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

CRYSTAL HILLSLEY and WILLIAM RILEY, on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

OCEAN SPRAY CRANBERRIES, INC.,

Defendant.

) Case No. 3:17-CV-2335-GPC-MDD
)
) CLASS ACTION
) **CLASS LITIGATION**
) **SETTLEMENT AGREEMENT**

1 This Class Litigation Settlement Agreement (the “Settlement Agreement”) is
2 made and entered into by and between plaintiff Crystal Hilsley (“Hilsley”) and
3 William Riley (“Riley”) (collectively “Plaintiffs”), individually for themselves and
4 on behalf of the national settlement class they purport to represent, counsel for
5 Plaintiff, Law Offices of Ronald A. Marron, APLC and Law Offices of David Elliot
6 (collectively, “Class Counsel”), and Defendant Ocean Spray Cranberries, Inc.
7 (“Ocean Spray” or “Defendant”). Plaintiffs and Defendant are referred to hereinafter
8 as the “Settling Parties.” This settlement is intended fully, finally, and forever to
9 resolve, discharge, release, and settle the lawsuit captioned *Hilsley v. Ocean Spray*
10 *Cranberries, Inc.*, Case No. 3:17-CV-2335 (the “Litigation”), upon and subject to
11 the terms and conditions herein.

12
13 **1. Recitals**

14 1.1. On September 19, 2017, Plaintiff Crystal Hilsley filed a Class Action
15 Complaint against Ocean Spray Cranberries, Inc. (“Ocean Spray”) and Arnold
16 Worldwide, LLC (“Arnold Worldwide”) in the Superior Court of California for the
17 County of San Diego, captioned *Hilsley v. Ocean Spray Cranberries, Inc., et. al.*,
18 Case No. 37-2017-00034869-CU-BT-CTL.

19 1.2. On November 16, 2017, Defendant Ocean Spray filed a Notice of
20 Removal and the case was transferred to the United States District Court for the
21 Southern District of California (the “Court”), Case No. 3:17-CV-2335-GPC-MDD
22 (the “Litigation”). (Dkt. No. 1).

23 1.3. Hilsley’s Complaint alleged that Ocean Spray’s product labels claiming
24 that Ocean Spray fruit-flavored beverage products contain “No Artificial Flavors”
25 are false and misleading because the Products actually contain the artificial flavoring
26 ingredients dl-malic acid and/or fumaric acid. (Dkt. No. 1-2). The Complaint sought
27 both monetary damages and injunctive relief for the following claims: (1) Violations
28 of the Consumers Legal Remedies Act, Cal. Civ. Code Sections 1750, *et seq.*; (2)

1 Violations of the False Advertising law, Cal. Bus. & Prof. Code Sections 17500, *et*
2 *seq.*; (3) Violations of the Unfair Competition Law, Cal. Bus. & Prof. Code Sections
3 17200, *et seq.*; (4) Breach of Express Warranties; and (5) Breach of Implied
4 Warranties. (Dkt. No. 1-2).

5 1.4. On August 16, 2018, Plaintiff filed a Motion for Class Certification and
6 to Appoint Class Counsel. (Dkt. No. 23).

7 1.5. On September 8, 2018, Ocean Spray filed a Motion for Summary
8 Judgment. (Dkt. No. 31).

9 1.6. On November 29, 2018, the Court issued an Order Granting in Part and
10 Denying in Part Plaintiff's Motion for Class Certification and to Appoint Class
11 Counsel. (Dkt. No. 83). Class certification was granted with respect to Plaintiff's
12 claims under the Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.*
13 ("CLRA"), the Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
14 ("UCL"), and the False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.*
15 ("FAL"). (Dkt. No. 83). However, the Court denied class certification for Plaintiff's
16 claims for breach of express and implied warranties. (Dkt. No. 83).

17 1.7. On October 30, 2018, the Court issued an Order Denying Defendants'
18 Motion for Summary Judgment, holding that "that there is a material issue of
19 disputed fact whether malic acid and fumaric acid function as flavors in Defendants'
20 Ocean Spray products." (Dkt. No. 76).

21 1.8. On March 27, 2019, Plaintiff filed a Motion for Partial Summary
22 Judgment. (Dkt. No. 101).

23 1.9. A Mandatory Settlement Conference was scheduled to take place
24 before Magistrate Judge Dembin on April 1, 2019. (Dkt. No. 14).

25 1.10. After reviewing the Parties' Confidential Settlement Conference Briefs,
26 Judge Dembin vacated the Mandatory Settlement Conference, finding that "a
27 settlement conference at this time is futile." (Dkt. No. 96).
28

1 1.11. On April 11, 2019, Plaintiff filed a Motion to Exclude the Testimony,
2 Opinions, and Reports of Defendants’ Experts. (Dkt. No. 105).

3 1.12. On April 11, 2019, Defendant Ocean Spray Cranberries, Inc. filed a
4 Motion for Summary Judgment and a Motion to Decertify the Class. (Dkt. Nos. 108-
5 109).

6 1.13. On April 11, 2019, Arnold Worldwide, LLC, filed a Motion for
7 Summary Judgment. (Dkt. No. 111).

8 1.14. On June 24, 2019, the Court denied Plaintiff’s Motion to Exclude
9 Defendant’s Experts. (Dkt. No. 188).

10 1.15. On July 3, 2019, the Court granted in part and denied in part Plaintiff’s
11 Motion for Partial Summary Judgment, denied Defendant Ocean Spray’s Motion for
12 Summary Judgment, and granted Defendant Arnold Worldwide, LLC’s Motion for
13 Summary Judgment. (Dkt. No. 193). Defendant Arnold Worldwide, LLC was
14 dismissed as a Defendant and several of Ocean Spray’s affirmative defenses were
15 dismissed. *See id.*

16 1.16. On July 10, 2019, the Court denied Ocean Spray’s Motion to Decertify
17 the Class. (Dkt. No. 196).

18 1.17. Plaintiff and Ocean Spray both filed Rule 26(a)(3)(A) Pretrial
19 Disclosures on July 26, 2019. (Dkt. Nos. 201, 202).

20 1.18. On July 25, 2019, Plaintiff filed a Notice of Related Case, asserting that
21 the action titled *Froio, et al. v. Ocean Spray Cranberries, Inc.*, Case No. 1:18-cv-
22 12005-FDS (D. Mass. Sept. 24, 2018) (“*Froio*”) is related to the *Hilsley* action. (Dkt.
23 No. 198).

24 1.19. That same day, July 25, 2019, Plaintiff filed an *Ex Parte* Motion to
25 Clarify and Amend Order Granting in Part and Denying in Part Plaintiff’s Motion
26 for Class Certification and Appointing Class Counsel. (Dkt. No. 199).

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1.20. On August 2, 2019, Ocean Spray filed an Opposition to Plaintiff’s Notice of Related Case and an Opposition to Plaintiff’s *Ex Parte* Motion. (Dkt. Nos. 204-205).

1.21. On August 22, 2019, Ocean Spray filed a motion to stay the *Hilsley* action in light of a “memorandum of understanding has recently been executed between the parties to the *Froio* action” that would include a nationwide class action settlement. (Dkt. No. 210).

