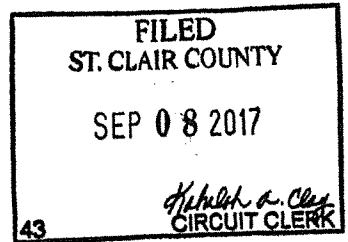


IN THE CIRCUIT COURT OF ST. CLAIR COUNTY  
STATE OF ILLINOIS



ANGELA BARNES, GAYLE )  
GREENWOOD, JAMIE BLANKENSHIP )  
and DOMINIC SIEBERT, individually and )  
on behalf of all other similarly-situated )  
citizens of the United States, )

No. 16 L 459

Plaintiffs, )

The Hon. Christopher Kolker

v. )

RIVER NORTH FOODS, INC. )

Defendant. )

**CLASS ACTION SETTLEMENT AGREEMENT**

This Class Action Settlement Agreement is entered into by and amongst Plaintiffs Angela Barnes, Gayle Greenwood, Jamie Blankenship, and Dominic Siebert on behalf of themselves and the Settlement Class Members ("Plaintiffs") and Defendant River North Foods, Inc. ("Defendant"). Capitalized terms used herein are defined in Section II of this Settlement or indicated in parentheses elsewhere in this Agreement. Subject to the Court's approval, the Parties hereby stipulate and agree that, in consideration for the promises and covenants set forth in the Settlement and upon the entry by the Court of a Final Approval Order and the occurrence of the Effective Date, the Action shall be settled and compromised upon the terms and conditions contained herein.

**I. RECITALS**

**1.1** On September 1, 2016, Plaintiffs Barnes and Greenwood filed this Action against Frontera Foods, Inc. on behalf of themselves and all Persons who purchased certain Products during the Class Period. Plaintiffs allege in the complaint that, among other things, the Product

packaging was false and deceptive in that it led purchasers to believe that the Products contained only “All Natural” ingredients and/or the Products listed Evaporated Cane Juice as an ingredient. Plaintiffs contend that Defendant’s representations give rise to claims for breach of the Illinois Consumer Fraud and Deceptive Business Practices Act and unjust enrichment. On November 22, 2016, Defendant filed a Motion to Dismiss Plaintiffs’ class action complaint. On March 21, 2017, Plaintiffs filed a First Amended Complaint, adding Rick Bayless and Manny Valdes as Defendants and asserting new claims for fraudulent transfer, breach of fiduciary duty and piercing the corporate veil. On May 5, 2017, Barnes and Greenwood amended their complaint again to add River North Foods, Inc. f/k/a Frontera Foods, Inc., as a defendant and to add Jamie Blankenship and Dominic Siebert as Plaintiffs, and added 26 new products to their complaint. Plaintiffs filed a Third Amended Complaint on July 12, 2017, in which Plaintiffs asserted a cause of action for willful and wanton misconduct/punitive damages. Prior to approval of the settlement class, Plaintiffs will file a Fourth Amended Complaint, in which they will allege a nationwide class, and in which the only named Defendant will be River North Foods, Inc. The claims will include breach of the Illinois Consumer Fraud and Deceptive Practices Act, as well as claims under similar acts in other states, breach of express and implied warranties, and unjust enrichment, among others.

**1.2** Defendant, to avoid the costs, disruption, and distraction of further litigation and without admitting the truth of any allegations made in the Action, or any liability with respect thereto, has concluded that it is desirable that the claims against it be settled and dismissed on the terms reflected in this Settlement.

**1.3** The undersigned Parties agree, subject to approval by the Court, that the litigation between Plaintiffs, on the one hand, and Defendant, on the other hand, shall be fully and finally compromised, settled, and released on the terms and conditions set forth in this Agreement.

**1.4** Plaintiffs' counsel has analyzed and evaluated the merits of all Parties' contentions and this Settlement as it affects all Parties and the Settlement Class Members. Among the risks of continued litigation are the possibilities that Plaintiffs will be unable to prove liability, damages, or entitlement to injunctive relief at trial on a class-wide or individual basis.

**1.5** Plaintiffs and Plaintiffs' counsel, after taking into account the foregoing, along with the risks and costs of further litigation, are satisfied that the terms and conditions of this Agreement are fair, reasonable, adequate, and equitable, and that a settlement of the litigation and the prompt provision of effective relief to the Settlement Class are in the best interests of the Settlement Class Members.

**1.6** Defendant, while continuing to deny all allegations of wrongdoing and disclaiming any liability with respect to any and all claims, considers it desirable to resolve the litigation on the terms stated herein, in order to avoid further expense, inconvenience, and interference with ongoing business operations, and to dispose of burdensome litigation. Therefore, Defendant has determined that settlement of this litigation on the terms set forth herein is in its best interests, and is fair, adequate, and reasonable.

**1.7** Defendant hereby consents, solely for the purposes of the settlement set forth herein, to the certification of the Settlement Class and appointment of Plaintiffs' counsel as Class Counsel for the Settlement Class and Plaintiffs as Class Representatives of the Settlement

Class; provided, however, that if this Agreement fails to receive Court approval or otherwise fails to be executed, including but not limited to, the judgment not becoming final as provided in Section XIII of this Agreement, then Defendant retains all rights it had immediately preceding the execution of this Agreement to object to the propriety of class certification in all other contexts and for all other purposes, and the litigation will continue as if the Settlement Class had never been certified. The fact that Defendant conditionally consented herein to certification of the Settlement Class shall not be used against Defendant by any Party or non-party for any purpose in this litigation or any other action, lawsuit, or proceeding of any kind whatsoever. If this Agreement fails to receive Court approval or otherwise fails to be executed, including but not limited to, the judgment not becoming final as provided in Section XIII of this Agreement, Plaintiffs shall have the right without objection to file a Fifth Amended Complaint that mirrors the Third Amended Complaint.

**1.8** This Agreement is contingent upon the issuance by the Court of both preliminary approval and final approval. Should the Court not issue preliminary approval and final approval, Defendant does not waive, and instead expressly reserves, all rights to defend this litigation.

**1.9** This Agreement reflects a compromise between the Parties, and shall in no event be construed as or be deemed an admission or concession by any Party of the truth, or lack thereof, of any allegation or the validity, or lack thereof, of any purported claim or defense asserted in any of the pleadings or filings in the litigation, or of any fault on the part of any Defendant, and all such allegations are expressly denied. Nothing in this Agreement shall constitute an admission of liability or be used as evidence of liability, by or against any Party hereto.

## II. DEFINITIONS

As used in this Settlement and the attached exhibits (which are an integral part of the Settlement and are incorporated in their entirety by reference) the following terms shall have the meanings set forth below, unless this Settlement specifically provides otherwise. Other capitalized terms in this Settlement but not defined in this section shall have the meanings ascribed to them elsewhere in this Agreement.

**2.1** “Action” means the class action lawsuit styled as *Angela Barnes, Gayle Greenwood, Jamie Blankenship, and Dominic Siebert v. River North Foods, Inc.*, Case No. 16-L-459, St. Clair County Circuit Court, Illinois.

**2.2** “Administration Expenses” means reasonable fees and expenses incurred by the Settlement Administrator for all tasks the Settlement Administrator and any third parties perform in furtherance of the notice and administration of the Settlement and to secure performance as set forth in this Settlement, in an amount not to exceed four-hundred-fifty-thousand dollars and zero cents (\$450,000.00).

**2.3** “Affiliate” means, with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with such Person. For purposes of the definition, “control” means (a) with respect to any corporation or other entity having voting shares or the equivalent and elected directors, managers, or Persons performing similar functions, (i) the ownership or power, directly or indirectly, to vote more than fifty (50%) of shares or the equivalent having the power to vote in the election of such directors, managers or Persons performing similar functions, or (ii) the

ability, directly or indirectly, to direct its business and affairs, and (b) with respect to any other Person, the ability, directly or indirectly, to direct its business and affairs.

**2.4** “Agreement” means this class action settlement agreement containing all terms, conditions, and exhibits which constitute the entire agreement between the Parties.

