

**IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

<b>AMANDA SMITH, individually and on</b>	)	
<b>behalf of all others similarly situated,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>Case No. 2:18-CV-04004-MDH</b>
	)	
<b>ATKINS NUTRITIONALS, INC.,</b>	)	
	)	
<b>Defendant.</b>	)	

**STIPULATION OF CLASS ACTION SETTLEMENT**

Subject to Court approval pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs Amanda Smith, Cheryl Fernandez, Joseph Colella, Joseph Timmerman, Kelly Styles Longo, Sandra Styles-Hovarth, Johanna Garcia, and Sharon Marie Betsill (collectively, “Plaintiffs”), on behalf of themselves and the members of their putative Settlement Class, and Defendant Atkins Nutritionals, Inc. (“Atkins Nutritionals” or “Defendant” and collectively with Plaintiffs, the “Parties”), by and through their respective undersigned counsel, authorized to settle the Actions on their behalves, in consideration for and subject to the promises, terms, and conditions contained in this Stipulation of Class Action Settlement Agreement (“Settlement Agreement” or “Agreement”), hereby **STIPULATE AND AGREE** as follows:

**I. RECITALS**

This Settlement Agreement is entered into based on the following:

A. WHEREAS, several of the Plaintiffs, by and through Plaintiffs’ Counsel, commenced and prosecuted three putative class actions against Atkins Nutritionals, captioned *Smith v. Atkins Nutritionals, Inc.*, Case No. 2:18-CV-04004-MDH (the “*Smith* Action”), pending in the Western District of Missouri, *Colella et al. v. Atkins Nutritionals, Inc.*, Case No. 17-cv-5867-KAM-SJB (the “*Colella* Action”), pending in the Eastern District of New York, and *Fernandez v. Atkins Nutritionals, Inc.*, Case No. 3:17-cv-01628-GPC-WVG (the “*Fernandez*

Action”), pending in the Southern District of California (collectively, the “Actions”), all involving similar claims relating to certain of Atkins Nutritionals’ products;

**B.** WHEREAS, the Actions all involve claims relating to the content, packaging, labeling, advertising, and marketing of certain Atkins Nutritionals’ products;

**C.** WHEREAS, on August 11, 2017, Plaintiffs’ Counsel filed the *Fernandez* Action, and thereafter amended the operative complaint, seeking to represent a class of persons who purchased Atkins Nutritionals’ products in California;

**D.** WHEREAS, on October 6, 2017, Plaintiffs’ Counsel filed the *Colella* Action, and thereafter amended the operative complaint, seeking to represent a class of persons who purchased Atkins Nutritionals’ products in New York;

**E.** WHEREAS, on January 3, 2018, Plaintiffs’ Counsel filed the *Smith* Action, seeking to represent a class of persons who purchased Atkins Nutritionals’ products in Missouri;

**F.** WHEREAS, on June 27, 2018, the Parties participated in a court-ordered Early Neutral Evaluation in the *Fernandez* Action, but did not reach a settlement;

**G.** WHEREAS, on February 6, 2019, the Parties participated in a mediation with The Honorable Jay Daugherty (Ret.) to evaluate and negotiate a potential class-wide settlement, but did not reach a settlement on that date;

**H.** WHEREAS, with the assistance of Judge Daugherty, the Parties continued settlement discussions and negotiations after the February 6th mediation;

**I.** WHEREAS, on April 5, 2019, the Parties reached an agreement in principle, which they documented in a Term Sheet that forms the basis of this Settlement Agreement;

**J.** WHEREAS, the Term Sheet requires that the Parties, and the Parties desire to, more fully memorialize their settlement in this Settlement Agreement;

**K.** WHEREAS, the Parties hereby incorporate and adopt the Term Sheet (attached as Exhibit A) as part of this Settlement Agreement, and any Term Sheet terms not expressly contained or repeated in this Settlement Agreement shall be considered part of this Agreement and continue to be in full force and effect;

**L.** WHEREAS, in the event there is a conflict between any term in the Term Sheet and any term in this Settlement Agreement, this Settlement Agreement shall control; the absence of a term in the Term Sheet from this Settlement Agreement shall not constitute such a conflict;

**M.** WHEREAS, this Settlement Agreement was reached as the result of extensive, good-faith, and arm's length negotiations between the Parties and their counsel, with the assistance of Judge Daugherty;

**N.** WHEREAS, before entering into this Settlement Agreement, the Parties, by and through their respective counsel, conducted a thorough examination, investigation, and evaluation of the relevant law, facts, and allegations to assess the merits of the claims and potential claims in the Actions to determine the strengths and weaknesses of potential liability, remedies, and all defenses thereto, as well as the appropriateness of class certification;

**O.** WHEREAS, the Parties and their respective counsel have taken into account the risks, uncertainties, delays, and expenses involved in prosecuting and defending the Actions, as well as other relevant considerations, and have concluded that it is in their respective best interests, including the interests of the Actions' respective putative classes and the proposed Settlement Class, to compromise and to fully and finally resolve and settle the Actions in the manner and on the terms and conditions set forth in this Settlement Agreement;

**P.** WHEREAS, based on extensive analysis of the law and facts at issue in the Actions by counsel for Plaintiffs and the fair, flexible, speedy, cost-effective, and assured procedures for providing an injunctive and monetary settlement, Plaintiffs have determined (including on advice of their counsel) that this Settlement Agreement is fair, adequate, and reasonable and in the best interests of Plaintiffs, the putative classes, and the Settlement Class;

**Q.** WHEREAS, Atkins Nutritionals denies all allegations of fault, wrongdoing, and liability whatsoever against it and maintains that its practices have at all times been lawful and proper. Atkins Nutritionals specifically denies all allegations made in the Actions, including, but not limited to, allegations that the Subject Products misled consumers regarding the impact of sugar alcohols, including maltitol, on blood sugar. Atkins Nutritionals denies all allegations that Plaintiffs, the putative classes, or any member of the putative classes suffered any damages or harm by reason of any alleged conduct, statement, act, or omission of Atkins Nutritionals or that Plaintiffs could establish any damages or entitlement to injunctive relief;

**R.** WHEREAS, the Parties agree that Atkins Nutritionals' execution of this Settlement Agreement and/or the Parties' Term Sheet are not, and shall not be argued or construed as, an admission by Atkins Nutritionals or deemed to be evidence: (1) of the validity of any of the claims made or that could have been made by Plaintiffs; (2) that Atkins Nutritionals violated any law or regulation in any respect; or (3) that class certification is appropriate for any purpose other than settlement;

**S.** WHEREAS, the Parties intend that this Settlement Agreement will encompass and end all pending, threatened, or possible litigation and/or claims by Plaintiffs and the Settlement Class against Atkins Nutritionals that have been asserted or that could have been asserted in the Actions;

**T.** WHEREAS, this Settlement Agreement and the proposed certification, for settlement purposes only, of the Settlement Class, effectuates the resolution of disputed claims;

**U.** WHEREAS, Plaintiffs' Counsel represent that they have no current knowledge of any person other than Plaintiffs who are considering asserting claims against Atkins Nutritionals and that Plaintiffs' Counsel have no current intention to bring any future claims or suits against Atkins Nutritionals;

**V.** NOW THEREFORE, it is hereby STIPULATED AND AGREED, by and between the Parties, and through their respective undersigned counsel, that: (i) the Actions and

all Released Claims be fully and finally compromised, settled, and released upon final settlement approval by the Court after the Approval Hearing and the Fairness Hearing; and (ii) upon such Final Approval, the Final Order and Final Judgment be entered dismissing the *Smith* Action with prejudice and final orders and judgments be entered dismissing the *Colella* and *Fernandez* Actions with prejudice, upon the following terms and conditions:

## **II. DEFINITIONS**

As used in this Settlement Agreement, capitalized terms and phrases, including the following, shall be defined as indicated:

**A.** “Approval Hearing” means the anticipated hearing by the above-captioned Court (the United States District Court for the Western District of Missouri), held pursuant to Rule 23 of the Federal Rules of Civil Procedure, to approve this Settlement Agreement.