1.22. The Parties attended a Pretrial Conference that took place on August 23, 2019. During the Pretrial Conference, the Court entered an Order setting a trial date for November 4, 2019, but encouraged the Parties to discuss a resolution of the *Hilsley* matter. (Dkt. No. 213).

1.23. Thereafter, the Parties in this action began engaging in meaningful settlement negotiations.

1.24. On August 26, 2019, Magistrate Judge Mitchell D. Dembin ordered that a settlement conference will be held on September 19, 2019.

1.25. On September 4, 2019, Defendant filed a Notice of Withdrawal of its Motion to Stay Proceedings to allow for continued settlement negotiations. (Dkt. No. 216).

1.26. On a date to be set by the Court, an Amended Complaint will be filed to add Riley as a named plaintiff and to expand the scope of the class to a national class, as well as to apply to other products sold within the United States during the class period that contained malic and/or fumaric acid, which also were labeled with the claim “no artificial flavors.”

1.27. The Settling Parties and their counsel have extensively investigated the facts and issues raised in the Litigation, and have sufficient information to evaluate their settlement and this Settlement Agreement.

1.28. Between March 2018 and March 2019, the Settling Parties have exchanged substantial written discovery requests and responses, exchanged

1 voluminous expert reports, and have taken numerous fact witness and expert witness
2 depositions.

3 1.29. Ocean Spray denies the allegations in the Litigation and that it has any
4 liability to Plaintiff or any consumer arising from the claims asserted in the
5 Litigation. Nonetheless, to avoid the substantial burden, risk, and distraction that
6 arises from continuation of the Litigation, and fully and finally to resolve the claims
7 asserted or that could have been asserted against it therein, Ocean Spray has agreed
8 to the terms of this Settlement Agreement.

9 1.30. Counsel for Plaintiff and Defendant engaged in arm's-length
10 negotiations to achieve settlement of the Litigation. After extensive confidential
11 settlement negotiations, the Settling Parties reached an agreement that forms the
12 basis of this Settlement Agreement. The Settling Parties did not discuss attorneys'
13 fees, costs, or any potential incentive awards for Plaintiff until they first agreed on
14 the substantive terms of their settlement.

15 1.31. Class Counsel analyzed and evaluated the merits of Ocean Spray's
16 defenses, the risks of continued litigation, and the benefits this settlement would
17 confer on Plaintiff and the Settlement Class, as defined below. Among the risks of
18 continued litigation considered by Class Counsel are the possibilities that Plaintiff
19 will be unable to prove liability, damages, or entitlement to injunctive relief at trial
20 on a class-wide or individual basis, as well as the fact that, even if proven, Ocean
21 Spray could challenge the determinations on appeal.

22 1.32. Based on their experience and knowledge of the strength of the claims
23 and defenses in the Litigation, counsel for the Parties concluded and are satisfied
24 that the terms and conditions of this Settlement Agreement are fair, reasonable,
25 adequate, and in the best interest of the Settlement Class and the Settling Parties.

26 1.33. Nothing in this Settlement Agreement or the circumstances relating to
27 or that give rise to this Settlement Agreement constitute or shall be deemed to
28 constitute an admission by Ocean Spray of any type or nature, including of the claims

1 asserted in the Litigation, or a waiver of Ocean Spray’s objections and defenses to
2 the claims asserted in the Litigation, including class certification.

3 **NOW, THEREFORE**, pursuant to the terms set forth herein and subject to
4 the Court’s approval of this Settlement Agreement, the Parties hereby stipulate and
5 agree, including on behalf of the Settlement Class, as defined below, fully and finally
6 to settle, compromise, and resolve the claims that were or could have been asserted
7 in the Litigation.
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9
10 **2. Definitions**

11 Capitalized terms in this Settlement Agreement are defined by the terms set
12 forth in this Section. If and to the extent Definitions in this Section conflict with
13 other terms set forth in this Settlement Agreement, the Definitions in this Section
14 shall govern.

15 2.1. “Authorized Claimant” means any member of the Settlement Class who
16 completely and timely submits a Claim Form that the Settlement Administrator has
17 reviewed and validated.

18 2.2. “Claimant” means a person who submits a Claim Form consistent with
19 the Claims process detailed in Section 6 of this Settlement Agreement.

20 2.3. “Claims Deadline” means one-hundred twenty (120) days after the date
21 the Notice is disseminated to the Settlement Class by the Settlement Administrator.

22 2.4. “Claim Form” means online and paper forms in substantially the same
23 form attached hereto as Exhibit A.

24 2.5. “Class Counsel” means the Law Offices of Ronald A. Marron, APLC,
25 the Law Office of David Elliot, and the attorneys at those firms assisting in
26 representation of the Settlement Class.

27 2.6. “Class Counsel’s Fees” means an award approved by the Court of
28 Plaintiff’s attorneys’ fees, costs, and expenses in an amount up to 33.33% of the total

1 Settlement Fund, as well as any fees the Court may award to any other person (other
2 than Ocean Spray).

3 2.7. “Class Period” means January 1, 2011 to the date on which preliminary
4 approval is granted pursuant to Section 6 herein.

5 2.8. “Effective Date” means the date on which the Final Judgment (defined
6 below) in the Action become “Final.” As used in this Settlement Agreement, “Final”
7 means one (1) business day after all of the following conditions have been satisfied:

8 (1) the Final Judgment has been entered; and

9 (2) if reconsideration and/or appellate review is not sought from the Final
10 Judgment, the expiration of the time for filing or noticing any motion for
11 reconsideration, appeal, petition, and/or writ; or

12 (3) if reconsideration and/or appellate review is sought from the Final Judgment:
13 (a) the date on which the Final Judgment is affirmed and is no longer subject to
14 judicial review, or (b) the date on which the motion for reconsideration, appeal,
15 petition, or writ is dismissed or denied and the Final Judgment is no longer subject
16 to judicial review.

17 2.9. “Final Approval” means: (a) issuance of a Court order granting final
18 approval of the settlement and this Settlement Agreement as binding on the Settling
19 Parties and the Settlement Class; (b) the Court’s determination that the Settlement
20 Agreement and Preliminary Approval Order are fair, adequate, reasonable, and
21 binding on the Settlement Class; (c) determination that the relief provided in this
22 Settlement Agreement should be disseminated to the Settlement Class; (d)
23 effectuating the releases set forth in Section 10 of this Settlement Agreement; (e)
24 entering final judgment in the Litigation; and (f) retaining continuing jurisdiction
25 over the interpretation, implementation, and enforcement of the Settlement.