**2.5** “Application” means the application to be filed by Class Counsel in this Action by which they will seek an award of attorneys’ fees, Class Representative Service Awards, and reimbursement of expenses they incurred prosecuting this Action.

**2.6** “Attorneys’ Fees and Expenses” means such funds as may be awarded by the Court based on the Settlement described herein to compensate Class Counsel as determined by the Court and described more particularly in Section VII of this Settlement. This award will also include a reimbursement of expenses incurred by Class Counsel, arising from their representation in the Action.

**2.7** “Benefit” means the cash payment available to a Claimant who files a Valid Claim under this Agreement. The specific Benefit paid is subject to review, validation, and adjustments by the Settlement Administrator based upon the terms and conditions of this Agreement.

**2.8** “Benefit Checks” are the form of payment issued for Valid Claims as determined by the Settlement Administrator and in accordance with this Agreement.

**2.9** “Claim” means a request for relief pursuant to this Settlement submitted by the Settlement Class Member on a Claim Form filed with the Settlement Administrator in accordance with the terms of this Settlement.

**2.10** “Claim Form” means the proposed Claim Form in substantially the form attached hereto as Exhibit A to be used by Settlement Class Members to make a Claim under the Settlement in Tier 1 or Tier 2 (described below), which form is to be approved by the Court and to be posted online in accordance with Section VIII of this Settlement.

**2.11** “Claim Period” means the period of time during which a Settlement Class Member must submit a Claim Form to be eligible to receive monetary Benefit as part of the Settlement and shall extend for sixty (60) consecutive days after the entry of the Final Approval Order.

**2.12** “Claimant” means a Settlement Class Member who files a Claim seeking a Benefit under this Agreement.

**2.13** “Claims Deadline” means the date by which a Claim Form must be received via United States First Class Mail or via electronic submission by 11:59 p.m. central time to be considered timely. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order as well as in the Settlement Notice and/or the Claim Form and shall not exceed sixty (60) consecutive days and shall conclude not later than sixty (60) days after the entry of the Final Approval Order.

**2.14** “Class Counsel” means Stuart L. Cochran of Steckler Gresham Cochran PLLC, Matthew H. Armstrong of Armstrong Law Firm LLC, and David C. Nelson of Nelson & Nelson Attorneys at Law.

**2.15** “Class Member” means a Person who purchased Products (in the United States, for personal use and not resale), between September 1, 2011 and the date of entry of the Preliminary Approval Order.

**2.16** “Class Notice” means the Publication Notice, Settlement Notice, and Media Plan as set forth in Exhibit B attached hereto.

**2.17** “Class Period” means the period of September 1, 2011 through, and including, the date of entry of the Preliminary Approval Order.

**2.18** “Class Representatives” means Plaintiffs Angela Barnes, Gayle Greenwood, Jamie Blankenship, and Dominic Siebert.

**2.19** “Class Representative Service Award” means any award sought by application and approved by the Court that is payable to Class Representatives, up to a maximum total amount of two-thousand-dollars and zero cents (\$2,000.00) per Class Representative, payable in addition to the Settlement Amount, to compensate each Class Representative for their efforts in bringing the Action and achieving the benefits of this Settlement on behalf of the Settlement Class.

**2.20** “Court” means the St. Clair County Circuit Court, Illinois.

**2.21** “Defendant” means River North Foods, Inc.

**2.22** “Effective Date” means the fifth business day after the last of the following dates: (a) all Parties and their counsel, Defendant’s Counsel, and Class Counsel have executed this Settlement; (b) the Court has entered the Final Approval Order certifying the Settlement Class, approving the Agreement verbatim and dismissing the Action with prejudice as to Plaintiffs’ and Settlement Class Members’ claims against Defendant; and (c) the date on which time to appeal or to seek permission to appeal from the Court’s approval of the Settlement Agreement has expired or, if appealed, approval of the Settlement Agreement has been affirmed in its entirety by the Court of last resort to which such appeal has been taken and such affirmance is no longer



subject to further appeal or review, or upon the denial of a writ of certiorari to review the order and final judgment from any court, thus making the Final Approval Order a final, non-appealable judgment.

**2.23** “Fairness Hearing” and/or “Final Approval Hearing” means the final hearing to be conducted by the Court on such date as the Court may order to determine the fairness, adequacy, and reasonableness of the Settlement in accordance with applicable jurisprudence, to be held after notice has been provided to the Settlement Class in accordance with this Settlement, and where the Court will: (a) determine whether to grant final approval to the certification of the Settlement Class; (b) determine whether to designate Plaintiffs as the representatives of the Settlement Class; (c) determine whether to designate Class Counsel as counsel for the Settlement Class; (d) determine whether to grant final approval to the Settlement; (e) rule on Class Counsel’s Application for Attorneys’ Fees and Expenses; and (f) consider whether to enter the Final Approval Order.

**2.24** “Fee Award” means the Attorneys’ Fees and Expenses to be paid separate and apart from the payment of Valid Claims, awarded by the Court to Class Counsel for all the past, present, and future attorneys’ fees, costs (including court costs), expenses, and disbursements incurred by them and their experts, staff, and consultants in connection with the Action, up to a maximum of nine-hundred-eighty-seven-thousand-five-hundred dollars and zero cents (\$987,500.00).

**2.25** “Final Approval Order” means an order, to be entered by the Court granting, among other things, final approval of the Settlement and entry of final judgment with respect thereto.

**2.26** “Household” means all Persons residing at the same physical address.

**2.27** “Labeling” means the display of written, printed, or graphic matter upon the packaging of the Product, as well as written, printed, or graphic matter designed for use in the distribution or sale of the Product, including information found on Defendant’s, its Affiliates’, or its customers’ websites or in any other media format describing, explaining, and/or promoting the Product(s).

**2.28** “Media Plan” means the notice plan, in substantially the form attached hereto as Exhibit B, developed by the Settlement Administrator to notify the Settlement Class to the Settlement Notice and to command the Settlement Class Members’ attention about their rights under the Settlement.

**2.29** “Motion for Preliminary Approval of Settlement” means the motion, to be filed by Plaintiffs, seeking entry by the Court of the Preliminary Approval Order, and includes all supporting papers.

**2.30** “Notice Date” means the date on which the Settlement Administrator disseminates the Settlement Notice consistent with the Preliminary Approval Order. The Notice Date shall be no later than thirty (30) days after the Court’s entry of the Preliminary Approval Order.

**2.31** “Objection” means an objection filed with the Court by a member of the Settlement Class, objecting to any aspect of the Settlement.

**2.32** “Objection Deadline” means sixty (60) days after the Notice Date.

**2.33** “Opt-Out” means a request by a member of the Settlement Class to be excluded from the Settlement Class by following the procedures set forth in the Preliminary Approval Order and the Class Notice.

**2.34** “Opt-Out Deadline” means sixty (60) days after the Notice Date.

**2.35** “Parties” (or “Party” individually) means Plaintiffs and Defendant.

**2.36** “Person” means any natural person, corporation, partnership, business organization or association, or other type of legal entity.

**2.37** “Plaintiff” or “Plaintiffs” means Angela Barnes, Gayle Greenwood, Jamie Blankenship, and Dominic Siebert.

**2.38** “Preliminary Approval Order” means an order, in substantially the form of the Proposed Preliminary Approval Order attached hereto as Exhibit D, to be entered by the Court granting, among other things, preliminary approval of the Settlement.

**2.39** “Product” and/or “Products” means all Frontera or Salpica branded products which contain the terms Natural (including All Natural and 100% Natural); Evaporated Cane Juice; Evaporated Cane Juice Sugar; Evaporated Cane Sugar; citric acid; xanthan; xanthan gum; disodium phosphate; dipotassium phosphate; and/or sodium citrate on the labels, including, but not limited, to those listed in the Fourth Amended Class Action Complaint and all Products listed in Exhibit C.

**2.40** “Proof of Purchase” means a receipt, picture of opened Product showing UPC code and Product label, or other documentation from a third-party commercial source which reasonably establishes the fact and date of purchase of the Product during the Class Period in the United States.