**B.** “Approved Claim” means a Claim Form approved by the Notice and Claims Administrator pursuant to the terms of the Claim Submittal Process and this Settlement Agreement.

**C.** “Atkins Nutritionals” or “Defendant” means Atkins Nutritionals, Inc. and all of its predecessors, successors, assigns, parents (including The Simply Good Foods Company), subsidiaries, divisions, departments, and affiliates.

**D.** “Cash Award” means money paid from the Settlement Fund to a Settlement Class Member in settlement of an Approved Claim in the amount set forth in Paragraph III.B.2.

**E.** “Claim Form” means the document to be submitted by Settlement Class Members seeking a Cash Award.

**F.** “Claim Deadline” means the date by which all Claim Forms must be postmarked to be considered timely. The Claim Deadline will be set forth in the Preliminary Approval Order and in the Notice and the Claim Form.

**G.** “Claims Period” means the time from the beginning of the Notice Program to the Claim Deadline during which a Settlement Class Member may submit a Claim Form.

**H.** “Claims Submittal Process” means the process through which a Settlement Class Member submits to the Notice and Claims Administrator a Claim Form and Evidence of Purchase of a Subject Product and by which the Notice and Claims Administrator reviews the Claim Form and determines whether the Settlement Class Member has timely presented a valid and supported Claim Form entitling the Settlement Class Member to payment of a Cash Award from the Settlement Fund.

**I.** “Class Counsel” or “Plaintiffs’ Counsel” means any and all attorneys and law firms, including local counsel, representing Plaintiffs and proposed as counsel for the Settlement Class, including without limitation, Jay Barnes, Randall Barnes, Matthew Dameron, Amy Jackson, Erik Dirks, Ralph E. Labaton, Deborah Rosenthal, David A. Straite, Barnes & Associates, Williams Dirks Dameron, LLC, Simmons Hanly Conroy, LLC, and Kaplan Fox & Kilsheimer, LLP.

**J.** “Court” means the United States District Court for the Western District of Missouri, Western Division.

**K.** “Defense Counsel” or “Atkins Nutritionals’ Counsel” means the law firm Dentons US LLP and its attorneys, including without limitation Michael J. Duvall and Grant Ankrom.

**L.** “Effective Date” means the date seven (7) days following the date as of which all of the following events and conditions have been met:

1. The Court has entered the Preliminary Approval Order;
2. The Court has entered the Final Order and Final Judgment; and
3. Final Approval has occurred.

**M.** “Escrow Account” means the separate, interest-bearing account to be established by the Notice and Claims Administrator under terms acceptable to all Parties at a depository institution insured by the Federal Deposit Insurance Corporation. The costs of

establishing and maintaining the Escrow Account shall be paid by the Notice and Claims Administrator as Notice and Claim Administration Expenses payable out of the Settlement Fund as provided herein.

**N.** “Evidence of Purchase” means Proof of Purchase or a Settlement Class Member certification, signed under penalty of perjury, attesting to the purchase of one or more of the More Than 10 Grams Of Maltitol Products during the applicable Purchase Period.

**O.** “Fairness Hearing” means the hearing set by the Court, pursuant to Rule 23 of the Federal Rules of Civil Procedure, after the entry of the Preliminary Approval Order and implementation of the Notice Program for purposes of:

1. Determining the fairness, adequacy, and reasonableness of this Settlement Agreement in accordance with Rule 23 of the Federal Rules of Civil Procedure;
2. Entering the Final Order and Final Judgment; and
3. Ruling on any Fee Award and Service Awards.

**P.** “Fee Award” means a Court-ordered award of reasonable attorneys’ fees and expenses to Plaintiffs’ Counsel, subject to the limitations discussed in Paragraph VIII.B.

**Q.** “Final Order and Final Judgment ” means the Court’s order and judgment fully and finally approving this Settlement Agreement and dismissing the *Smith* Action with prejudice and the Court’s entry of its order and judgment under Rule 54 of the Federal Rules of Civil Procedure in a form (or substantially identical form) jointly proposed by the Parties.

**R.** “Final Approval” means that all of the following conditions have been satisfied:

1. The Settlement Agreement has been approved by the Court;
2. The Court has entered the Final Order and Final Judgment and no Party has exercised its right to terminate this Settlement Agreement; and
3. Either (a) the time to appeal, or to seek permission to appeal, of the Final Order and Final Judgment has expired with no appeal having been

taken or no permission to appeal having been sought, or (b) the Court's Final Order and Final Judgment has been affirmed in its entirety by the court of last resort to which any appeal has been taken or petition to review has been presented and such affirmance has become no longer subject to the possibility of further appeal or review. Notwithstanding the foregoing, Final Approval shall not be delayed by any appeal or petition for a writ of certiorari or other form of review pertaining solely to an application for attorneys' fees, costs, or expenses.

**S.** "Service Awards" means monetary awards approved by the Court for the benefit of Amanda Smith, Cheryl Fernandez, Joseph Colella, Joseph Timmerman, Kelly Styles Longo, Sandra Styles-Hovarth, Johana Garcia, and/or Sharon Marie Betsill for serving as class representatives.

**T.** "Injunctive Relief" means the non-monetary portion of this settlement, specifically, the relabeling and reformulating of certain of the Subject Products and the discontinuance of certain of the Subject Products described below.

**U.** "More Than 10 Grams Of Maltitol Products" means Subject Products containing more than 10 grams of maltitol, specifically, Atkins Nutritionals' Chocolate Covered Candies, Chocolate Peanut Candies, Milk Chocolate Caramel Squares, Peanut Butter Cups, and Chocolate Caramel Mousse bars.

**V.** "Mediation Expenses" means the fees and expenses charged by Judge Daugherty in connection with the above-described mediation.

**W.** "Monetary Relief" means three million eight-hundred thousand dollars (\$3,800,000) to be paid by Atkins Nutritionals into the Settlement Fund in consideration of the full release of the Released Parties from the Released Claims and for dismissal of the Actions with prejudice.



**X.** “Notice” means the notice of this Settlement Agreement in a form to be agreed upon by the Parties, and approved by the Court, and distributed by the Notice and Claims Administrator to the Settlement Class.

**Y.** “Notice and Claims Administrator” or “Claims Administrator” means the agreed upon and Court-approved third-party administrator responsible for administering the Notice Program and the Claims Submittal Process.

**Z.** “Notice and Claim Administration Expenses” means the reasonable charges of and expenses incurred by the Notice and Claims Administrator in administering the Notice Program and the Claims Submittal Process.

**AA.** “Notice Program” means the program agreed upon by the Parties and approved by the Court, and administered by the Notice and Claims Administrator, for providing Notice to Settlement Class Members through print and/or online media, including a settlement website, but not through Atkins Nutritionals’ website, any distribution to Atkins Nutritionals’ online community (including any social media sites used by Atkins Nutritionals or any email addresses in the possession of Atkins Nutritionals), or any in-store notices, point-of-sale placards, point-of-purchase notifications or similar notifications.

**BB.** “Objection Deadline” means the date, to be set by the Court, by which Settlement Class Members must file and serve objections, if any, to this Settlement Agreement and the Motion for Preliminary Approval.

**CC.** “Opt-out Date” means the date, to be set by the Court, by which Settlement Class Members must postmark a Request for Exclusion to the Notice and Claims Administrator for a Settlement Class Member to be excluded from the Settlement Class.

**DD.** “Preliminary Approval Order” or “Preliminary Approval” means the order conditionally certifying, for settlement purposes only, the Settlement Class, appointing Plaintiffs’ Counsel as counsel for the Settlement Class, setting the date of the Fairness Hearing, preliminarily approving this Settlement Agreement, approving the Notice Program and Claim

Form, and setting dates for the completion of the Notice Program, the Opt-Out Date, the Objection Deadline, and the Claim Deadline.