26 2.10. “Final Approval Hearing” means the hearing to be held by the Court to
27 adjudicate whether:
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(1) the terms of this Settlement Agreement are fair, reasonable, and adequate to the Settlement Class and should be approved;

(2) the Notice constitutes due, adequate, and sufficient notice to all persons entitled to notice of the Litigation and meets all applicable requirements of the Federal Rules of Civil Procedure, the Class Action Fairness Act, the United States Constitution (including the Due Process Clause), rules of this Court, and any other applicable law, and constitutes notice as directed by the Court in the Preliminary Approval Order to apprise the Settlement Class of the (a) pendency of the Litigation; (b) nature and terms of the Settlement; (c) right of Settlement Class members to object to the Settlement; and (d) right of Settlement Class members to appear at the Final Approval Hearing;

(3) a final judgment should be entered dismissing the Litigation with prejudice, as contemplated by this Settlement Agreement;

(4) the Court should permanently bar and enjoin (a) all Settlement Class members from filing, commencing, prosecuting, intervening or participating in (as class members or otherwise), or receiving any benefit or other relief from another lawsuit, arbitration, or administrative, regulatory, or other proceeding (as well as a motion or complaint in intervention in this Litigation if the person or entity filing such motion or complaint in intervention purports to be acting as, on behalf of, for the benefit of, or derivatively for any of the above persons or entities) or order, in any jurisdiction or forum, that is based upon, arises out of, or relates to any Released Claim as to any Released Party, and (b) all persons and entities from filing, commencing, or prosecuting any other lawsuit as a class action (including seeking to amend a pending complaint to include class allegations or by seeking class certification in a pending action) or other proceeding on behalf of any Settlement Class member as to the Released Parties, if such other lawsuit is based upon, arises out of, or relates to any Released Claim, including any claim that is based upon, arises out of, or relates to the Litigation or the transactions or occurrences referred to therein;

- 1 (5) the Court should approve the Fee and Expense Award to Class Counsel; and
- 2 (6) any other matter that the Court may deem appropriate.

3 The Parties anticipate the Final Approval Hearing will be scheduled approximately
4 one hundred and fifty (150) days after the Notice to the Class.

5 2.11. “Final Judgment” means the “Final Judgment and Order of Dismissal”
6 to be entered by the Court, which, among other things, fully and finally approves
7 this Settlement Agreement and dismisses the Litigation with prejudice.

8 2.12. “Incentive Award” means the award that will be sought by application
9 and, if approved by the Court, will be payable to the Plaintiffs from the Settlement
10 Fund for their roles as class representatives and the responsibility and work attendant
11 to those roles.

12 2.13. “Notice” means the notice to be disseminated by the Settlement
13 Administrator consistent with Notice Plan attached hereto as Exhibit D, including,
14 but not limited to, the Long-Form and Short-Form Notices attached hereto as
15 Exhibits B and C.

16 2.14. “Notice Date” means the date Notice is communicated to Settlement
17 Class members pursuant to Section 6 of this Settlement Agreement.

18 2.15. “Notice Plan” means the proposal for dissemination of Notice to
19 members of the Settlement Class, attached hereto as Exhibit D.

20 2.16. “Objection” means the written communication that must be sent to the
21 Settlement Administrator and postmarked on or before the Objection/Exclusion
22 Deadline by a Settlement Class member who wishes to object to the terms of the
23 Settlement as defined in Section 5.2 below.

24 2.17. “Objection/Exclusion Deadline” is the date by which an Objection or
25 Request for Exclusion by a Settlement Class member must be postmarked, as
26 ordered by the Court in its Preliminary Approval Order referred to in Section 4 of
27 this Settlement Agreement.
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1 2.18. “Plaintiffs” means class representative Crystal Hilsley and William
2 Riley.

3 2.19. “Preliminary Approval Order” means the order to be entered by the
4 Court, substantially in the form attached hereto as Exhibit E which preliminarily
5 approves the Settlement, certifies the Settlement Class, sets dates for the Final
6 Approval Hearing, Objection/Exclusion Deadline, and Notice Date, and approves
7 the Notice Plan and Claim Form.

8 2.20. “Product” or “Products” means Ocean Spray’s beverage products that
9 (a) contain the artificial versions of malic acid and/or fumaric acid as an ingredient,
10 and (b) are sold with labels that contain the claim “no artificial flavors.”

11 2.21. “Released Claims” means the claims released in accordance with
12 Section 10 of this Settlement Agreement.

13 2.22. “Released Parties” means Defendant Ocean Spray Cranberries, Inc.,
14 and any and all of its respective past, present, and future heirs, executors,
15 administrators, predecessors, successors, assigns, parent companies, subsidiaries,
16 divisions, joint venturers, entities in which Defendant had a controlling interest,
17 holding companies, employees, agents, consultants, marketing partners, resellers,
18 lead generators, telemarketers, independent contractors, insurers, reinsurers,
19 directors, officers, partners, principals, attorneys, accountants, financial advisors,
20 investors, investment bankers, underwriters, shareholders, auditors, legal
21 representatives, successors in interest, affiliates, trusts, and corporations; and each
22 and all of the past, present, and future officers, directors, principals, representatives,
23 employees, agents, shareholders, attorneys, stockholders, successors, executors,
24 claim service managers, subrogees, and assigns of any of the foregoing entities; and
25 any and all of Defendant’s manufacturers, distributors, licensees, agents, contractors,
26 co-packers, customers, retailers and suppliers of the relevant Products.

27 2.23. “Request for Exclusion” means the written communication that must
28 be sent to the Settlement Administrator and postmarked on or before the

1 Objection/Exclusion Deadline by a Settlement Class member who wishes to be
2 excluded from the Settlement Class as defined in Section 5.1 below

3 2.24. “Settlement” or “Settlement Agreement” means this Class Action
4 Settlement Agreement, including all exhibits hereto.

5 2.25. “Settlement Administrator” means Classaura Class Action
6 Administration, which will provide Notice to the Settlement Class and administer
7 the Claims process. The Parties shall select a successor Settlement Administrator in
8 the event one becomes necessary.

9 2.26. “Settlement Class” is defined as follows: All United States citizens and
10 residents who purchased any of the following Products for personal or household
11 use and **not** for resale, in their respective state of citizenship from January 1, 2011
12 until the date preliminary approval is granted:

- 13 • Ocean Spray® Cran-Apple™;
- 14 • Ocean Spray® Cran-Grape™;
- 15 • Ocean Spray® “100% Apple” Juice Drink;
- 16 • Ocean Spray® Cran-Raspberry™;
- 17 • Ocean Spray® Wave™ Apple with White Cranberries;
- 18 • Ocean Spray® Wave™ Berry Medley;
- 19 • Ocean Spray® Cran-Cherry™;
- 20 • Ocean Spray® Cran-Pineapple™;
- 21 • Ocean Spray®_Cran-Pomegranate™;
- 22 • Ocean Spray® Diet Cran-Pomegranate™;
- 23 • Ocean Spray® Diet Cran-Cherry™;
- 24 • Ocean Spray® 100% Juice Cranberry Cherry Flavor
- 25 • Ocean Spray® Cran-Strawberry™
- 26 • Ocean Spray® Diet Blueberry
- 27 • Ocean Spray® Diet Cranberry with Lime
- 28 • Ocean Spray® Cran-Lemonade™
- Ocean Spray® Classic Tea White Cranberry Peach
- Ocean Spray® Cran-Tea™ White Cranberry Peach
- Ocean Spray® Classic Tea Cranberry
- Ocean Spray® Cran-Tea™ Cranberry
- Ocean Spray® 100% Premium Juice Cranberry Apple

