorn** Foods Inc. PO Box 10789, Chicago, IL 60610.



Serving Suggestion

3 BILLION Delicious Meals ENJOYED WORLDWIDE

Meat-free
Chicken Nugget