**EE.** “Proof of Purchase” means originals, copies, or images of receipts, product packaging, or other documentation from a commercial source reasonably establishing a Settlement Class Member’s purchase during the applicable Purchase Period of one or more of the More Than 10 Grams Of Maltitol Products.

**FF.** “Purchase Period” means the time period in which a Settlement Class Member must have purchased one or more of the Subject Products to be a Settlement Class Member and, if applicable, one or more of the More Than 10 Grams Of Maltitol Products in order to be eligible for a Cash Award. The Purchase Period is from January 1, 2013 to the Claim Deadline for purchases in New York or by Missouri or California citizens, and from January 1, 2014 to the Claim Deadline for purchases by citizens of or in any other state.

**GG.** “Released Claims” means and includes any and all claims, demands, rights, damages, obligations, suits, debts, liens, and causes of action under common law, statutory law, or any other law or regulation (including federal, state, or local) of every nature and description whatsoever, including monetary, injunctive, or equitable claims, and whether ascertained or unascertained, suspected or unsuspected, existing or claimed to exist, including Unknown Claims, as of the Effective Date, held by Plaintiffs including all Settlement Class Members (and Plaintiffs’ and all Settlement Class Members’ respective heirs, guardians, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, and assigns) that were asserted or that could have been reasonably asserted against the Released Parties in the Actions, or that arise out of or are related in any way to any or all of the acts, omissions, facts, matters, transactions, or occurrences that were or could have been directly or indirectly alleged or referred to in the Actions, including but not limited to alleged violations of New York’s General Business Laws, the Missouri Merchandising Practices Act, California’s Unfair Competition Law and False Advertising Law, or similar laws of any state or territory of the United States, alleged claims for breaches of express or implied warranties, and unjust enrichment, and any claims for monetary, injunctive, or equitable relief that arise out of or relate to the facts and circumstances giving rise to the allegations in the Actions, including but

not limited to Atkins Nutritionals' communications, disclosures, representations, statements, claims, nondisclosures, and/or omissions in or on the packaging, advertising, labeling, formulation and/or marketing of or relating to the Subject Products.

**HH.** "Released Parties" shall be defined and construed broadly to effectuate a complete and comprehensive release and means Atkins Nutritionals, all of its predecessors, successors, assigns, parents (including The Simply Good Foods Company), subsidiaries, divisions, departments, and affiliates, and any and all of its past, present and future officers, directors, employees, shareholders, partners, principals, agents, servants, successors, attorneys, insurers, representatives, licensees, licensors, customers, subrogees and assigns and any entity that made, manufactured, tested, inspected, audited, certified, purchased, distributed, supplied, licensed, transported, donated, marketed, advertised, promoted, sold, or offered for sale any Subject Product, or any entity that contributed to any labeling, sale, distribution, supply, advertising, marketing, or packaging of any Subject Product, including all of their respective predecessors, successors, assigns, parents, subsidiaries, divisions, departments, or affiliates, and any and all of their past, present and future officers, directors, employees, shareholders, partners, principals, agents, servants, successors, attorneys, insurers, representatives, licensees, licensors, customers, subrogees, or assigns. It is expressly understood that, to the extent a Released Party is not a Party to this Settlement Agreement, all such Released Parties are intended third-party beneficiaries of this Settlement Agreement.

**II.** "Releasing Parties" means Plaintiffs, Plaintiffs' Counsel, all Settlement Class Members, and any person claiming by, through or on behalf of any Plaintiff or Settlement Class Member, including but not limited to spouses, children, wards, heirs, devisees, legatees, invitees, employees, associates, co-owners, attorneys, agents, administrators, predecessors, successors, assignees, representatives of any kind, shareholders, partners, directors, or affiliates.

**JJ.** "Request for Exclusion" means the written communication that must be sent to the Notice and Claims Administrator and postmarked on or before the Opt Out Date by a Settlement Class Member who wishes to be excluded from the Settlement Class.

**KK.** “Settlement” means the settlement embodied in this Settlement Agreement.

**LL.** “Settlement Class” or “Settlement Class Members” means, for settlement purposes only, Plaintiffs and all persons who: (1) purchased a Subject Product, (2) during the applicable Purchase Period, (3) anywhere in the United States.

**MM.** “Settlement Fund” means the fund into which Atkins Nutritionals will deposit the Monetary Relief and from which the Notice and Claims Administrator shall pay Mediation Expenses, Notice and Claim Administration Expenses, any Fee Award, any Service Awards, Cash Awards, and, if applicable, any *Cy Pres* distribution or reversion.

**NN.** “Subject Products” means any Atkins Nutritionals products that contained any sugar alcohol (including but not limited to maltitol) or polyol (including but not limited to glycerin) and sold anywhere in the United States during the Purchase Period, including but not limited to: Dark Chocolate Almond Coconut Crunch; Caramel Double Chocolate Crunch; Dark Chocolate Decadence, Chocolate Coconut Bar, Peanut Butter Cups, Chocolate Peanut Candies, Chocolate Chip Cookie Dough, Chocolate Peanut Butter, Chocolate Peanut Butter Pretzel, Sweet & Salty Trail Mix, Classic Trail Mix, Caramel Chocolate Nut Roll, Coconut Almond Delight, Marshmallow Mudslide Bar, Chocolate Oatmeal Fiber, Chocolate Candies, Caramel Nut Chew Bar, Chocolate Caramel Mousse Bar, Chocolate Covered Almonds, Milk Chocolate Covered Squares, Peanut Caramel Cluster Bar, Strawberry Almond, Peanut Butter Granola, Blueberry Greek Yogurt, Chocolate Chip Granola, Cinnamon Bun, Cookies n’ Crème, Cashew Trail Mix, Chocolate Chip Crisp, Chocolate Hazelnut, Peanut Butter Fudge Crisp, Pecan Caramel Clusters, Milk Chocolate Caramel Squares, Nutty Fudge Brownie, Peanut Fudge Granola Bar, Mocha Almond Bar, Raspberry Chia Bar, Chocolate Almond Caramel Bar, Vanilla Pecan Crisp Bar, Lemon Bar, White Chocolate Macadamia Nut, Triple Chocolate Bar, Caramel Chocolate Peanut Nougat Bar, Cranberry Almond Bar, Peanut Butter Protein Wafer Crisp, Lemon Vanilla Protein Wafer Crisp, and Chocolate Mint Protein Wafer Crisp.

**OO.** “Term Sheet” means the document memorializing the settlement-in-principal reached by the Parties that formed the basis of this Settlement Agreement.

**PP.** “Total Settlement Value” means the sum of the Monetary Relief and the agreed-upon value of the Injunctive Relief, as further defined in Paragraph VIII.B.1.

**QQ.** “Unknown Claims” means any and all Released Claims that a Plaintiff or a Settlement Class Member, or anyone acting on behalf of or in a Plaintiff’s or a Settlement Class Member’s interest, does not know or suspect to exist against any of the Released Parties relating in any way to any Subject Product, which, if known, might have affected his or her decision to enter into or to be bound by the terms of this Settlement Agreement. Plaintiffs and Settlement Class Members acknowledge that they may hereafter discover facts in addition to or different from those that they now know or believe to be true concerning the subject matter of this Settlement Agreement, but nevertheless fully, finally, and forever settle and release any and all Released Claims, demands, rights, damages, obligations, suits, debts, liens, and causes of action under common law or statutory law (federal, state, or local) of every nature and description whatsoever, including monetary, injunctive, or equitable claims, and whether ascertained or unascertained, suspected or unsuspected, existing or claimed to exist, including Unknown Claims, as of the Effective Date, held by Plaintiffs including all Settlement Class Members (and Plaintiffs’ and all Settlement Class Members’ respective heirs, guardians, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, and assigns) that were asserted or that could have been reasonably asserted against the Released Parties and that arise out of or are related in any way to any or all of the acts, omissions, facts, matters, transactions, or occurrences that were or could have been directly or indirectly alleged or referred to in the Actions, including but not limited to alleged violations of New York’s General Business Laws, the Missouri Merchandising Practices Act, California’s Unfair Competition Law and False Advertising Law, or similar laws of any state or territory of the United States, alleged claims for breaches of express or implied warranties, and unjust enrichment, any claims for monetary, injunctive, or equitable relief that relate in any way to communications, disclosures, representations, statements, claims, nondisclosures, and/or omissions in or on the packaging, advertising, labeling, and/or marketing of or relating to the Subject Products’ Net Carbs claims and their impact on blood sugar.