- 1 • Ocean Spray® 100% Cranberry Concord Grape
- 2 • Ocean Spray® 100% Juice Cranberry Raspberry
- 3 • Ocean Spray® 100% Juice Cranberry Pomegranate
- 4 • Ocean Spray® 100% Juice Tropical Citrus Fruit & Vegetable
- 5 • Ocean Spray® Light Tropical Citrus Fruit & Vegetable
- 6 • Ocean Spray® 100% Juice Cranberry Pomegranate Blueberry Fruit & Vegetable
- 7 • Ocean Spray® Pink Cranberry Passionfruit Juice Drink
- 8 • Ocean Spray® 100% Juice Cranberry Mango
- 9 • Ocean Spray® Pink Lite Cranberry Juice Drink
- 10 • Ocean Spray® Light Cran-Mango™
- 11 • Ocean Spray® Pink Cranberry Juice Drink
- 12 • Ocean Spray® Pink Lite Cranberry Juice Drink
- 13 • Ocean Spray® Pink Cranberry Juice Drink
- 14 • Ocean Spray® Ruby Pomegranate
- 15 • Ocean Spray® Diet Cran-Tea™
- 16 • Ocean Spray® 100% Juice Cranberry Pineapple
- 17 • Ocean Spray® Diet Cran-Pineapple™
- 18 • Ocean Spray® Mocktails Tropical Citrus
- 19 • Ocean Spray® Cran-America™
- 20 • Ocean Spray® Pink Cranberry Juice Drink
- 21 • Ocean Spray® Cranharvest™ Cranberry Apple Cider
- 22 • Ocean Spray® Diet Cran-Raspberry™
- 23 • Ocean Spray® Diet Cran-Apple™
- 24 • Ocean Spray® Diet Cranberry
- 25 • Ocean Spray® Diet Cran-Grape™
- 26 • Ocean Spray® Cranberry Cranenergy™
- 27 • Ocean Spray® Diet Ruby Red
- 28 • Ocean Spray® New Light 50 Cranberry Grape
- Ocean Spray® Sparkling Citrus Tangerine
- Ocean Spray® Cranenergy™ Sparkling Diet Cranberry
- Ocean Spray® Ruby Cherry
- Ocean Spray® Cherry Juice Cocktail
- Ocean Spray® Cranenergy™ Sparkling Cranberry
- Ocean Spray® Sparkling Pink Cranberry Juice Drink
- Ocean Spray® Pom Blue Sparkling Beverage
- Ocean Spray® Sparkling Cranberry

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- Ocean Spray® Diet Pom Blue Sparkling Beverage
- Ocean Spray® Sparkling Diet Cranberry
- Ocean Spray® Sparkling Cran-Raspberry™
- Ocean Spray® Sparkling Cran-Grape™
- Ocean Spray® Diet Cran-Lemonade™
- Ocean Spray® Cran-Mango™
- Ocean Spray® Ruby Cranberry
- Ocean Spray® 100% Citrus Tangerine Orange
- Ocean Spray® 100% Citrus Mango Pineapple
- Ocean Spray® Cran-Tropical™ Juice Drink
- Ocean Spray® Light Cranberry Apple
- Ocean Spray® Diet Cran-Mango™
- Ocean Spray® Light Ruby Red
- Ocean Spray® Blueberry Juice Cocktail
- Ocean Spray® Blueberry Pomegranate
- Ocean Spray® Diet Blueberry Pomegranate
- Ocean Spray® Pomegranate Cranenergy™
- Ocean Spray® Light Cran-Pomegranate™
- Ocean Spray® Wave™ Mango Pineapple
- Ocean Spray® Raspberry Cranenergy™
- Ocean Spray® Diet Cran-Blackberry™
- Ocean Spray® New Light 50 Cranberry Raspberry.

The Settlement Class specifically excludes Defendant’s current and former officers and directors, members of the immediate families of Defendant’s officers and directors, Defendant’s legal representatives, heirs, successors, and assigns, any entity in which Defendant has or had a controlling interest during the Class Period, and the judicial officers to whom this lawsuit is assigned.

2.27. “Settlement Fund” means the Five Million Four Hundred Thousand Dollar (\$5,400,000.00) payment which Ocean Spray will, within 45 days of the Preliminary Approval Order, deposit from which the Settlement Administrator shall pay expenses associated with administration of this Settlement, as approved by the Court, including, without limitation: payments to Settlement Class members, costs

1 of Notice, Fee and Expense Award, Incentive Awards, and other legal expenses as
2 described in Section 7.

3 2.28. “Settlement Payment” means the amount to be paid to an Authorized
4 Claimant as described in Section 8.

5 2.29. “Settlement Website” means an internet website created and
6 maintained by the Settlement Administrator to provide the Settlement Class with
7 information relating to the Settlement, including relevant documents and electronic
8 and printable forms relating thereto, including the Claim Form, which can be
9 submitted online through an internet-based form or printed and mailed. The URL of
10 the Settlement Website shall be provided in the Notice.

11
12 **3. Stipulation to Class Certification**

13 3.1. The Settling Parties hereby stipulate, for purposes of this Settlement
14 only, that the requirements of Federal Rules of Civil Procedure 23(a), 23(b)(2), and
15 23(b)(3) are satisfied and, subject to Court approval, the Settlement Class shall be
16 certified for settlement purposes pursuant to the terms and conditions set forth in this
17 Settlement Agreement. The Settling Parties stipulate and agree to conditional
18 certification of the Settlement Class for purposes of this Settlement only. Should the
19 Court not grant Final Approval of the Settlement, for whatever reason, this
20 stipulation to class certification shall become null and void.

21
22 **4. Preliminary Approval**

23 4.1. On a date to be set by the Court, Plaintiff shall apply to the Court for entry
24 of a Preliminary Approval Order substantially in the form attached hereto as
25 Exhibit E The Preliminary Approval Order shall include provisions that:

26 4.1.1. Preliminarily approve this Settlement as falling within the range
27 of reasonableness meriting possible final approval;

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4.1.2. Direct Notice to the Settlement Class in the manner specified in this Settlement Agreement as set forth in Section 6 below;

4.1.3. Preliminarily determine that Plaintiff is a member of the Settlement Class and, for purposes of the Settlement Agreement, satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure to appoint her as a class representative of the Settlement Class;

4.1.4. Conditionally certify the Settlement Class under Rules 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure for settlement purposes only;

4.1.5. Appoint the Law Offices of Ronald A. Marron, APLC and the Law Office of David Elliot as Class Counsel pursuant to Rule 23(g);

4.1.6. Schedule the Final Approval Hearing;

4.1.7. Set a briefing schedule for a Motion for Final Approval of the Settlement;

4.1.8. Approve designation of Classaura Class Action Administration as Settlement Administrator;

4.1.9. Establish a Notice Date and direct the Settlement Administrator to cause Notice to be disseminated in the manner set forth in this Settlement Agreement within forty-five (45) days after entry of the Preliminary Approval Order;