**2.41** “Proposed Preliminary Approval Order” means the order attached hereto as Exhibit D.

**2.42** “Publication Notice” means the proposed short form notice, in substantially the form attached as Exhibit B hereto as well as attached to the Proposed Preliminary Approval Order, to be approved by the Court and to be published in accordance with Section VIII of this Settlement Agreement.

**2.43** “Releases” means the release of all claims contained in Section XII of this Settlement.

**2.44** “Released Claims” are defined in Section XII.

**2.45** “Released Parties” means River North Foods, Inc., Richard Bayless, Manuel Valdes, Conagra Brands, Inc. and each of their parent companies, related companies, direct and indirect subsidiaries, Affiliates, divisions, franchisees, distributors, wholesalers, retailers, advertising and production agencies, licensors, and agents, including all officers, directors, managers, members, employees, shareholders, consultants, insurers, agents, representatives, and assigns of any of the foregoing. For the avoidance of doubt, Released Parties shall include all persons or entities in the stream of commerce for the marketing, sale, and/or distribution of the Products.

**2.46** “Releasing Parties” means Plaintiffs, all Settlement Class Members, Class Counsel, and any Person claiming by or through him/her/it, including any Person claiming to be his/her/its spouse, parent, child, heir, guardian, associate, co-owner, attorney, agent, administrator, executor, devisee, predecessor, successor, assignee, assigns, representative of any kind, shareholder, partner, director, employee or affiliate.

**2.47** “Settlement” means the settlement into which the Parties have entered to resolve the Action. The terms of the Settlement are as set forth in this Agreement and attached exhibits.

**2.48** “Settlement Administrator” means Heffler Claims Group, the independent entity selected by the Parties to administer the Settlement and approved by the Court.

**2.49** “Settlement Amount” means the monetary relief available to Settlement Class Members for payment of all Valid Claims in an aggregate amount not to exceed three-million-nine-hundred-fifty thousand dollars and zero cents (\$3,950,000.00) to implement the terms of the Settlement. The Settlement Amount represents the limit and extent of Defendant’s monetary obligations under this Settlement for the payment of Valid Claims.

**2.50** “Settlement Class” means: all Persons who purchased Products in the United States during the Class Period. Excluded from the Settlement Class are: (a) all Persons who purchased or acquired the Product for resale; (b) River North Foods, Inc. and its employees, principals, affiliated entities, legal representatives, successors and assigns; (c) any Person who files a valid, timely Opt-Out request; (e) federal, state, and local governments (including all agencies and subdivisions thereof, but excluding employees thereof) and (d) the judges to whom this Action is assigned and any members of their immediate families.

**2.51** “Settlement Class Members” means all Persons who are members of the Settlement Class and who do not exclude themselves from the Settlement Class in the manner and time prescribed by the Court in the Preliminary Approval Order.

**2.52** “Settlement Notice” means a long form notice substantially in the form attached as Exhibit B, to be approved by the Court, and to be disseminated in accordance with Section VIII of this Agreement.

**2.53** “Settlement Website” means the website to be created for this Settlement that will include information about the Action, the Settlement, and relevant documents, as well as electronic and printable forms relating to the Settlement, including the Claim Form which can be submitted online or printed and mailed, and which Settlement Class Members can visit to read or request additional information regarding the Settlement. The Settlement Website shall be [www.xxxxxxxxxxxxxxxxxxxxxx.com](http://www.xxxxxxxxxxxxxxxxxxxxxx.com).

**2.54** “Tier” means the category a Settlement Class Member elects and is qualified under which to receive payment of a Benefit from Defendant.

**2.55** “Unit” means a single quantity of the Product. By way of example, a Claim for 10 Units means that the Settlement Class Member is seeking \$5.00 ( $\$0.50 \text{ per Unit} \times 10 \text{ Units} = \$5.00$ ) before adjustments by the Settlement Administrator.

**2.56** “Valid Claim” means a Claim Form submitted by a Settlement Class Member that is: (a) submitted in accordance with the directions accompanying the Claim Form and the provisions of the Settlement; (b) on the initial submission, accurately, fully and truthfully completed and executed, with all of the information requested in the Claim Form, by a Settlement Class Member; (c) signed physically or by e-signature by a Settlement Class Member personally, subject to the penalty of perjury; (d) returned via mail and received by the Claims Deadline, or, if submitted online, is submitted by 11:59 p.m. central time on the Claims Deadline; and (e) determined to be valid by the Settlement Administrator.

### **III. CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS**

**3.1** The Parties agree that the Action may be certified as a class action in accordance with the terms of this Agreement and without prejudice to Defendant’s right to contest class

certification in the event this Agreement fails to become effective or is not fully implemented in accordance with its terms. If the Settlement is not approved or this Agreement fails to be fully implemented, Defendant reserves all rights to object to any subsequent motion to certify a class in this or any other lawsuit and no representation or concession made in connection with the Settlement or this Agreement shall be considered law of the case or an admission by Defendant or to have any kind of preclusive effect against Defendant or to give rise to any form of estoppel or waiver by Defendant in these actions or any other proceeding.

3.2 Defendant expressly denies any and all liability and/or wrongdoing with respect to any and all of the claims alleged in these lawsuits and any similar lawsuits and enters into this Settlement solely to compromise a disputed claim. Accordingly, any references to the alleged business practices of Defendant in this Settlement, this Agreement or the related Court hearings and processes shall raise no inference respecting the propriety of those business practices or any other business practices of Defendant.

#### **IV. REQUIRED EVENTS**

As soon as practicable after the execution of this Agreement, Plaintiffs shall file in the Action this Agreement and a motion seeking entry of the Preliminary Approval Order, which order by its terms shall accomplish all of the following:

4.1 Preliminarily approve the Settlement and this Agreement as fair and reasonable to the Settlement Class;

4.2 Conditionally certify the Settlement Class for the purpose of effecting the Settlement;

**4.3** Designate Plaintiffs Angela Barnes, Gayle Greenwood, Jamie Blankenship, and Dominic Siebert as the Class Representatives of the Settlement Class;

**4.4** Designate Class Counsel as counsel for the Settlement Class;

**4.5** Approve the Settlement Administrator and instruct the Settlement Administrator to perform the following functions in accordance with the terms of this Agreement, the Preliminary Approval Order, and the Final Approval Order:

- a. Process Opt-Out requests from the Settlement in accordance with Section IX of this Agreement;
- b. Process Objections to the Settlement in accordance with Section IX of this Agreement;
- c. Process Claim Forms in accordance with Section VI of this Agreement;
- d. Before disseminating the Settlement Notice, establish the Settlement Website, which Settlement Class Members can visit to read and obtain additional information regarding the Settlement, including submission of Claim Forms; and
- e. Set up and operate a toll-free automated interactive voice response system through which Settlement Class Members can access Settlement information.

**4.6** Approve the form, contents, and method of notice to be given to the Settlement Class as set forth in Section VIII of this Agreement, and direct Defendant to provide, and cause to be provided, such notice and to file with the Court a declaration of compliance with those notice requirements, as set forth in Section VIII of this Agreement.



**V. SETTLEMENT CONSIDERATION AND PROCEDURES FOR PROVIDING BENEFITS TO SETTLEMENT CLASS MEMBERS**

**5.1 Benefit Available to Settlement Class Members**

In order to qualify for a Benefit, Settlement Class Members must timely submit a completed Claim Form attached as Exhibit A. This can be done on the Settlement Website or by mail by the Claims Deadline. In consideration for the Settlement and Releases given herein and subject to the rights, terms, and conditions of this Agreement, Defendant will pay or cause to be paid Valid Claims based upon the election of the Settlement Class Member and for which the Settlement Class Member qualifies:

- (a) Tier 1. Settlement Class Members who elect to fill out the Claim Form for Tier 1 and who do not have valid Proof of Purchase may recover up to a maximum of fifty cents (\$0.50) per Unit, limited to ten (10) Units or five dollars and zero cents (\$5.00) per Household; or
- (b) Tier 2. Settlement Class Members who elect to fill out the Claim Form for Tier 2 may recover fifty cents (\$0.50) per Unit up to a maximum of twenty (20) Units or ten dollars and zero cents (\$10.00) per Household with a valid Proof of Purchase dated within the Class Period.