### **III. SETTLEMENT TERMS**

THEREFORE, for good and valuable consideration, including the promises, covenants, and agreements memorialized in this Agreement, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

#### **A. Injunctive Relief**

##### **1. Relabeling**

Atkins Nutritionals will remove from the packaging and labeling of all Subject Products manufactured more than one (1) year after the Preliminary Approval Order the statement that sugar alcohols “minimally impact blood sugar.” Atkins Nutritionals may continue to distribute and sell any Subject Products in the manufacturing, distribution, or sale process or chain as of the date that is one (1) year from the Preliminary Approval Order, regardless of their labeling. Atkins Nutritionals will submit to the Court, in connection with the motion for Final Approval, copies, images, or the content of the revised packaging and labeling for the Subject Products. Atkins Nutritionals will not use or re-introduce the “minimally impact blood sugar” statement regarding sugar alcohols on Subject Product packaging or labels for at least two (2) years from the Effective Date. Nothing in this Agreement shall limit Atkins Nutritionals’ ability to make any other changes to its product labels or packaging, including but not limited to any graphics or other statements or information on packaging or labels.

##### **2. Discontinuance**

Atkins Nutritionals also has agreed to discontinue and has discontinued seven (7) of the Subject Products containing maltitol: Dark Chocolate Almond Delight Snack Bar; Dark Chocolate Decadence Bar; Classic Trail Mix; Marshmallow Mudslide Bar; Cinnamon Bun Meal Bar; Strawberry Almond Meal Bar; and Chocolate Oatmeal Fiber Bar. Atkins Nutritionals further agrees to, within two (2) years of the Preliminary Approval Order, discontinue five (5) additional Subject Products (in addition to the four already discontinued) containing maltitol: Chocolate Hazelnut Snack; Sweet and Salty Trail Mix; Coconut Almond Delight; Dark Chocolate Almond Coconut Crunch; and Cashew Trail Mix (collectively, these twelve (12) products are the “Discontinued Products”). Atkins Nutritionals will not re-introduce any Discontinued Product for at least two (2) years after the Effective Date. Atkins Nutritionals may

continue to distribute and sell any Discontinued Products in the manufacturing, distribution, or sale process or chain as of the date two (2) years of the Preliminary Approval Order, regardless of their labeling or ingredients.

### **3. Reformulation**

Atkins Nutritionals has agreed to discontinue the use of maltitol in nine (9) of the Subject Products and to reformulate these products, and has reformulated these products. These products are: Chocolate Chip Granola Meal Bar; Chocolate Peanut Butter Meal Bar; Peanut Butter Granola Meal Bar; Blueberry Greek Yogurt Bar; Chocolate Peanut Butter Pretzel; Triple Chocolate Snack Bar; Caramel Double Chocolate Crunch Snack Bar; Chocolate Chip Crisp Snack Bar; and Cranberry Almond Snack Bar (collectively, these nine (9) products are the “Reformulated Products”). Atkins Nutritionals will not re-introduce maltitol into any Reformulated Product for at least two (2) years from the Effective Date. Atkins Nutritionals may continue to distribute and sell any Reformulated Products currently in the manufacturing, distribution, or sale process or chain. Atkins Nutritionals further agrees to endeavor in good faith to discontinue or reduce the amount of maltitol in two additional Subject Products, within two (2) years of the Preliminary Approval Order: Caramel Nut Roll Snack Bar and Caramel Chocolate Peanut Nougat Snack Bar. Nothing in this Agreement shall limit Atkins Nutritionals’ ability to make other formulation changes to its products.

### **4. “Net Carbs” Calculation**

Nothing in this Agreement shall limit Atkins Nutritionals’ ability to use the “Net Carbs” or “Net Carbohydrates” calculation or any associated statements, other than the “minimally impact blood sugar” statement regarding sugar alcohols, in Atkins Nutritionals’ packaging, labeling, marketing, or advertising. Nothing in this Agreement shall prescribe or limit how Atkins Nutritionals calculates “Net Carbs” or “Net Carbohydrates.”

### **5. Good Faith and Commercially Reasonable Efforts**

Atkins Nutritionals’ relabeling, discontinuance, and reformulation obligations detailed in Paragraph III.A shall be undertaken in good faith and with commercially reasonable efforts. If Atkins Nutritionals cannot meet any of these obligations in whole or part using such efforts,



Atkins Nutritionals may apply to the Court for relief from or modification to this Settlement Agreement.

**B. Monetary Relief**

**1. Settlement Fund**

Atkins Nutritionals shall, by a date set by the Court, establish the Settlement Fund by depositing into the Escrow Account the Monetary Relief for payment of: (a) Mediation Expenses; (b) Notice and Claim Administration Expenses; (c) any Fee Award as described in Paragraph VIII.B; (d) any Service Awards as described in Paragraph VIII.A; (e) Cash Awards pursuant to Paragraph VI.C; (f) if applicable, any *Cy Pres* distribution as described in Paragraph III.B.3; and (g) if applicable, any reversion as described below. The Settlement Fund shall be kept in the Escrow Account with permissions granted to the Notice and Claims Administrator to access said funds until such time as all payments that are required to be made by the Settlement Agreement out of the Settlement Fund are made. The Settlement Fund includes all interest that shall accrue on the sums deposited in the Escrow Account. The Notice and Claims Administrator shall be responsible for all tax filings with respect to any earnings on the Settlement Fund and the payment of all taxes that may be due on such earnings. The Settlement Fund represents the total extent of Defendant's monetary obligations under this Settlement Agreement. The payment of the Monetary Relief by, or on behalf of, Defendant fully discharges Defendant and the other Released Parties' financial obligations (if any) in connection with the Settlement, meaning that no Released Party shall have any other obligation to make any payment into the Escrow Account or to any Settlement Class Member, or any other person, under this Agreement, regardless of whether the total amount of items (a)-(f) of this paragraph exceed that amount.

**2. Cash Awards**

Settlement Class Members may receive a Cash Award for each Approved Claim. Each Settlement Class Member with an Approved Claim who provides Evidence of Purchase including a Claim Form and a Proof of Purchase will receive an amount equal to the 25% of the average national purchase price for each More Than 10 Grams Of Maltitol Product purchased, with no cap on the total aggregate amount of Cash Awards per Settlement Class Member



(subject to the *Pro Rata* Adjustment described in this paragraph). Each Settlement Class Member with an Approved Claim who provides Evidence of Purchase in the form of only a Claim Form (but without Proof of Purchase) shall receive an amount equal to 10% of the average national purchase price of each 10 Gram or More of Maltitol Product purchased, subject to a cap of \$100 in aggregate Cash Awards per Settlement Class Member for such Approved Claims made without Proof of Purchase (subject to the *Pro Rata* Adjustment described in this paragraph). All Cash Awards are subject to a *Pro Rata* Adjustment in the event that the amount of the total Settlement Fund is exceeded by the sum of Mediation Expenses, Notice and Claim Administration Expenses, any Fee Award, any Service Awards, and total amounts of Approved Claims.