4.1.10. Determine that the Notice to be sent to the Settlement Class: (a) meets the requirements of Rule 23(c)(3) of the Federal Rules of Civil Procedure and the Due Process Clause of the United States Constitution; (b) is the best practicable notice under the circumstances; and (c) is reasonably calculated to apprise Settlement Class members of the pendency of the Litigation and their right to object and opt out of or participate in the Settlement within the timeframe provided herein;

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4.1.11. Require members of the Settlement Class who wish to opt out of the Settlement to submit written Requests for Exclusion timely on or before the Objection/Exclusion Deadline to the Settlement Administrator, as specified in Section 5 of this Settlement Agreement;

4.1.12. Require Settlement Class members who wish to object to the fairness, reasonableness, or adequacy of the Settlement, Fee and Expense Award, or Incentive Awards to submit to the Settlement Administrator and deliver to Class Counsel and Ocean Spray's counsel by the Objection/Exclusion Deadline, a statement of his or her Objection, as well as the specific reason for such Objection, including legal support the Settlement Class member wishes to bring to the Court's attention, and evidence the Settlement Class member wishes to introduce in support of his or her Objection;

4.1.13. Provide that any Settlement Class member who does not timely submit a written Request for Exclusion or Objection will be bound by all proceedings, orders, and judgments (including this Settlement and the Final Judgment) in this Litigation; and

4.1.14. Provide the Objection/Exclusion Deadline be a date that is thirty (30) days prior to the Final Approval Hearing.

5. Requests for Exclusion and Objections to the Settlement

5.1. Any Settlement Class member who does not wish to participate in the Settlement must submit a Request for Exclusion to the Settlement Administrator stating his or her intention to be "excluded" from the Settlement. The Request for Exclusion must contain the Settlement Class member's name, current address, and telephone number. The Request for Exclusion must be either (a) personally signed by the Settlement Class member and dated, mailed, and postmarked to the Settlement Administrator on or before the Objection/Exclusion Deadline, or (b) electronically

1 signed by the Settlement Class member and submitted to the Settlement
2 Administrator through the Settlement Website on or before the Objection/Exclusion
3 Deadline. Multiple, so-called “mass” or “class,” opt-outs shall not be allowed. The
4 date of the postmark on the return mailing envelope or date of online submission
5 through the Settlement Website shall be the exclusive means used to determine
6 whether a Request for Exclusion has been timely submitted. Any Settlement Class
7 member whose request to be excluded from the Settlement Class is approved by the
8 Court will not be bound by the Settlement and will have no right to object, appeal,
9 or comment thereon.

10 5.2. Any Settlement Class member, on his or her own, or through an
11 attorney hired at his or her own expense, may object to the terms of the Settlement,
12 Class Counsel’s application for a Fee and Expense Award, or the Incentive Awards.
13 Any such Objection must be in writing and include the contents described in
14 Paragraph 5.3 below and must be filed with the Court and sent to counsel for the
15 Settling Parties as set forth below via U.S. Mail or e-mail on or before the
16 Objection/Exclusion Deadline or as the Court may otherwise direct. Any Objection
17 that is not properly or timely raised is waived. All Objections to the Settlement must
18 be sent to each of the following persons:

19
20 Ronald A. Marron
LAW OFFICES OF RONALD A. MARRON
21 651 Arroyo Drive
San Diego, CA 92103
22 Email: ron@consumersadvocates.com

23 Rick L. Shackelford
GREENBERG TRAURIG, LLP
24 1840 Century Park East, Suite 1900
Los Angeles, CA 90067
25 Email: ShackelfordR@gtlaw.com

26 5.3. To be effective, Objections must be in writing and accompanied by
27 documents or other evidence, as well as any factual or legal argument the objecting
28 Settlement Class member intends to rely upon in making his or her Objection. All

1 Objections must include (a) a reference, in its first sentence, to the Litigation, *Hilsley*
2 *v. Ocean Spray Cranberries, Inc.*, Case No. 3:17-CV-2335; (b) the Objector's full,
3 legal name, residential address, telephone number, and email address (and the
4 Objector's lawyer's name, business address, telephone number, and email address if
5 objecting through counsel); (c) a statement describing the Objector's membership in
6 the Settlement Class, including a verification under oath as to the date, name of the
7 Products purchased, and the location and name of the retailer from whom the
8 Objector purchased the Products, and all other information required by the Claim
9 Form; (d) a written statement of all grounds for the objection, accompanied by any
10 legal support for such objection; (e) copies of any papers, briefs, or other documents
11 upon which the objection is based; (f) a list of all persons who will be called to testify
12 in support of the objection; (g) a statement of whether the Objector intends to appear
13 at the Final Approval Hearing (note: if the objector intends to appear at the Final
14 Approval Hearing through counsel, the objection must also state the identity of all
15 attorneys representing the objector who will appear at the Final Approval Hearing);
16 (h) a list of the exhibits that the Objector may offer during the Final Approval
17 Hearing, along with copies of such exhibits; and (i) the objector's signature. In
18 addition, Settlement Class Members, if applicable, must include with their Objection
19 (a) the identity of all counsel who represent the objector, including former or current
20 counsel who may be entitled to compensation for any reason related to the objection;
21 and (b) a detailed list of any other objections submitted by the Settlement Class
22 Member, or his/her counsel, to any class actions submitted in any court, whether
23 state or federal, in the United States in the previous five (5) years.

24
25 5.4. Any Settlement Class member who fails to file and serve a written
26 Objection timely, setting forth all of the information required by this Section shall
27 be precluded from objecting to the Settlement and foreclosed from seeking any
28 review of the Settlement or the terms of the Settlement Agreement by any means,
including, but not limited to, through an appeal.

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5.5. Either Party may request the Court, within its discretion, to exercise its right to deem any Objection frivolous and award appropriate costs and fees to the Party or Parties opposing such Objection(s).

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5.6. Any Settlement Class member who fails to timely submit a Request for Exclusion or Objection as provided in this Settlement Agreement shall be bound by all subsequent proceedings, orders, and Final Judgment (including this Settlement) in the Litigation, even if he or she has pending, or subsequently initiates, any litigation, arbitration, or other proceeding against Ocean Spray or Released Parties relating to the Released Claims.

5.7 The Parties agree that if there are objections to any portion of this Settlement, including the Fee and Expense Request, Class Counsel will use best efforts to resolve those objections. If the objections cannot be resolved consensually (and without exceeding the \$5.4 million Settlement Amount), then the Parties agree the objections shall be submitted to the approving court for resolution. If the court grants any monetary relief to any objector, including attorneys' fees, such relief shall be paid from the Settlement Fund. In no event shall Defendant's monetary obligation exceed \$5.4 million. If any objection is sustained such that any objector is granted monetary relief or granted relief other than monetary relief, then each party reserves the right to terminate the settlement or the Parties reserve the right to modify the Settlement to provide for such non-monetary relief.