For the avoidance of doubt, a Settlement Class Member may file a single Claim electing either Tier 1 or Tier 2. Only one Claim per Household is eligible.

**5.2 No Unclaimed Property Rights**

Defendant guarantees to pay the Benefit as determined by the Settlement Administrator subject to the number of Valid Claims and other adjustments pursuant to the terms and conditions of this Agreement. Notwithstanding anything to the contrary, Defendant shall pay

Valid Claims only. This Agreement does not create any vested property interest or unclaimed property rights for Settlement Class Members who do not file Valid Claims.

### **5.3 Guarantee and Cap**

Defendant guarantees to satisfy all Valid Claims made up to the Settlement Amount. The actual amount paid to Settlement Class Members will depend upon the number of Valid Claims. If the total amount of Valid Claims exceeds the Settlement Amount, then the Benefit payable to each Claimant shall be proportionately reduced, such that Defendant's maximum liability under this Agreement for Valid Claims shall not exceed the Settlement Amount in the aggregate. If the total amount of claims is less than the Settlement Amount, Defendant is not obligated to make any additional payments.

## **VI. PROCEDURES FOR PROVIDING BENEFIT TO SETTLEMENT CLASS MEMBERS**

**6.1** The Parties shall jointly ask the Court to approve Heffler Claims Group as the Settlement Administrator. The Settlement Administrator shall, subject to the supervision of the Court, administer the relief provided by this Agreement by processing Claim Forms in a rational, responsive, cost effective, and timely manner. The Settlement Administrator shall maintain reasonably detailed records of its activities under this Agreement. The Settlement Administrator shall maintain all such records as are required by applicable law in accordance with its normal business practices and such records will be made available to Class Counsel, Defendant's Counsel, the Parties, and their representatives promptly upon request.

**6.2** At the election of the Settlement Class Member, the Settlement Administrator shall accept Claim Forms submitted on paper via United States First Class Mail or online at the Settlement Website. Claim Forms must be received by the Settlement Administrator by mail or

submitted online no later than the Claims Deadline. Claim Forms received or submitted online after that date will not be considered Valid Claims. The Settlement Administrator will track Claim Forms with unique security identifiers or control numbers issued to Persons who seek to file a Claim. For Claim Forms that are submitted online, the Settlement Class Member shall have the opportunity to upload Proof of Purchase image files (e.g. jpg, tif, pdf), to preview and confirm information entered in the Claim Form prior to submitting the claim, and to print a page immediately after the Claim Form has been submitted showing the information entered, the names of image file(s) uploaded, and the date and time the Claim Form was received.

**6.3** On the Claim Form, the Settlement Administrator shall validate that the Settlement Class Member provided and certified the truth and accuracy of the following information under the penalty of perjury, including by signing the Claim Form physically or by e-signature, or the Claim will not be considered a Valid Claim by the Settlement Administrator:

- (a) The Settlement Class Member's name and mailing address;
- (b) Complete all sections of the Claim Form completely, truthfully, and accurately;
- (c) The Settlement Class Member's email address (unless the Settlement Class Member requests a claim form by mail, in which case an email address is optional);
- (d) The name of the Product(s) purchased, the number of Units purchased during the Class Period and the store where purchased;
- (e) That the claimed purchases were not made for purposes of resale; and

- (f) A security code or control number provided by the Settlement Administrator.

**6.4** The Settlement Administrator shall be responsible for, among other things, providing notice as set forth in the Media Plan, processing Claim Forms, and administering the Settlement Website, toll-free telephone support line, Objection process, and Settlement claims process described herein (including receiving and maintaining on behalf of the Court and the Parties any Settlement Class Member correspondence regarding requests for Opt-Out from the Settlement Class). The Settlement Administrator will use adequate and customary procedures and standards to prevent the payment of fraudulent claims and to pay only Valid Claims. The Settlement Administrator and Parties shall have the right to audit claims, and the Settlement Administrator may request additional information from Claimants including by cross examination. The Settlement Administrator will approve Valid Claims and issue Benefit Checks based upon the terms and conditions of the Agreement or may reject Claims which are invalid or evidence waste, fraud, or abuse. The determination of validity of claims shall occur within sixty (60) days of the end of the Claim Period. The Settlement Administrator shall approve or deny all claims, and its decision shall be final, binding, and non-appealable by either Party or by Settlement Class Members. Neither Plaintiffs nor Defendant, nor their counsel, shall have any liability whatsoever for any act or omission of the Settlement Administrator.

**6.5** The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. The Settlement Administrator shall promptly provide Class Counsel and Defendant's Counsel with information concerning notice, administration, and implementation of the Agreement. Should the Court request or should it be reasonably

advisable to do so, the Parties, in conjunction with the Settlement Administrator, shall submit a timely report to the Court summarizing the work performed by the Settlement Administrator.

Without limiting the foregoing, the Settlement Administrator shall:

- (a) promptly forward upon request to Defendant's Counsel and Class Counsel, copies of all documents and other materials relating to the administration of the Settlement;
- (b) receive requests from Settlement Class Members to Opt-Out from the Settlement Class and promptly provide to Class Counsel and Defendant's Counsel a copy thereof upon receipt. If the Settlement Administrator receives any Opt-Out requests from Settlement Class Members after the Opt-Out Deadline, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Defendant's Counsel;
- (c) provide reports and summaries, as requested, to Class Counsel and Defendant's Counsel, including without limitation, reports regarding the number of Claim Forms received and the identity of the Settlement Class Members;
- (d) employ reasonable procedures to screen Claims Forms for waste, fraud, and abuse and shall reject a Claim Form, or any part of a Claim for a payment reflected therein, where the Settlement Administrator determines that there is evidence of waste, fraud, or abuse. The Settlement Administrator will review each Claim Form based upon the initial submission by the Settlement Class Member and ensure that each is

complete, properly substantiated, and, based on the substantiation, determine the appropriate benefit to be paid, if any, in accordance with the terms of this Agreement. The Settlement Administrator is empowered to pay legitimate and Valid Claims only.

- (e) prepare a declaration attesting to compliance with the Class Notice requirements set forth below and identifying all Opt-Outs and/or objectors. Such declaration shall be provided to Defendant's Counsel and Class Counsel for filing with the Court no later than seven (7) days prior to the Final Approval Hearing.
- (f) issue Benefit Checks for payment of Valid Claims. Defendant is obligated to pay Valid Claims only. All Benefit Checks issued pursuant to the Settlement shall bear in the legend that they expire if not negotiated within sixty (60) days of their date of issue. To the extent that a Benefit Check issued to a Settlement Class Member is not cashed within sixty (60) days after the date of issue, the check will be void.

**VII. CLASS COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND CLASS REPRESENTATIVE SERVICE AWARDS**

7.1 The Parties agree, subject to Court approval, that Stuart L. Cochran of Steckler Gresham Cochran PLLC, Matthew H. Armstrong of Armstrong Law Firm LLC, and David C. Nelson of Nelson & Nelson at Law shall be appointed Class Counsel, without prejudice to Defendant's right to contest the appointment in the event that this Agreement is not fully implemented in accordance with its terms. If the Settlement is not approved or this Agreement

fails to be implemented fully, Defendant reserves all rights to object to any subsequent motion to appoint class counsel in these or any other actions.

7.2 Class Counsel will submit to the Court an application seeking a Fee Award which shall not exceed nine-hundred-eighty-seven-thousand-five-hundred dollars and zero cents (\$987,500.00). Defendant will not object to any Fee Award equal to or less than \$987,500.00. In addition, Class Representatives may seek a Class Representative Service Award in the amount of two-thousand dollars and zero cents (\$2,000.00) per Class Representative as compensation for their efforts in bringing the Action and achieving the benefits of the Settlement on behalf of the Settlement Class. Defendant will not object to any Class Representative Service Award equal to or less than \$2,000.00 per Class Representative. The Fee Award and Class Representative Service Award shall be paid separate and apart from the Settlement Amount, and shall not take away from or otherwise reduce the monetary relief available to the Settlement Class. Court approval of Class Counsel's Fee Award and Class Representative Service Award will not be a condition of the Settlement. If the Court denies, in whole or part, Class Counsel's Application for a Fee Award, the remainder of the terms of this Agreement shall remain in effect. In addition, no interest will accrue on such amounts at any time. Neither Class Counsel nor Plaintiffs will request nor will they accept any award inconsistent with these terms.