### **3. *Cy Pres***

If the total amount of Cash Awards is less than \$500,000, then Atkins Nutritionals shall donate the lesser of: (a) the difference between the total amount of Cash Awards and \$500,000, or (b) the amount remaining in the Settlement Fund after deduction of Mediation Expenses, Notice and Claim Administration Expenses, any Fee Award, any Service Awards, and Cash Awards to (subject to approval by the Court) the American Diabetes Association as a *Cy Pres* recipient. If the total amount of Cash Awards is \$500,000 or more, then Atkins Nutritionals shall have no obligation to make a donation.

### **4. Reversion**

Any remaining money in the Settlement Fund following the payment of Mediation Expenses, Notice and Claims Administration Expenses, any Fee Award, any Service Awards, Cash Awards, and, if applicable, payment to the *Cy Pres* recipient, shall revert to Atkins Nutritionals.

### **5. Unredeemed Cash Awards and Interest**

Any Cash Award that is not redeemed within ninety (90) days of the Effective Date (“Unredeemed Cash Awards”) will revert back to Atkins Nutritionals if a *Cy Pres* payment has been made or the total amount of the redeemed Cash Awards equals or exceeds \$500,000. If Cash Awards are paid with the *Pro Rata* Adjustments, any Unredeemed Cash Awards will be paid to the *Cy Pres* recipient. Any interest earned on the Settlement Fund will be used to pay

Cash Awards on a *pro rata* basis if the *Pro Rata* Adjustment otherwise is required or, if not, will be paid to the *Cy Pres* recipient.

#### **6. Priority of Settlement Fund Payments**

The Notice and Claims Administrator shall pay the following items in this order: (1) Mediation Expenses; (2) Notice and Claim Administration Expenses; (3) any Service Awards, (4) any Fee Award; (5) any Cash Awards (if applicable, adjusted pro rata); (6) any *Cy Pres* distribution; and (7) any reversion to Atkins Nutritionals.

#### **IV. RELEASES AND DISMISSALS:**

**A. Release:** For and in consideration of this Settlement including the Injunctive Relief, payment of the Monetary Relief, and other consideration, the sufficiency of which is hereby acknowledged, and the mutual promises contained in this Settlement Agreement, upon the Effective Date, the Releasing Parties shall be deemed to have, and by operation of the Final Order and Final Judgment and Final Approval shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Parties. In connection with the Released Claims, each Releasing Party, including but not limited to Plaintiff Fernandez and the putative class in the *Fernandez* Action, shall be deemed as of the Effective Date to have expressly, knowingly, and voluntarily waived any and all provisions, rights benefits conferred by Section 1542 of the California Civil Code, and any other statute, rule, and legal doctrine similar, comparable, or equivalent to Section 1542, which provides:

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

**B.** In connection with such Release, the Releasing Parties acknowledge that they are aware that they or their attorneys may hereafter discover Unknown Claims or facts in addition to or different from those that they now know or believe exist with respect to Released

Claims, but that it is their intention to hereby fully, finally, and forever settle and release all of the Released Claims and Unknown Claims that they have or may have against the Released Parties. In furtherance of such intention, the Release herein shall be and remain in effect as a full and complete general release notwithstanding the discovery or existence of any such additional or different claims or facts. Plaintiffs and Settlement Class Members acknowledge and will be deemed to have acknowledged that this Release was separately bargained for and constitutes a material element of the Settlement Agreement of which this Release is part.

**C. Dismissals:** Within seven (7) days of Final Approval, Plaintiffs and Plaintiffs' Counsel shall request and/or effectuate dismissals of the *Fernandez* Action and the *Colella* Action.

**D. Injunction:** Upon the Effective Date, this Settlement Agreement shall be the exclusive remedy for any Released Claims of Plaintiffs and/or Settlement Class Members, and Plaintiffs and the Settlement Class Members inclusive of any individual or entity acting on behalf of any one of them shall be permanently barred and enjoined from initiating, asserting, or prosecuting any Released Claims against any Released Parties in any federal or state court or tribunal, administrative or arbitration forum, before any local, state or federal agency, any industry trade association or self-regulatory body, or any other forum.

**E. No Admission of Liability, Fault, Harm, or Entitlement to Any Relief:** The Parties expressly acknowledge and agree that the provisions contained in this Settlement Agreement are not and shall not be deemed a presumption, concession, or admission by Atkins Nutritionals of any fault, liability, or wrongdoing as to any facts or claims alleged or asserted in the Actions, or in any related actions or proceedings, nor shall they be so interpreted, construed, deemed, invoked, offered, or received in evidence or otherwise used by any person in the Actions or in any other action or proceeding, whether civil, criminal, or administrative in nature. Atkins Nutritionals denies all allegations of fault, wrongdoing, and liability whatsoever against it and maintains that its practices have at all times been lawful and proper. Atkins Nutritionals specifically denies all allegations in the Actions, including, but not limited to, that the Subject Products misled consumers regarding the impact of sugar alcohols, including maltitol on blood sugar. Atkins Nutritionals denies allegations that Plaintiffs, the putative classes, any member of

the putative classes, or the Settlement Class Members suffered any damages or harm by reason of any alleged conduct, statement, act, or omission of Atkins Nutritionals or that Plaintiffs could establish any damages or entitlement to injunctive relief. Atkins Nutritionals does not consent to certification of the Settlement Class for any purpose other than to effectuate this Settlement.

**F. Class Counsel Representation:** Plaintiffs' Counsel represent that they have no current knowledge of any person other than Plaintiffs who is considering asserting claims against Atkins Nutritionals and that Plaintiffs' Counsel have no current intention to bring any future claims or suits against Atkins Nutritionals.

## **V. APPROVAL BY THE COURT**

**A.** As soon as is practicable following the full execution of this Settlement Agreement, Class Counsel shall draft a motion for a Preliminary Approval Order, and provide a draft of such motion to Atkins Nutritionals for comment at least seven (7) days in advance of filing the motion. Class Counsel shall, in good faith, consider any comments offered by Atkins Nutritionals to the motion for a Preliminary Approval Order, and to the extent Class Counsel disagrees with Atkins Nutritionals' comments, shall meet and confer with Defense Counsel concerning the same. At a minimum, the motion shall request, among other things:

1. Certification, for settlement purposes only, of the Settlement Class;
2. Findings that the terms of this Settlement Agreement fall within the range of permitted approval and should therefore be approved;
3. Approval of the Parties' Notice and Notice Program;
4. The setting of a deadline for Notice and the Opt-Out Deadline;
5. Approval of the Claims Submittal Process including setting of the Claims Deadline;
6. Appointment of the Notice and Claims Administrator;
7. Appointment of Plaintiffs' Counsel as Settlement Class Counsel;
8. Scheduling of the Fairness Hearing to determine whether this Settlement should be approved as fair, reasonable, and adequate and to

determine whether the Final Order and Final Judgment should be entered, in compliance with 28 U.S.C. § 1715(d);

9. The setting of a deadline and procedure for objections to this Settlement;

10. A stay of all proceedings other than those necessary to carry out or enforce this Settlement Agreement and the Preliminary Approval Order, pending the Fairness Hearing; and

11. An order enjoining Plaintiffs, Plaintiffs' Counsel, and Settlement Class Members from commencing or prosecuting, either directly or indirectly, any Released Claims, pending the Fairness Hearing.

The motion shall also request that the Court enter a Preliminary Approval Order in a form jointly prepared and proposed by the Parties.

**B.** Within five (5) days after the filing of the motion for a Preliminary Approval Order, Class Counsel also shall request stays of all proceedings in the *Fernandez* Action and the *Colella* Action pending Final Approval.

**C.** Within ten (10) days after the filing of the motion for Preliminary Approval, the Notice and Claims Administrator, on behalf of Atkins Nutritionals, shall provide notice of the Settlement Agreement, consistent with 28 U.S.C. § 1715, to the Attorney General of the United States, the Attorneys General of California, Missouri, and New York, and any other individuals required under Section 1715. The Parties stipulate that such notice satisfies all requirements under Section 1715.