6. Notice and Claims Process

6.1. The Notice shall:

6.1.1. Inform the Settlement Class that if they do not timely exclude themselves from the Settlement Class or object to the Settlement they may be eligible to receive the relief provided by the proposed Settlement

1 Agreement;

2 6.1.2. Contain a short, plain statement of the background of the
3 Litigation and the proposed Settlement;

4 6.1.3. Describe the proposed relief outlined in this Settlement
5 Agreement;

6 6.1.4. Explain the impact the proposed Settlement will have on any
7 existing or future litigation, arbitration, or other proceeding;

8 6.1.5. State that any relief to Settlement Class members is contingent
9 upon the Court's granting Final Approval of the Settlement; and

10 6.1.6. Disclose Class Counsel will seek a Fee and Expenses award
11 from the Settlement Fund.

12 6.1.7. Constitute the best notice practicable under the circumstances
13 consistent with Federal Rule of Civil Procedure 23(c) and the Court' Order
14 Regarding Class Notice (Dkt. No. 94).
15

16 6.2. Notice to State and Federal Officials. In compliance with the Attorney
17 General notification provision of the Class Action Fairness Act of 2005 ("CAFA"),
18 28 U.S.C. Section 1715, within ten (10) days after the Motion for Preliminary
19 Approval is filed, the Settlement Administrator shall cause notice of this proposed
20 Settlement to be served on the Attorney General of the United States and the
21 Attorneys General of each State or territory. The Settlement Administrator shall file
22 with the Court a certification stating the date(s) upon which such CAFA notices were
23 sent. The Settlement Administrator will provide counsel for the Parties to assist with
24 any substantive responses received in response to any CAFA notice served.

25 6.3. Notice to the Settlement Class members. Within forty-five (45) days
26 after entry of the Preliminary Approval Order, or on the date established by the Court
27 in the Preliminary Approval Order, the Settlement Administrator shall effect notice
28 as set forth below:

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6.3.1. Print Publication Notice. On or before the forty-fifth day after entry of the Preliminary Approval Order, the Settlement Administrator will cause the Notice, in the form approved by the Court, to be published based on the Notice Plan, which is attached hereto as Exhibit D

6.3.2. Settlement Website. On or before the Notice Deadline, the Settlement Administrator shall establish the Settlement Website, from which Settlement Class members may download or print the Notice, a complete copy of this Settlement Agreement and the Preliminary Approval Order, and submit a Claim Form. The Settlement Website shall include the deadlines for filing Claims, Requests for Exclusion from the Settlement Class, Objections, the date of the Final Approval Hearing, and other information pertaining to the Settlement, a voice-recorded Interactive Voice Response (“IVR”) with Frequently Asked Questions (“FAQs”), and an interactive function that permits Settlement Class members to download a Claim Form online or file a Claim Form via the Settlement Website or by mail and post-marked by the Claims Deadline. The Settlement Administrator shall establish the Settlement Website using a website name to be mutually agreed upon by the Settling Parties. The Website shall be operative no later than the Notice Date and shall be accessible for a period of not fewer than sixty (60) days following the Effective Date, but not longer than the Claims Deadline.

6.3.3. Toll-Free IVR. On or before the Notice Deadline, the Settlement Administrator shall establish a Toll-Free IVR phone number with script recordings of information about this Settlement, including information about the Claim Form, utilizing the relevant portions of the language contained in the Notice and Claim Form. The Toll-Free number shall remain open and accessible through the Claim Deadline. The Settlement Administrator shall make reasonable provision for Class Counsel to be promptly advised of recorded messages left on the Toll-Free number by potential Settlement Class

1 members concerning the Litigation or the Settlement so that Class Counsel
2 may timely and accurately respond to such inquiries; provided, however, the
3 Settlement Administrator shall review the recorded messages before
4 providing them to Class Counsel and if one or more of the messages requests
5 a blank Claim Form or other similar administrative assistance only, then the
6 Settlement Administrator shall handle such administrative request(s), but the
7 Settlement Administrator shall provide all other messages to Class Counsel
8 for any further response to the Settlement Class member.

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10 6.4. Responsibilities of Settlement Administrator. The Settlement
11 Administrator will help implement the terms of this Settlement Agreement and the
12 Preliminary Approval Order. The Settlement Administrator shall be responsible for
13 administrative tasks, including, without limitation, (a) arranging, as set forth in this
14 Section and in the Preliminary Approval Order, for distribution of Class Notice and
15 Claim Forms (in forms approved by the Court) to Settlement Class members, (b)
16 answering inquiries from Settlement Class members or forwarding such inquiries to
17 Class Counsel or its designee, (c) receiving and maintaining on behalf of the Court
18 and the Parties any Settlement Class member correspondence regarding Requests for
19 Exclusion from the Settlement or Objections to the Settlement, (d) posting on the
20 Settlement Website Class Notice, Claim Forms, and other related documents, (e)
21 receiving and processing Claims and distributing Settlement Payments, (f)
22 answering inquiries and providing information reasonably requested by Ocean
23 Spray, and (g) otherwise assisting with implementation and administration of the
24 Settlement.

25 6.5. General Claims Administration and Review of Claims. The Settlement
26 Administrator shall be responsible for reviewing and administering all Claims to
27 determine their validity. The Settlement Administrator shall reject any Claim that
28 does not comply in any material respect with the instructions on the Claim Form or
the terms of the Settlement, or is submitted after the Claims Deadline.

1 6.6. Claims Process. The Settlement Administrator shall retain copies of all
2 Claims submitted and all documentation of Claims approved or denied and all
3 Settlement Payments made. The Settlement Administrator agrees to be subject to the
4 direction and authority of the Court with respect to the administration of the
5 Settlement and the payment of Settlement Funds to Authorized Claimants pursuant
6 to the terms of this Settlement Agreement. Upon determining a Claim submitted
7 pursuant to this Settlement Agreement is valid and the amount of Settlement
8 Payment, the Settlement Administrator shall notify counsel for the Parties of that
9 determination. Ocean Spray shall have forty-five (45) days following this notice to
10 challenge the Claim. Ocean Spray shall be permitted to submit to the Settlement
11 Administrator, with a copy to Class Counsel, any information demonstrating that the
12 submitted Claim is not valid. The Settlement Administrator may then contact the
13 Claimant who submitted the Claim to request any further information. The
14 Settlement Administrator shall then make a final determination that is not
15 challengeable by any Party.

16 6.7. Claim Forms may be completed and submitted by U.S. mail or online
17 at the Settlement Website. Claim Forms may also be requested by calling the Toll-
18 Free number provided by the Class Action Settlement Administrator or by writing
19 to the Settlement Administrator.

20 6.8. To be eligible for a Settlement Payment, a Claimant must timely submit
21 a signed and completed Claim Form containing his or her name, mailing address,
22 and email address. Claim Forms must be postmarked or submitted online no later
23 than the Claims Deadline.

24 6.9. The contract with the Settlement Administrator shall obligate the
25 Settlement Administrator: (a) to describe accurately and neutrally, and shall train
26 and instruct its employees and agents to describe accurately and objectively, the
27 provisions of the Settlement in communications with Settlement Class members; and
28 (b) to provide prompt, accurate, and objective responses to inquiries from Class

1 Counsel, Ocean Spray, or Ocean Spray's Counsel.

2 6.10. All disputes relating to the Settlement Administrator's ability and need
3 to perform its duties shall be referred to the Court, if necessary, which will have
4 continuing jurisdiction over the terms and conditions of the Settlement until all
5 payments and obligations contemplated by the Settlement have been fully carried
6 out.