7.3 Defendant agrees that it will not object to the amount of Class Counsel's Application for Fee Award up to the amounts set forth in the preceding paragraph, and agrees that it will pay the amounts approved by the Court up to the amounts five (5) business days after the Effective Date.

7.4 Class Counsel shall provide Defendant with all necessary accounting and tax

information, including W-9 forms, with reasonable advance notice to allow Defendant to make the Attorneys' Fees and Expenses award payment as set forth above. Once Defendant makes the Fee Award payment as directed in writing by Class Counsel, Defendant shall have no further obligation to pay any additional sums to Class Counsel and shall be held harmless and indemnified by Class Counsel for the division and disbursements of the Fee Award amongst and between Class Counsel.

**VIII. NOTICE AND DISSEMINATION TO THE SETTLEMENT CLASS AND CLAIMS DEADLINE**

Subject to Court approval, the Parties agree that Defendant shall cause notice of the proposed Settlement to be provided to the Settlement Class by the following methods:

**8.1 Settlement Notice**

The Parties agree that the Settlement Notice shall otherwise be in the manner and form agreed upon by the Parties and approved by the Court. Collectively, the Settlement Notice shall in general terms set forth and sufficiently inform the Settlement Class Members of: (a) a short, plain statement of the background of the Action, the Settlement Class certification, and the essential terms of the Settlement; (b) appropriate means for obtaining additional information regarding the Settlement and the Action; (c) appropriate information concerning the procedure for objecting or opting-out from the Settlement, if they should wish to do so; and (d) that any relief to Settlement Class Members is contingent on the Court's final approval of the Settlement. The Parties will request the Court to approve the Settlement Notice in the Preliminary Approval Order.



## **8.2 Publication Notice**

Similarly, the Settlement Administrator will cause the Publication Notice to be published in accordance with the Media Plan attached as Exhibit B. The Parties agree that the Publication Notice provides to the Settlement Class and Settlement Class Members information sufficient to inform them of: (a) the essential terms of the Settlement; (b) appropriate means for obtaining additional information regarding the Settlement and the Action; and (c) appropriate information about the procedure for Objecting or Opting-Out of the Settlement, if they should wish to do so. Since the Media Plan is determined to be the best notice practicable under the circumstances and satisfies due process, the Parties will request the Court to approve the Media Plan in the Preliminary Approval Order.

## **8.3 Settlement Website**

The Settlement Administrator will establish a Settlement Website that will contain the complaint in the Action, the Motion for Preliminary Approval, the Preliminary Approval Order, the Settlement Agreement, the Settlement Notice, the Publication Notice, and the Claim Form. The Settlement Website will also identify key deadlines (e.g., the Claims Deadline, the Opt-Out Deadline, Objection Deadline, the date of Final Approval Hearing), and direct Settlement Class Members on how to submit Claim Forms and include a “Frequently Asked Questions” section.

## **8.4 Toll-Free Telephone Support Line**

The Settlement Administrator will establish a toll-free telephone support line that will provide Settlement Class Members with general information about the Action and will respond to frequently asked questions about the Action and claim procedure available exclusively through an interactive voice response (IVR).

### **8.5 Methods for Dissemination of Notice**

As soon as practicable, but no later than thirty (30) days after the Court's entry of the Preliminary Approval Order, the Settlement Administrator shall disseminate the Settlement Notice consistent with the Preliminary Approval Order by setting up the Settlement Website on the Internet and posting both the Settlement Notice and Publication Notice.

Within thirty (30) days after the entry of the Preliminary Approval Order, Defendant shall publish, cause to be published, or ensure that the Settlement Administrator has caused to be published, the Publication Notice pursuant to the Media Plan.

### **8.6 Declaration of Compliance**

The Settlement Administrator shall prepare a declaration attesting to compliance with the Settlement Notice requirements set forth above and a statement of the number of Persons the Media Plan reached. Such declaration shall be provided to Defendant's Counsel and Class Counsel and filed with the Court no later than seven (7) days prior to the Final Approval Hearing.

### **8.7 Report on Opt-Out Requests and Objections**

Not later than seven (7) days before the Final Approval Hearing, the Settlement Administrator shall prepare and deliver to Class Counsel, who shall file with the Court, and Defendant's counsel, a report stating the total number of Persons who have submitted timely and valid Opt-Out requests from the Settlement Class and Objections to the Settlement, and the names of such Persons.

## **IX. OBJECTIONS AND OPT-OUT REQUESTS**

### **9.1 Objections**

Any Class Member, on his or her own, or through an attorney hired at his or her own expense, may object to the terms of the Settlement. Any such Objection must be filed with the Court and served upon Class Counsel, Defendant's Counsel, and the Settlement Administrator no later than sixty (60) days after the Notice Date (the "Objection Deadline"). To be effective, any such Objection must be in writing and include the contents described below:

- (a) A reference at the beginning to this case, *Angela Barnes, Gayle Greenwood, Jamie Blankenship, and Dominic Siebert v. River North Foods, Inc.*, Case No. 16-L-459, St. Clair County Circuit Court, Illinois;
- (b) The name, address, telephone number, and, if available, the email address of the Person objecting, and if represented by counsel, of his/her counsel;
- (c) A written statement of all grounds for the Objection, accompanied by any legal support for such Objection;
- (d) Whether he/she intends to appear at the Final Approval Hearing, either with or without counsel;
- (e) A statement of his/her membership in the Settlement Class, including all information required by the Claim Form; and
- (f) A detailed list of any other objections submitted by the Settlement Class Member, or his/her counsel, to any class actions submitted in any court, whether state or otherwise, in the United States in the previous five (5) years. If the Settlement Class Member or his/her counsel has not objected

to any other class action settlement in any court in the United States in the previous five (5) years, he/she shall affirmatively state so in the written materials provided in connection with the Objection to this Settlement.

## **9.2 Compliance with Objection Requirements**

Any Class Member who fails to timely file and serve a written Objection containing all of the information listed in the items (a) through (f) of the previous paragraph, including notice of his/her intent to appear at the Final Approval Hearing, shall not be permitted to object to the Settlement and shall be foreclosed from seeking any review of the Settlement or the terms of the Agreement by any means, including but not limited to an appeal.

Any Class Member who submits a timely written Objection shall consent to deposition by Class Counsel prior to the Final Approval Hearing.

## **9.3 Opt-Out Requests**

Any potential Class Member, other than any Class Representative, may elect to be excluded from this Settlement and from the Settlement Class by Opting-Out of the Settlement Class. Any potential Class Member who desires to be excluded from the Settlement Class must give written notice of the election to Opt-Out no later than sixty (60) days after the Notice Date (the “Opt-Out Deadline”), with copies mailed to the Settlement Administrator, Class Counsel, and counsel for Defendant. Opt-Out requests must: (a) be signed by the Class Member who is requesting exclusion; (b) include the full name, address, and phone number(s) of the Class Member requesting exclusion; and (c) include the following statement: “I/We request to Opt-Out from the settlement in the **River North Foods Action**.” No Opt-Out request will be valid unless all the information described above

is included. No Class Member, or any person acting on behalf of or in concert or participation with that Class Member, may exclude any other Class Member from the Settlement Class. The last date for Class Members to Opt-Out of the Settlement will, subject to Court approval, be on the Opt-Out Deadline contained in the Preliminary Approval Order. Class Members who timely Opt-Out of the Settlement will not be bound by the terms of this Agreement, including any releases contained herein.