**D.** At the Fairness Hearing, the Parties shall seek to obtain from the Court a Final Order and Final Judgment that shall, among other things:

1. Finally approve this Settlement Agreement pursuant to Rule 23 of the Federal Rules of Civil Procedure;
2. Certify the Settlement Class for settlement purposes only;

3. Find that Notice to the Settlement Class complied with all laws and requirements, including but not limited to the Due Process Clause of the United States Constitution;
4. Incorporate and effectuate the Releases set forth in this Settlement Agreement;
5. Dismiss the Actions with prejudice; and
6. Notwithstanding the aforementioned dismissal with prejudice, retain jurisdiction relating to the consummation, administration, enforcement, and interpretation of this Settlement Agreement, the Final Order and Final Judgment, any order approving the Fee Application or awarding Service Awards, and for any other necessary purpose.

E. The Parties acknowledge that each intends to implement the terms of this Settlement Agreement. The Parties shall, in good faith, cooperate and assist with and undertake all reasonable actions and steps to accomplish all required events on the schedule set by the Court and shall use reasonable efforts to implement all terms and conditions of this Settlement Agreement.

## **VI. NOTICE TO THE SETTLEMENT CLASS AND CLAIMS SUBMITTAL PROCESS**

A. **Notice Program:** The Parties will jointly propose to the Court for approval, concurrent with the motion for Preliminary Approval, a Notice Program pursuant to which the Notice and Claims Administrator will disseminate Notice to Settlement Class Members. The parties have consulted, and are continuing to consult, with experienced notice and claims administration professionals to develop the Notice Plan in a manner that complies with Federal Rule of Civil Procedure 23(e). The Notice Plan will include a comprehensive, multi-layer digital marketing approach, based on market research, to reach potential Settlement Class Members. The Notice Program also will include a settlement website.

B. **Opt-Out Rights:** The Notice Program will include a proposed procedure for Settlement Class Members to opt-out of this Settlement Agreement, including an Opt-Out Date and a Request for Exclusion form. A putative Settlement Class Member may opt-out of the

Settlement Class at any time during the Opt-Out Period. In order to exercise the opt-out right, the putative Settlement Class Member must execute and submit a Request for Exclusion to the Court postmarked on or before the end of the Opt-Out Period. A Request for Exclusion must be personally signed by each putative Settlement Class Member requesting exclusion. Additionally, a Request for Exclusion must include the putative Settlement Class Member's present name and address, a clear and unequivocal statement that the putative Settlement Class Member wishes to be excluded from the Settlement Class, and the signature of the putative Settlement Class Member or, in the case of a putative Settlement Class Member who is deceased or incapacitated only, the signature of the legally authorized representative of the putative Settlement Class Member. A Request for Exclusion by a putative Settlement Class Member shall apply only to the individual who submits the valid Request for Exclusion. Except for those putative Settlement Class Members who have timely and properly opted out, all other putative Settlement Class Members will be Settlement Class Members for all purposes under this Agreement. Any putative Settlement Class Member who elects to opt-out of the Settlement Class shall not: (i) be bound by any orders or judgments entered in this Case; (ii) be entitled to relief under or be affected by this Settlement Agreement; (iii) gain any rights by virtue of this Settlement Agreement; or (iv) be entitled to object to any aspect of this Settlement Agreement. If more than one-thousand (1,000) potential Settlement Class Members opt-out of the Settlement Class, either Party may terminate the Settlement pursuant to Paragraph X.D of this Settlement Agreement.

**C. Claims Submittal Process:** To receive a Cash Award, a Settlement Class Member must submit a Claim Form with Evidence of Purchase to the Notice and Claims Administrator during the Claims Period.

**1. Review of Claims:**

The Notice and Claims Administrator will be responsible for reviewing all Claim Forms and Evidence of Purchase to determine whether a Claim is an Approved Claim. The Notice and Claims Administrator will reject any Claim that is not: (a) submitted timely and in accordance with the directions on the Claim Form, the provisions of this Settlement Agreement, and the Preliminary Approval Order; (b) fully and truthfully completed by a Settlement Class Member with all of the information requested in the Claim Form, including Evidence of Purchase; and (c)



signed by the Settlement Class Member under penalty of perjury. The Notice and Claims Administrator shall notify a Settlement Class Member if his or her Claim has been rejected. Upon notification, a Class Member whose Claim has been rejected may cure the deficiency in his or her Claim within twenty (20) days of the Notice and Claims Administrator providing Notice of the deficiency.

**2. Determination of Average National Sale Price:**

The Notice and Claims Administrator, with the assistance of and input from Atkins Nutritionals, shall be responsible for calculating the average national nationwide sale price of each More Than 10 Grams Of Maltitol Product during the Purchase Period, for purposes of calculating Cash Awards.

**3. Payment of Cash Awards:**

The Notice and Claims Administrator shall compile all Approved Claims and hold them until the end of the Claims Period. At the end of the Claims Period, the Notice and Claims Administrator shall compare the total dollar amount of all Approved Claims to the balance in the Settlement Fund after deducting the Mediation Expenses, Notice and Claims Administration Expenses, any Fee Award, and any Service Awards, including to determine whether a *Pro Rata* Adjustment is necessary. If such an adjustment is necessary, the Notice and Claims Administrator will calculate the reduction to each Approved Claim. The Notice and Claims Administrator shall then pay (by direct deposit, money transfer, check, or other Court-approved means) each Settlement Class Member for each Approved Claim (adjusted *pro rata*, if applicable). Such payments (and explanations of any rejected claims) shall be made after, and within thirty (30) days of, the Effective Date and must be redeemed within ninety (90) days of the Effective Date.

**4. Modification:**

The provisions of this Claims Submittal Process may be modified by agreement of the Parties prior to or in conjunction with the request for Court approval, as necessary to effectuate the purposes of this Settlement Agreement.



**5. Objections:**

- a.** Any Settlement Class Member who submits a Request for Exclusion may not file an objection to this Settlement and shall be deemed to have waived any rights or benefits under this Settlement Agreement.
- b.** So-called “mass” or “class” opt outs shall not be allowed.
- c.** Settlement Class Members who object to the fairness, reasonableness, or adequacy of this Settlement must file or send a written objection to the Court, in accordance with any instructions ordered by the Court, by the Objection Deadline or will be deemed to have waived all objections and shall be foreclosed from making any objection (whether in opposition to the motion for Preliminary Approval, motion for Final Approval, on appeal, or otherwise) to the Settlement.

**VII. SETTLEMENT ADMINISTRATION**

**A.** The Notice and Claims Administrator shall administer the relief provided by this Settlement Agreement by processing Claim Forms in a rational, responsive, cost effective, and timely manner. The Notice and Claims Administrator shall maintain reasonably detailed records of its activities under this Settlement Agreement. The Notice and Claims Administrator shall maintain all such records as are required by applicable law in accordance with its normal business practices and such records shall be made available to Class Counsel and Defense Counsel upon request.

**B.** The Notice and Claims Administrator shall be obligated to employ reasonable procedures to screen claims for abuse or fraud and deny Claim Forms where there is evidence of abuse or fraud.

**C.** Defendant, the Released Parties, and Defense Counsel shall have no responsibility for, interest in, or liability whatsoever with respect to: (i) any act, omission, or

determination by Class Counsel, or the Notice and Claims Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment, or distribution of the Escrow Account or Settlement Fund; (iii) the allocation of the Settlement Fund to Settlement Class Members or the implementation, administration, or interpretation thereof; (iv) the determination, administration, calculations, or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in value of, the Settlement Fund; or (vi) the payment or withholding of any taxes, tax expenses, or costs incurred in connection with the taxation of the Settlement Fund or the filing of any federal, state, or local returns.