7 6.11. Declaration of Compliance. Within five (5) calendar days after the
8 Claims Deadline, the Settlement Administrator shall provide the Settling Parties
9 with a declaration attesting to completion of the notice process set forth in this
10 Section.

11 6.12 Costs of Notice and Administration. The Settlement Fund will be used
12 to pay the cost of class notice and claims administration in the amount of up to
13 \$500,000.00, or a lesser or greater amount as ordered by the Court.

14 **7. Settlement Consideration**

15 7.1. Class Benefits. Class Counsel and Plaintiff believe the Settlement
16 confers substantial benefits upon the Settlement Class, as identified below,
17 particularly as weighed against the risks associated with the inherent uncertain
18 nature of a litigated outcome; the complex nature of the Litigation in which Class
19 Counsel have reviewed internal and confidential documents; the difficulty and
20 complexity of calculating actual economic harm allegedly attributable to purportedly
21 false representations relating to the Products; and the length and expense of
22 continued proceedings through trial and appeals. Based on their evaluation of such
23 factors, Class Counsel and Plaintiff have determined the Settlement, based on the
24 terms set forth herein, is in the best interests of the Settlement Class.

25 7.2 The Settlement includes cash payments or monetary relief and non-
26 monetary relief as set forth below.
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7.2.1. Ocean Spray will provide \$1.00 in cash from the Settlement Fund per bottle of Products purchased (any size) during the Class Period, up to 20 bottles, limited to one claim per household. No additional proof of purchase will be required beyond a timely and properly submitted claim form, and no evidence of additional purchases will entitle a claimant to receive compensation in excess of \$20.00 (unless distribution is increased *pro rata* subject to paragraph 7.2.3 below). The monetary relief described in this paragraph is to be paid from the Settlement Fund, subject to Paragraph 7.2.3. below.

7.2.2. The actual amount paid to individual Authorized Claimants will depend upon the number of accepted Claims. Adequate and customary procedures and standards will be used by the Settlement Administrator to prevent the payment of fraudulent claims and to ensure that only legitimate Claims are paid.

7.2.3. If the amount of valid claims timely submitted by class members exceeds the amount in the Settlement Fund, cash payments to class members who submit timely and valid claims will be reduced *pro rata* until the funds remaining in the Settlement Fund are exhausted. If the amount of valid claims timely submitted by class members does not exhaust the amount in the Settlement Fund after payment of Notice and Settlement Administrator expenses, a Fee and Expense Award, any necessary taxes, tax expenses, Incentive Awards, and the total amount of all Authorized Claims, cash payments to class members will increase *pro rata* until the funds remaining in the Settlement Fund are exhausted.

7.3. Ocean Spray agrees to the following injunctive relief: Within 12 months after the Final Approval Effective Date, Ocean Spray shall discontinue manufacturing the Products that contain the artificial versions of malic acid and/or fumaric acid as an ingredient with labels that contain the claim “no artificial flavors”,

1 provided Ocean Spray shall be permitted to exhaust existing label stock purchased,
2 printed, or ordered prior to the Final Approval Effective Date even if the associated
3 Products are manufactured later than 12 months after the Final Approval Effective
4 Date. This injunctive relief does not require the recall of any product already sold to
5 retail customers or in their respective distribution chains. This injunctive relief does
6 not require any relabeling of any products. This injunctive relief does not apply to
7 any labels ordered, purchased, or printed prior to the Final Approval Effective Date.
8 The injunctive relief does not require destruction of any inventory of finished goods
9 solely due to the label bearing the claim “no artificial flavors.” The injunctive relief
10 does not require the destruction of any label stock purchased, printed, or ordered
11 prior to the Final Approval Effective Date.

12 7.4. Ocean Spray shall cause to be deposited Five Million Four Hundred
13 Thousand Dollars (\$5,400,000.00) into the Settlement Fund within 45 days of the
14 Preliminary Approval Order.

15 7.5. The Settlement Fund shall be maintained by the Settlement
16 Administrator, which will act as the escrow agent for and place the Settlement Fund
17 in an interest-bearing account, subject to approval by the Court.

18 7.6. The Settlement Fund shall be used to pay in full and in the following
19 order: (a) any necessary taxes and tax expenses; (b) all costs associated with the
20 Settlement Administrator, including costs of providing Notice to Settlement Class
21 members, processing Claims, and all costs relating to providing necessary notices in
22 accordance with the Class Action Fairness Act of 2005, 28 U.S.C. Sections 1715 *et*
23 *seq.*; (c) any Fee and Expense Award made by the Court to Class Counsel under
24 Section 8 of this Settlement Agreement; (d) any Incentive Award made by the Court
25 to the Plaintiff under Section 8 of this Settlement Agreement; and (e) payments to
26 Authorized Claimants and any others as allowed by this Settlement Agreement and
27 approved by the Court. The Settlement Fund represents the limit and extent of Ocean
28 Spray’s monetary obligations under this Settlement Agreement.

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7.7. The Settlement Administrator shall send correspondence to any applicable Claimant explaining rejection of his or her Claim no later than fifteen (15) days after the Claims Deadline. If any claimant whose Claim Form has been rejected, in whole or in part, desires to contest such rejection, the claimant must within ten (10) business days from receipt of the rejection, transmit to the Settlement Administrator by e-mail or U.S. mail a notice and statement of reasons indicating the claimant's grounds for contesting the rejection, along with any supporting documentation, and requesting further review by the Settlement Administrator in consultation with Class Counsel and Defense Counsel of the denial of the claim. If Class Counsel and Defense Counsel cannot agree on a resolution of the claimant's notice contesting the rejection, the disputed claim shall be presented to the Court or a referee appointed by the Court for summary and non-appealable resolution.

7.8. The Settlement Administrator will send payment directly to the Authorized Claimant within thirty (30) calendar days after the Effective Date. The Settlement Administrator will process direct credit or payment via physical check, PayPal, Venmo, Amazon, or electronic Automated Clearing House ("ACH") transactions.

8. Award of Fees and Expenses to Class Counsel and Incentive Awards to Plaintiff

8.1. An award of Fees and Expenses shall be made from the Settlement Fund to Class Counsel. Class Counsel may make an application for an award of Fees and Expenses in the Litigation not to exceed 33.33% of the Settlement Fund. Subject to the terms and conditions of this Stipulation and any order of the Court, the Fee and Expense Award to Class Counsel shall be paid out of the Settlement Fund within forty five (45) days following the Court's Order granting Final Approval of the Settlement and Fee and Expense Award, subject to Class Counsel guaranteeing to make the funds available upon a reversal by the Court of Appeals, if any.

1 8.2. Class Counsel shall have the sole and absolute discretion to allocate and
2 distribute the Fee and Expense Award among Plaintiff’s Counsel and any other
3 attorney for Plaintiff.