In the event that ten percent (10%) or more of the Settlement Class Opt-Out, Defendant shall have the option to elect to terminate this Agreement, in which circumstance the Settlement will become null and void and the parties will return to the *status quo ante* as described in Section III.

The Class Representatives affirmatively support this Settlement and agree not to Opt-Out of this Settlement. None of the Class Representatives, Class Counsel, Defendant, or its counsel shall in any way encourage any Class Member to Opt-Out or discourage any Class Member from participating in this Settlement.

**X. COSTS OF NOTICE AND ADMINISTRATION**

In addition to providing to Settlement Class Members the Benefits described in Section V above, Defendant will pay actual fees and expenses up to but not to exceed four-hundred-fifty-thousand dollars and zero cents (\$450,000.00) for: (a) the costs of preparing and disseminating the notices provided for in Section VIII above; and (b) the other Administration Expenses, including payments made for the services of the Settlement Administrator and third-party expenses. Notwithstanding anything to the contrary herein, Defendant shall not be responsible for any cost that may be incurred by, on behalf of, or at the direction of, Plaintiffs or

Class Counsel in: (a) responding to inquiries about the Agreement, the Settlement, or the Action; (b) posting the Publication Notice on Class Counsel's website, should that occur; (c) defending the Agreement or the Settlement against any challenge to either or both of them; or (d) defending against any challenge to the Preliminary Approval Order, Final Approval Order, or judgment entered pursuant to the Agreement.

## **XI. PROCEDURES FOR SETTLEMENT APPROVAL**

### **11.1 Preliminary Approval**

Promptly after the execution of this Agreement, Plaintiffs will move the Court for an order preliminarily approving this Agreement and requesting that the Court approve the form and content of the Class Notice, substantially in the forms attached to this Agreement as Exhibit B, as described in VIII above, and:

- (a) certifying the Settlement Class and appointing Class Counsel and Class Representatives to represent the Class;
- (b) setting the date of the Final Fairness Hearing, upon notice to the Settlement Class, to consider:
  - 1. whether the Settlement should be approved as fair, reasonable, and adequate;
  - 2. whether the Released Claims of the Settlement Class against the Released Parties should be dismissed with prejudice;
  - 3. Class Counsel's Application for Fee Award; and
  - 4. the Class Representative Service Awards.

Class Counsel will file motions on topics outlined in Section VII at least five (5) business days prior to the date of the Fairness Hearing.

### **11.2 Final Approval of the Court**

This Agreement and the Settlement embodied herein are subject to Final Approval by the Court. If the Settlement is approved, the Court will enter a judgment dismissing the claims against Defendant with prejudice. The Parties waive any right to appeal or collaterally attack a Final Approval Order entered by the Court.

If this Agreement or any part of it is materially modified by the Court or is materially modified upon appeal or remand, either Party may terminate this agreement. If no Party timely elects to terminate, then the Parties shall remain bound to the Settlement as so modified. For purposes of this paragraph, a “material modification” is one that significantly affects the rights or obligations of one or more of the Parties. Without limiting the foregoing and by way of illustration only, material modifications include but are not limited to: (a) any change to the scope of the Released Claims set forth in this Settlement Agreement; (b) any material change to the Final Approval Order which limits or reduces any of the protections afforded to Defendant, (c) any increase in the cost of the settlement to be borne by Defendant to be determined at the sole discretion of Defendant; or (d) any change to the Benefit, Class Notice, Claim Form, and claim process. No order or action of the Court pertaining to attorneys’ fees or expenses shall be considered to constitute a material modification so long as such order, action, or modification does not increase the cost of settlement to be borne by Defendant, and does not require that Defendant do anything not specifically set forth herein, or is one that significantly affects the rights or obligations of

one or more of the Parties. Similarly, no order or action of the Court pertaining to the Class Representatives Service Awards shall be considered to constitute a material modification so long as such order, action or modification does not increase the cost of Settlement to be borne by Defendant and does not require that Defendant do anything not specifically set forth herein. Any dispute as to the materiality of any modification or proposed modification of this Agreement shall be resolved by the Court.

## **XII. RELEASES**

**12.1** Upon the Effective Date and without any further action by the Court or by any Party to this Agreement, Plaintiffs, all Settlement Class Members, Class Counsel, and any Person claiming by or through him/her/it, including any Person claiming to be his/her/its parent, child, heir, guardian, associate, co-owner, attorney, agent, administrator, executor, devisee, predecessor, successor, assignee, assigns, representative of any kind, shareholder, partner, director, employee or affiliate, for good and sufficient consideration, the receipt and adequacy of which is acknowledged, shall be deemed to, and shall, in fact, have remised, released and forever discharged any and all Released Claims, which they, or any of them, had or has or may in the future have or claim to have against any of the Released Parties.

**12.2** The Releasing Parties hereby fully release and forever discharge the Released Parties from any and all actions, causes of actions, claims, administrative claims, demands, rights, damages, obligations, suits, debts, liens, penalties, fines, contracts, agreements, judgments, expenses, costs, liabilities, and causes of action of every nature and description, including claims for attorneys' fees, expenses and costs, whether known or unknown, suspected



or unsuspected, existing now or arising in the future that (a) is or are based on any or any alleged act, omission, inadequacy, misstatement, representation, misrepresentation, fraud, deception, harm, matter, cause, or event pertaining to the Products that has occurred at any time from the beginning of time up to and including the entry of the Preliminary Approval Order, (b) arise from or are related in any way to the Action, the Products or the design, manufacturing, testing, packaging, marketing, advertising, promoting, Labeling, or sale of the Products, (c) includes any Frontera or Salpica branded products which contain the terms Natural (including All Natural and 100% Natural); Evaporated Cane Juice; Evaporated Cane Juice Sugar; Evaporated Cane Sugar; citric acid; xanthan; xanthan gum; disodium phosphate; dipotassium phosphate; and/or sodium citrate on the labels, including, but not limited to, those listed in the Fourth Amended Class Action Complaint and in all Products listed in Exhibit C (the “Released Claims”). This release expressly excludes and does not release the Released Parties from any claims, if any, the Releasing Parties may have against the Released Parties for personal injury damages relating to the Products.

**12.3** Without limiting the foregoing, the release specifically extends to claims that the Releasing Parties do not know or suspect to exist in their favor at the time that the Settlement, and the release contained herein, becomes effective. This paragraph constitutes a waiver of, without limitation as to any other applicable law, section 1542 of the California Civil Code, which provides:

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

**12.4** The Releasing Parties understand and acknowledge the significance of these waivers of California Civil Code section 1542 and any other applicable federal or state statute, case law, rule or regulation relating to limitations on releases. In connection with such waivers and relinquishment, the Releasing Parties acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts that they now know or believe to be true with respect to the subject matter of the Settlement, but that it is their intention to release fully, finally, and forever all Released Claims with respect to the Released Parties, and in furtherance of such intention, the release of the Released Claims will be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

**12.5** The Final Approval Order shall further provide for and effect the release of all actions, causes of action, claims, administrative claims, demands, debts, damages, costs, attorney's fees, obligations, judgments, expenses, compensation, or liabilities, in law or in equity, whether now known or unknown, contingent or absolute, that Releasing Parties now have or may have against the Released Parties by reason of any act, omission, harm, matter, cause, or event whatsoever arising out of the initiation, prosecution, or settlement of the Action or the claims and defenses asserted in the Action.

**12.6** Notwithstanding the above, the Court shall retain jurisdiction over the Parties and the Agreement with respect to the future performance of the terms of the Agreement, and to assure that all payments and other actions required of any of the Parties by the Settlement are properly made or taken.

### **XIII. FINAL JUDGMENT AND SETTLEMENT APPROVAL**

This Agreement is subject to and conditioned upon the issuance by the Court of the Final

Approval Order that finally certifies the Settlement Class for the purposes of this Settlement, grants final approval of the Agreement, and provides the relief specified herein, which relief shall be subject to the terms and conditions of the Agreement and the Parties' performance of their continuing rights and obligations hereunder.