**D.** All taxes and tax expenses associated with the Settlement Fund shall be paid by the Notice and Claims Administrator as Notice and Claim Administration Expenses. Any tax returns prepared for the Settlement Fund shall be consistent with this Settlement Agreement and in all events shall reflect that all taxes on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein. The Released Parties shall have no responsibility or liability for the acts or omissions of the Notice and Claims Administrator or its agents with respect to the preparation of taxes and/or payment of taxes or tax expenses.

## **VIII. SERVICE AWARDS AND CLASS COUNSELS' ATTORNEYS FEES**

**A. Service Awards:** Atkins Nutritionals agrees not to object to or oppose a request for Service Awards to the named Plaintiffs in the following amounts: \$10,000 each for Plaintiffs Smith and Fernandez; \$5,000 to Plaintiff Colella; and \$3,000 each for Joseph Timmerman, Kelly Styles Longo, Sandra Styles-Hovarth, Johana Garcia, and Sharon Marie Betsill.

**B. Fee Awards:**

**1. Total Settlement Value:** For purposes of the Fee Application and Fee Award, the Parties agree that the Total Settlement Value is six million eight-hundred thousand dollars (\$6,800,000), which is the sum of the value of the Injunctive Relief (which the Parties have valued at not less

than three million dollars (\$3,000,000)) and the Monetary Relief of three million eight-hundred thousand dollars (\$3,800,000). Atkins Nutritionals will submit, as required by the Court, declarations and/or other necessary evidence concerning the Injunctive Relief, including the costs of reformulating the Subject Products described above in Paragraph III.B of this Settlement Agreement. The parties recognize that the total value of this Settlement to the Settlement Class may exceed \$6,800,000, given the Injunctive Relief. The parties agree, however, that the Total Settlement Value for purposes of the Fee Application and Fee Award is exactly \$6,800,000.

2. Atkins Nutritionals agrees not to object to or oppose a reasonable application by Plaintiffs' Counsel to the Court for a Fee Award, provided that the Fee Application does not exceed thirty-percent (30%) of the Total Settlement Value.

a. The Notice and Claims Administrator will pay any such Fee Award, which shall be deemed to include any and all Rule 54 costs and all other expenses incurred in connection with the Actions, within thirty (30) days after the Effective Date.

b. Plaintiffs and Class Counsel agree that their only recourse to recover payment of any attorneys' fees, costs and expenses (including but not limited to under Rule 54) incurred in connection with the Actions and/or this Settlement shall be through this provision of the Settlement Agreement.

c. Atkins Nutritionals shall not have any liability or responsibility for any Fee Award in excess of the amount stated in this paragraph.

**C. Court Disapproval:** In the event that the Court disapproves of or awards any amount less than the amount sought by Class Counsel for fees, costs and expenses, or by any Plaintiff for any Service Award, this Settlement Agreement shall be unaffected and fully

enforceable, such disapproval(s) or reduction(s) shall have no effect on any other provision, and Atkins Nutritionals shall have no other liability to Class Counsel or to Plaintiffs for any fees, costs, expenses, or other obligations.

**IX. CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS  
SOLELY FOR PURPOSES OF SETTLEMENT**

A. For purposes of this Settlement only, the Parties agree to seek preliminary certification, pursuant to Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3), of the Settlement Class, on a nationwide basis, and in connection therewith, also seek to add Plaintiffs Cheryl Fernandez, Joseph Colella, Joseph Timmerman, Kelly Styles Longo, Sandra Styles-Hovarth, Johana Garcia, and Sharon Marie Betsill as named plaintiffs and/or Settlement Class representatives in the *Smith* Action. The Parties further agree that the Court should make preliminary findings and enter a Preliminary Approval Order granting preliminary certification of the Settlement Class, subject to final findings and ratification in the Final Order and Final Judgment, and appointing Plaintiffs as the representatives of the Settlement Class and Plaintiffs' Counsel as Class Counsel for the Settlement Class.

B. Atkins Nutritionals does not consent to the certification of the Settlement Class for any purpose other than to effectuate this Settlement, and denies that any of the putative classes meet the requirements for certification as a class action under federal, Missouri, California, New York, or any other law, or that the evidence is sufficient to support a finding of liability on an individual or class wide basis, other than under Federal Rule of Civil Procedure 23(e). Any statements that Atkins Nutritionals makes in support of this Settlement, including in support of certification of a Settlement Class, shall not be cited or relied on by Plaintiffs' Counsel in any further proceedings if this Settlement is not approved for any reason. Atkins Nutritionals also does not consent to the appointment of Plaintiffs as class representatives other than to effectuate this Settlement and does not admit that any Plaintiffs would be a proper class representative in the Actions or in any other action for any purpose other than this Settlement. Atkins Nutritionals' agreement to conditional certification of the Settlement Class does not constitute an admission of wrongdoing, fault, liability, or damage of any kind to Plaintiffs, any Settlement Class Members, or any members of any putative class in any of the Actions or that

any of the Actions, any claims that have or could have been asserted in the Actions, or any similar claims could have been certified for resolution on a class-wide basis under applicable laws and standards, including but not limited to Federal Rule of Civil Procedure 23.

**C.** If this Settlement Agreement is terminated pursuant to its terms, disapproved by any court, and/or not consummated for any reason, or the Effective Date for any reason does not occur, the Parties shall jointly request that any order certifying the Settlement Class, and all preliminary and/or final findings regarding that certification order shall be disregarded and not citable as evidence or precedent (including but not limited to for purposes of certifying a class) and that the Actions may proceed as though a Settlement Class had never been certified and such findings had never been made.

**D.** No agreements, documents, or statements made by or entered into by any Party in connection with the Settlement may be used by Plaintiffs, Class Counsel, any person in the putative Settlement Class, or any other person to establish liability, any defense and/or any of the elements of class certification, whether in the actions or any other proceedings.

#### **X. MODIFICATION OR TERMINATION OF SETTLEMENT AGREEMENT**

**A.** The terms and provisions of this Agreement may be amended, modified, or expanded by written agreement of the Parties and approval of the Court; provided, however, that after entry of the Preliminary Approval Order and Notice to the Settlement Class, the Parties may not effect such amendments, modifications, or expansions of this Settlement Agreement and its implementing documents without further notice to the Settlement Class or approval by the Court unless such changes are consistent with the Court's Preliminary Approval Order and do not materially alter, reduce, or limit the rights of Settlement Class Members under this Settlement Agreement.

**B.** The time periods, dates, and/or deadlines specified in this Settlement Agreement may be modified by written agreement of the Parties prior to the motion for Preliminary Approval or after the Motion for Preliminary Approval with notice to and approval by the Court, or by the Court; provided however, that the time periods specified in the Injunctive Relief Paragraph of this Agreement are material terms of this Agreement and, if modified, would

trigger the termination provisions of Section IX Paragraph D. Such a modification to a time period, date, or deadline specified in this Agreement may be effected without notice to Settlement Class Members, unless such a modification is to a time period, date, or deadline stated in the Notice, Claim Form, Request for Exclusion, or any other communication made to Settlement Class Members as part of the approved Notice Program. The Parties agree to consent to any request for any reasonable extension of time necessary to carry out any of the provisions of this Settlement Agreement.

C. If any precondition necessary to trigger the Effective Date is not met, including but not limited to the entry of the Preliminary Approval Order, Final Order, Final Judgment or Final Approval, this Settlement Agreement shall be cancelled and terminated (unless Atkins Nutritionals and Plaintiffs agree in writing otherwise).

D. Either Party may terminate this Settlement Agreement by providing written notice to the other Party and the Court within seven (7) days of the occurrence of any of the following: (a) any court denies preliminary or final approval of this Settlement Agreement or issues an order that materially changes this Settlement Agreement; (b) the Final Order and Final Judgment is reversed or materially modified by a reviewing court; or (c) more than one-thousand (1,000) of the Settlement Class Members exclude themselves from the Settlement. The Parties agree that any award by a court of less than the fees and expenses sought by Plaintiffs' Counsel or less than the Service Awards specified above shall not be grounds to terminate this Settlement Agreement. The Parties may agree to waive these triggering events and continue to abide by the terms of this Settlement Agreement.