4 8.3. Class Counsel may ask the Court for Incentive Awards from the
5 Settlement Fund to the Plaintiffs as follows: Nine Thousand Dollars (\$9,000.00) to
6 Plaintiff Crystal Hilsley and One Thousand Dollars (\$1,000) to Plaintiff William
7 Riley. Any Incentive Awards approved by the Court shall be paid from the
8 Settlement Fund within ten (10) days after the Final Approval Effective Date.

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10 **9. Conditions of Settlement, Effect of Disapproval, Cancellation, or**
11 **Termination**

12 9.1. In the event this Settlement Agreement is not approved by the Court or
13 the Settlement set forth herein is terminated or fails to become effective in
14 accordance with its terms, the Settling Parties shall be restored to their respective
15 pre-settlement positions in the Litigation, including with regard to any agreements
16 concerning tolling and similar agreements, and this entire Settlement Agreement
17 shall become null and void. The entire amount deposited into the Settlement Fund
18 (to the extent it was deposited) shall be promptly returned to Ocean Spray.

19 9.2. The Parties and their counsel agree to cooperate fully with one another
20 and to use their best efforts to effectuate the Settlement, including, without
21 limitation, in seeking Preliminary Approval and Final Approval of the Settlement,
22 carrying out the terms of this Settlement Agreement, and promptly agreeing upon
23 and executing all such other documentation as may be reasonably required to obtain
24 final approval by the Court of the Settlement. The Parties shall cooperate in good
25 faith and undertake all reasonable actions and steps in order to accomplish the events
26 described in this Settlement Agreement.

27 **10. Release**

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2 10.1. As of the Effective Date, the Released Parties shall be released of and
3 from any and all claims asserted or which could have been asserted in the Litigation
4 involving any allegations of misleading statements or misrepresentations concerning
5 the Products, including, without limitation, arising from, under or relating to any law
6 or jurisdiction including, state, federal or local law or otherwise.

7 10.2. Notwithstanding the above, the Court shall retain continuing
8 jurisdiction over the Parties and the Settlement Agreement with respect to the future
9 performance of the terms of the Settlement Agreement, and to assure that all
10 payments and other actions required of any of the Parties by the Settlement are
11 properly made or taken. All Parties hereto submit to the jurisdiction of the Court for
12 purposes of implementing and enforcing the terms embodied in this Settlement
13 Agreement.

14 **11. Miscellaneous Proceedings**

15 11.1. Pending entry of the Preliminary Approval Order and the entry of the
16 Final Judgment, the Settling Parties agree to stay all proceedings in this Litigation,
17 except those incident to the Settlement itself.

18 11.2. The Settling Parties agree to use their best efforts to prevent, stay, or
19 seek dismissal of, or to oppose entry of any interim or final relief in favor of, any
20 claim by any member of the Settlement Class in any litigation that would be barred
21 by the releases contemplated by this Settlement Agreement, and any other litigation
22 against any of the Parties challenging the Settlement, or that otherwise involves,
23 directly or indirectly, a Released Claim.

24 11.3. The Settling Parties and their undersigned counsel agree to undertake
25 their best efforts and mutually cooperate to promptly effectuate this Settlement
26 Agreement and the terms of the Settlement set forth herein, including taking all steps
27 and efforts contemplated by this Settlement Agreement and any other steps and
28 efforts which may become necessary by order of the Court or otherwise.

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11.4. The undersigned represent that they are fully authorized to execute and enter into the terms and conditions of this Settlement Agreement.

11.5. This Settlement Agreement contains the entire agreement among the Settling Parties and supersedes any prior agreements or understandings between them. All terms of this Settlement Agreement are contractual and not mere recitals and shall be construed as if drafted by all Parties. The presumption found in California Civil Code Section 1654 (and equivalent, comparable, or analogous provisions of the laws of the United States of America or any State or territory thereof, or of the common law or civil law) that uncertainties in a contract are interpreted against the party causing an uncertainty to exist is hereby waived by all Parties.

11.6. The terms of this Settlement Agreement are and shall be binding upon each of the Parties, their agents, attorneys, employees, successors and assigns, and upon all other persons claiming any interest in the subject matter through any of the Parties, including any Settlement Class member.

11.7. Whenever this Settlement Agreement requires or contemplates that one Party shall or may give notice to the other, notice shall be provided by email, or next day (excluding Sunday) express delivery service as follows:

If to Plaintiff, then to:

Ronald A. Marron
LAW OFFICES OF RONALD A. MARRON
651 Arroyo Drive
San Diego, CA 92103
Email: ron@consumersadvocates.com

If to Defendant, then to:

Rick L. Shackelford
GREENBERG TRAUIG, LLP
1840 Century Park East, Suite 1900
Los Angeles, CA 90067
Email: ShackelfordR@gtlaw.com

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11.8. The time periods and dates described in this Settlement 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 Class Counsel and Ocean Spray’s Counsel, without notice to Settlement Class members. 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 Settlement Agreement.

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11.9. All time periods set forth herein shall be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Settlement Agreement or by order of the Court, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday or, when the act to be done is the filing of a paper in Court, a day in which weather or other conditions have made the Office of the Clerk or the Court inaccessible, in which event the period shall run until the end of the next day. As used in this subsection, “legal holiday” includes New Year’s Day, Martin Luther King, Jr.’s Birthday, Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States.

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11.10. The Parties, their successors and assigns, and their attorneys undertake to implement the terms of this Settlement Agreement in good faith and to use good faith in resolving any disputes that may arise in the implementation of the terms of this Settlement Agreement.

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11.11. This Settlement Agreement may be amended or modified only by a written instrument signed by Class Counsel and Ocean Spray’s Counsel. Amendments and modifications may be made without additional notice to the Settlement Class members unless such notice is required by the Court.

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11.12. Neither this Settlement Agreement nor any act performed or document executed pursuant to or in furtherance of this Settlement Agreement: (a) is or may be deemed to be or may be used as an admission or evidence of the validity of any Released Claim, or of any wrongdoing or liability of Ocean Spray, or of the propriety of Class Counsel maintaining the Litigation as a class action; or (b) is or may be deemed to be or may be used as an admission or evidence of any fault or omission of Ocean Spray in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal, except that Ocean Spray may file this Settlement Agreement or the Final Judgment in any action that may be brought against any Released Party 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, issue preclusion, or similar defense or counterclaim.

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

11.14. This Settlement Agreement shall be deemed to have been executed upon the last date of execution by the undersigned.

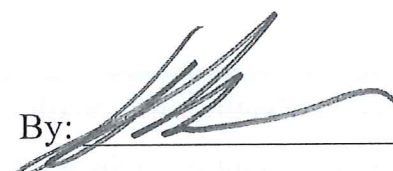
11.15. This Settlement Agreement may be executed in counterparts, each of which shall constitute an original.

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

UNDERSTOOD AND AGREED:

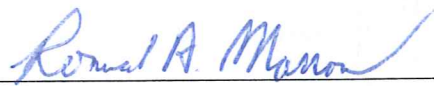
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Dated: October 14, 2019

By: 
Representative of Ocean Spray Cranberries, Inc.

Dated: 10-17-19

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