#### **XIV. REPRESENTATIONS AND WARRANTIES**

Each Party represents and warrants to, and agrees with, the other Party as follows:

**14.1** Each Party has had the opportunity to receive, and has received, independent legal advice from his or her or its attorneys regarding the advisability of making the Settlement, the advisability of executing this Agreement, and the legal and income tax consequences of this Agreement, and fully understands and accepts the terms of this Agreement.

**14.2** Defendant represents and warrants: (a) that it has the requisite corporate power and authority to execute, deliver, and perform the Agreement and to consummate the transactions contemplated hereby; (b) that the execution, delivery, and performance of the Agreement and the consummation by it of the actions contemplated herein have been duly authorized by necessary corporate action on the part of Defendant; and (c) that the Agreement has been duly and validly executed and delivered by Defendant and constitutes its legal, valid, and binding obligation.

**14.3** Class Representatives represent and warrant that they are entering into the Agreement on behalf of themselves individually and as proposed representatives of the Settlement Class Members, of their own free will and without the receipt of any consideration other than what is provided in the Agreement or disclosed to, and authorized by, the Court. Each Class Representative represents and warrants that he/she has reviewed the terms of the

Agreement in consultation with Class Counsel and believes them to be fair and reasonable, and covenants that he/she will not file an Opt-Out request from the Settlement Class or object to the Agreement.

**14.4** Plaintiffs represent and warrant that no portion of any claim, right, demand, action, or cause of action against any of the Released Parties that Plaintiffs have or may have arising out of the Action or pertaining to their purchase and/or use of the Product and/or the design, manufacture, testing, advertising, promoting, marketing, Labeling, packaging, or sale of the Product otherwise referred to in this Agreement, and no portion of any recovery or settlement to which Plaintiffs may be entitled, has been assigned, transferred, or conveyed by or for Plaintiffs in any manner; and no Person other than Plaintiffs has any legal or equitable interest in the claims, demands, actions, or causes of action referred to in this Agreement as those of Plaintiffs themselves.

**14.5** No Party relies or has relied on any statement, representation, omission, inducement, or promise of the other party (or any officer, agent, employee, representative, or attorney for any other party) in executing this Agreement, or entering the Settlement provided for herein, except as expressly stated in this Agreement.

**XV. NO ADMISSIONS OF FAULT**

The Agreement and every Agreement and term contained in it is conditioned upon final approval of the Court and is made for settlement purposes only. Whether or not consummated, this Agreement shall not be construed as, offered in evidence as, received in evidence as, and/or deemed to be, evidence of a presumption, concession or an admission by Plaintiffs, Defendant, any Settlement Class Member or Released Party, of the truth of any fact alleged or the validity

of any claim or defense that has been, could have been, or in the future might be asserted in any litigation, or the deficiency of any claim or defense that has been, could have been, or in the future might be asserted in any litigation, or of any liability, fault, wrongdoing, or otherwise of such Party.

## **XVI. MISCELLANEOUS PROVISIONS**

### **16.1 Termination of Agreement**

This Agreement may be terminated prior to approval of this Agreement by the Court, upon the mutual agreement of the Parties by and through their respective counsel; or as specifically set forth in this Agreement.

### **16.2 Entire Agreement**

This Agreement, together with the Exhibits hereto, constitutes the entire agreement between the Parties with respect to the subject matter of the Settlement and supersedes all prior negotiations, communications, memoranda, and agreements between the Parties. Neither the Plaintiffs nor Defendant are entering into this Agreement in reliance upon any representations, warranties, or inducements other than those contained in this Agreement.

### **16.3 Change of Time Periods**

The time periods and/or dates described in this Agreement with respect to the giving of notices and hearings are subject to approval and change by the Court or by the written agreement of Plaintiffs' Counsel and Defendant's Counsel, without notice to Class Members except that the Settlement Administrator shall ensure that such dates are posted on the Settlement Website.

#### **16.4 Extension of Time**

The Parties reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extension of time that might be needed to carry out any of the provisions of this Agreement.

#### **16.5 Media and Contact of Class Members**

To avoid contradictory, incomplete, or confusing information about the Settlement, the Parties agree that if they make any written press releases or statements to the media about the settlement before the conclusion of the Claim Period, such releases or statements will be approved by the Parties in advance and, where desired by the other Party, made jointly. Except as noted herein and by mutual agreement of the Parties, the Class Notice shall constitute the only communication with Class Members regarding the Settlement prior to the Final Fairness Hearing. Notwithstanding, Class Counsel can answer any inquiries initiated by Class Members and may communicate freely with Plaintiffs.

#### **16.6 Cooperation**

Defendant, Plaintiffs, and their respective counsel agree to prepare and execute any additional documents that may reasonably be necessary to effectuate the terms of this Agreement. The Parties shall cooperate with the Settlement Administrator to the extent reasonably necessary to assist and facilitate the Settlement Administrator in carrying out its duties and responsibilities. The Parties will also cooperate so that Class Counsel may have such confirmatory discovery as is reasonably necessary in connection with this Agreement.

#### **16.7 Plaintiffs' Authority**

Class Counsel represent and warrant that they are authorized to take all appropriate actions required or permitted to be taken by or on behalf of the Plaintiffs and, subsequent to an appropriate Court Order, the Settlement Class in order to effectuate the terms of this Agreement and are also authorized to enter into appropriate modifications or amendments to this Agreement on behalf of the Plaintiffs and, subsequent to an appropriate Court Order, the Class Members.

#### **16.8 Governing Law**

This Agreement shall be construed and governed in accordance with the laws of the State of Illinois, without regard to Illinois's conflict-of-laws principles.

#### **16.9 Stay Pending Court Approval**

Class Counsel and Defendant's Counsel agree to stay all proceedings, other than those proceedings necessary to carry out or enforce the terms and conditions of the Settlement, until the Effective Date of the Settlement has occurred. If, despite the Parties' best efforts, this Agreement should fail to become effective, the Parties will return to their prior positions in the Action, in accordance with Section III of this Agreement.

The Parties also agree to use their best efforts to seek the stay and dismissal of, and to oppose entry of any interim or final relief in favor of any Settlement Class Member in, any other proceedings against any of the Released Parties which challenges the Settlement or otherwise asserts or involves, directly or indirectly, a Released Claim.

#### **16.10 Construing the Agreement**

This Agreement shall not be construed more strictly against one Party than another merely by virtue of the fact that it may have been initially drafted by counsel for only one of the Parties. It is recognized that this Agreement is the result of arm's-length negotiations between the Parties and it is acknowledged that all Parties have contributed substantially to the preparation of this Agreement, accordingly, the doctrine of *contra proferentum* shall not apply in construing this Agreement, nor shall any other such similar doctrine apply.

#### **16.11 Evidentiary Preclusion**

The Parties agree that, to the fullest extent permitted by law, neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any claim or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any Released Party or the appropriateness of class certification in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. In addition, any failure of the Court to approve the Settlement and/or any objections or interventions may not be used as evidence in the Action or any other proceeding for any purpose whatsoever. However, the Released Parties may file the Agreement and/or the Final Approval Order in any action or proceeding that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement,



judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

#### **16.12 Effect of Non-Approval**

In the event that this Agreement is not approved by the Court in substantially its present form, any Objection to the Settlement is sustained by the Court, or the Settlement does not become final for any reason including Termination pursuant to paragraphs 16.1, 11.2 or 9.3 above, the terms and provisions of this Agreement shall have no further force and effect with respect to the Parties or the Class Members, and shall not be used in this Action or in any other action or proceeding for any purpose, and any order or judgment entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, nunc pro tunc. In such event, this Agreement and all negotiations, proceedings, documents prepared, and statements made in connection with this Agreement shall be without prejudice to any Party or Class Member and shall not be admissible or offered into evidence in any action or proceeding, and shall not be deemed, asserted, or construed to be an admission or confession by any Party or any other Person or entity of any fact, matter, or proposition of law, and shall not be used or asserted in any other manner or for any purpose, and all Parties and Class Members shall stand in the same position as if this Agreement and Settlement had not been negotiated, made, or submitted to the Court.

#### **16.13 Signatures**

This Agreement may be executed in counterparts, and, when so executed, shall constitute a binding original; each of which shall be deemed an original but all of which together shall

constitute one and the same instrument. Facsimile signatures or signatures sent by email shall be deemed original signatures and shall be binding.

#### **16.14 Notices**

Whenever this Agreement requires or contemplates that one Party shall or may give notice to the other, notice shall be provided in writing by United States First Class Mail and email to:

1. If to Plaintiffs or Class Counsel:

Stuart L. Cochran  
Steckler Gresham Cochran PLLC  
12720 Hillcrest Rd., Ste. 1045  
Dallas, TX 75230

2. If to Defendant or Defendant's counsel ("Defendant's Counsel"):

John P. Cunningham  
BROWN & JAMES, P.C.  
Richland Executive Plaza, Suite 200  
525 West Main  
Belleville, IL 62220  
jcunningham@bjpc.com

and

Judy Okenfuss  
ICE MILLER LLP  
One American Square, Suite 2900  
Indianapolis, IN 46282  
judy.okenfuss@icemiller.com

#### **16.15 Good Faith**

The Parties agree that they will act in good faith and will not engage in any conduct that will or may frustrate the purpose of this Agreement.

#### **16.16 Protective Orders**

All orders, settlement agreements and designations regarding the confidentiality of

documents and information (“Protective Orders”) remain in effect, and all Parties and counsel remain bound to comply with the Protective Orders, including the provisions to certify the destruction of “Confidential” documents.

#### **16.17 Binding on Successors**

This Agreement shall be binding upon the heirs, executors, administrators, successors, and assigns of the Plaintiffs, Settlement Class Members, and Defendant.

#### **16.18 Arms-Length Negotiations**

The determination of the terms and conditions contained herein and the drafting of the provisions of this Agreement have been by mutual understanding after negotiation, with consideration by, and participation of, the Parties hereto and their counsel.

#### **16.19 Waiver**

The waiver by one Party of any provision or breach of the Agreement shall not be deemed a waiver of any other provision or breach of the Agreement.

#### **16.20 Variance**

In the event of any variance between the terms of this Agreement and any of the Exhibits hereto, the terms of this Agreement shall control and supersede the Exhibit(s).

#### **16.21 Exhibits**

All Exhibits to this Agreement are material and integral parts hereof, and are incorporated by reference as if fully rewritten herein.

#### **16.22 Taxes**

No opinion concerning the tax consequences of the Agreement to any Settlement Class Member is given or will be given by Defendant, Defendant’s Counsel, or Class Counsel; nor is

any Party or their counsel providing any representation or guarantee regarding the tax consequences of the Agreement as to any Settlement Class Member. Each Settlement Class Member is responsible for his/her tax reporting and other obligations respecting the Agreement, if any.

#### **16.23 Retain Jurisdiction**

The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of this Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the agreements embodied in this Agreement.

#### **16.24 Attorneys' Fees**

Notwithstanding any of the provisions herein, if any party finds it necessary to institute legal proceedings to enforce another party's obligation under this Agreement, the prevailing party in any such action shall be entitled to recover its reasonable attorneys' fees and costs.

#### **16.25 Support From The Parties**


After a full investigation, discovery and arms-length negotiations, the Parties and their

counsel agree that they: (a) have independently determined that this Settlement is in the best interest of the Class; and (b) shall support motions for entry of the Preliminary Approval Order and Final Approval Order.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives.

Dated this 7<sup>th</sup> day of September, 2017.

*Plaintiffs*

  
Angela Barnes  
*On Behalf of Plaintiffs and the Proposed  
Settlement Class*

\_\_\_\_\_  
Gayle Greenwood  
*On Behalf of Plaintiffs and the Proposed  
Settlement Class*

\_\_\_\_\_  
Jaime Blankenship  
*On Behalf of Plaintiffs and the Proposed  
Settlement Class*

\_\_\_\_\_  
Dominic Siebert  
*On Behalf of Plaintiffs and the Proposed  
Settlement Class*

counsel agree that they: (a) have independently determined that this Settlement is in the best interest of the Class; and (b) shall support motions for entry of the Preliminary Approval Order and Final Approval Order.


IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives.

Dated this 7<sup>th</sup> day of September, 2017.

*Plaintiffs*

---

Angela Barnes  
*On Behalf of Plaintiffs and the Proposed  
Settlement Class*

  
Gayle Greenwood  
*On Behalf of Plaintiffs and the Proposed  
Settlement Class*

---

Jaime Blankenship  
*On Behalf of Plaintiffs and the Proposed  
Settlement Class*

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Dominic Siebert  
*On Behalf of Plaintiffs and the Proposed  
Settlement Class*

counsel agree that they: (a) have independently determined that this Settlement is in the best interest of the Class; and (b) shall support motions for entry of the Preliminary Approval Order and Final Approval Order.

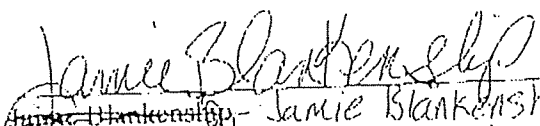
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives.

Dated this 7 day of September, 2017.

*Plaintiffs*

\_\_\_\_\_  
Angela Barnes  
*On Behalf of Plaintiffs and the Proposed  
Settlement Class*

\_\_\_\_\_  
Gayle Greenwood  
*On Behalf of Plaintiffs and the Proposed  
Settlement Class*

  
\_\_\_\_\_  
~~Jamie Blankenship~~ - Jamie Blankenship  
*On Behalf of Plaintiffs and the Proposed  
Settlement Class*

\_\_\_\_\_  
Dominic Siebert  
*On Behalf of Plaintiffs and the Proposed  
Settlement Class*

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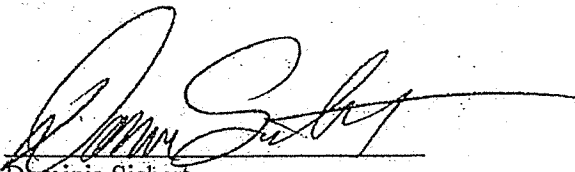
Dated this 7 day of September, 2017.

*Plaintiffs*

\_\_\_\_\_  
Angela Barnes  
*On Behalf of Plaintiffs and the Proposed  
Settlement Class*

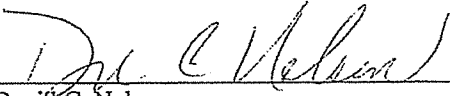
\_\_\_\_\_  
Gayle Greenwood  
*On Behalf of Plaintiffs and the Proposed  
Settlement Class*

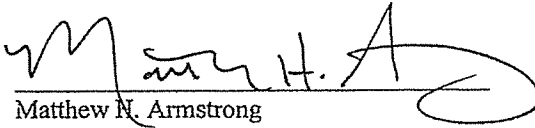
\_\_\_\_\_  
Jaime Blankenship  
*On Behalf of Plaintiffs and the Proposed  
Settlement Class*

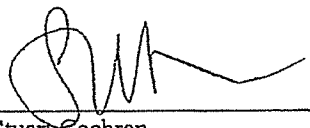
  
\_\_\_\_\_  
Dominic Siebert  
*On Behalf of Plaintiffs and the Proposed  
Settlement Class*



*Class Counsel*

  
\_\_\_\_\_  
David C. Nelson  
Nelson & Nelson, Attorneys at Law, P.C.

  
\_\_\_\_\_  
Matthew N. Armstrong  
Armstrong Law Firm LLC

  
\_\_\_\_\_  
Stuart Cochran  
Steckler Gresham Cochran PLLC

*Defendant*

\_\_\_\_\_  
River North Foods, Inc.

By: \_\_\_\_\_

Title: \_\_\_\_\_

*Class Counsel*

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David C. Nelson  
Nelson & Nelson, Attorneys at Law, P.C.


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Matthew H. Armstrong  
Armstrong Law Firm LLC

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Stuart Cochran  
Steckler Gresham Cochran PLLC

*Defendant*

  
River North Foods, Inc.  
By: MANUEL VALDES  
Title: CEO