E. In the event that this Settlement Agreement is not approved by the Court, is cancelled or terminated, or fails to become effective in accordance with its terms, the Parties shall be restored to their respective pre-Settlement positions, and this Settlement Agreement shall be null and void, have no further force and effect, and not be offered in evidence or used in any litigation, arbitration, or other proceeding for any purpose, including to establish the existence, certification, or maintenance of any purported or proposed class or to prove or establish any damages or other relief that are, were, or could have been sought in the Actions, or to prove or establish Atkins Nutritionals' liability to any Plaintiffs, Settlement Class Members, or any other

person. In such an event, this Settlement Agreement and all negotiations, proceedings, documents prepared, communications, and statements made in connection with this Settlement Agreement shall be without prejudice to the Parties and shall not be deemed or construed an admission by any party of any fact, matter, or proposition of law.

F. In the event that this Settlement Agreement is not approved by the Court, is cancelled or terminated, or fails to become effective in accordance with its terms, no Party shall have any obligations under this Agreement, including but not limited to the Injunctive Relief, Monetary Relief, Fee Award, or Service Awards described above, and no Party may pursue a claim in law or equity for restitution, quantum merit, reimbursement, or any other similar claim based on this Settlement Agreement.

G. Preliminary and Final Approval of this Settlement Agreement by the Court is a material condition to this Settlement Agreement and may not be waived other than expressly in writing.

H. The full value of the Monetary Relief, less the costs of mediation and the reasonable expenses actually incurred by the Notice and Claims Administrator, shall be returned to Atkins Nutritionals within ten (10) days after any binding decision disapproving the Settlement or any other action taken by a Party to cancel or terminate the Settlement.

## **XI. ADDITIONAL TERMS**

A. **Recitals and Definitions:** The above Recitals and Definitions are expressly incorporated into the Settlement Agreement and shall constitute a part of the consideration for this Settlement Agreement.

B. **Publicity and Non-Disparagement:** Except in connection with a motion for approval of this Settlement Agreement filed in the *Smith* Action, the dissemination of Notice to the Settlement Class, the dismissals of the *Fernandez* Action and the *Colella* Action, or as otherwise expressly provided for in this Settlement Agreement, Plaintiffs and Plaintiffs' Counsel will not make any public statements disparaging Atkins Nutritionals, Atkins Nutritionals' Counsel, Atkins Nutritionals' products (including without limitation the Subject Products),



product packaging, labeling, advertisements, marketing, or any other aspect of Atkins Nutritionals' business, The Simply Good Foods Company or any aspect of its business, or the Settlement Agreement in the media, through any public statements, online postings, interviews, or publications, or otherwise, and will not issue any press releases, give any interviews, post on any online media, including but not limited to websites or social media, or publish, assist, or facilitate the publication of any articles, or otherwise market or promote the settlement of the Actions or this Settlement Agreement, except as expressly allowed under this Settlement Agreement or the Notice Plan or with the prior written approval of Atkins Nutritionals. Atkins Nutritionals will not disparage Plaintiffs, Plaintiffs' Counsel, or the Settlement Agreement in the media, through any public statements, online postings, interviews, or publications, or otherwise. The Parties agree that this non-disparagement obligation is a material term of this Settlement Agreement and that the non-breaching party shall be entitled to pursue all remedies and damages available in a court of competent jurisdiction, including but not limited to injunctive relief. The Parties stipulate that such a material breach would cause irreparable harm for which no adequate remedy at law exists.

**C. Time for Compliance:** If the date for performance of any act required by or under this Settlement Agreement falls on a Saturday, Sunday, or Court holiday, that act may be performed on the next business day with the same effect as if it had been performed on the day or within the period of time specified by or under this Settlement Agreement.

**D. Agreement Jointly Prepared:** This Settlement Agreement has been negotiated among and drafted jointly by Plaintiffs' Counsel and Defense Counsel. Neither Plaintiffs, Plaintiffs' Counsel, Settlement Class Members, Defendant, nor Defendant's Counsel shall be deemed to be the drafter of this Settlement Agreement or of any particular provision, nor shall any of them argue that any particular provision should be construed against a drafter or otherwise resort to the *contra proferentem* canon of construction. Accordingly, this Settlement Agreement shall not be construed in favor of or against one Party as the drafter, and neither statutory nor common law principles of construing ambiguities against the drafter shall have application.



**E. Separate and Divisible Terms:** In the event any one of the provisions contained in this Settlement Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions if the Parties mutually agree in writing to proceed as if such invalid, illegal, or unenforceable provision had not been included in this Settlement Agreement.

**F. No Implied Waiver:** No waiver of any breach of any term or provision of this Settlement Agreement shall be construed to be, or shall be, a waiver of any other breach of any term or provision of this Settlement Agreement.

**G. Governing Law:** This Agreement shall be deemed to have been executed and delivered within the State of Missouri, and the rights and obligations of the Parties shall be construed and enforced in accordance with, and governed by, the laws of the State of Missouri (if not governed by the Federal Rules of Civil Procedure or applicable federal statutes including those cited herein).

**H. Entire Agreement; No Oral Modification:** The terms and conditions set forth in this Settlement Agreement constitute the complete and exclusive statement of the agreement between the Parties relating to the subject matter of this Settlement Agreement, superseding all previous negotiations and understandings, and may not be contradicted by evidence of any prior or contemporaneous agreement. No parol or other evidence may be offered to explain, construe, contradict, or clarify its terms, the intent of the Parties or their counsel, or the circumstances under which this Settlement Agreement was made or executed. In the event any conflict exists between the Term Sheet and this Settlement Agreement, this Settlement Agreement shall control. The Parties further intend that this Settlement Agreement constitutes the complete and exclusive statement of its terms as between the Parties, and that no extrinsic evidence whatsoever may be introduced in any agency or juridical proceeding, if any, involving this Settlement Agreement. Any modification of the Settlement Agreement must be in writing and signed by the Parties. Notwithstanding the foregoing, the Parties hereby incorporate and adopt the Term Sheet as part of this Settlement Agreement.

**I. Advice of Counsel:** All of the Parties warrant and represent that they are agreeing to the terms and conditions of this Settlement Agreement based on the legal advice of their respective attorneys, that they have been afforded the opportunity to discuss the contents of this Settlement Agreement with their attorneys, and that the terms and conditions of this document are fully understood and voluntarily accepted.

**J. Execution in Counterparts:** This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument. The date of execution shall be the latest date on which any Party signs the Settlement Agreement.

**K. Enforcement of this Settlement Agreement:** The Court may retain jurisdiction and will have exclusive jurisdiction to enforce, interpret, and implement this Settlement Agreement and the terms of any order entered pursuant to this Settlement Agreement.

**L. Notices:** Any notices required to be given to a Party under this Settlement Agreement shall be made to the following:

**For Plaintiffs:**

Matthew Dameron, Esq.  
Williams Dirks Dameron, LLC  
1100 Main St. #2600  
Kansas City, MO 64105

**For Defendant:**

Michael Duvall, Esq.  
Dentons US LLP  
601 S. Figueroa Street, Suite 2500  
Los Angeles, CA 90017

And

Timothy Kraft, Esq.  
The Simply Good Foods Company  
1225 17th Street, Suite 1000  
Denver, CO 80202

## **XII. EXECUTION**

The undersigned, being duly authorized, have caused this Settlement Agreement to be executed on the dates shown below and agree that it shall take effect on that date upon which it has been executed by the last of all of the undersigned.

\_\_\_\_\_  
**Amanda Smith, Plaintiff**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Sharon Marie Betsill, Plaintiff**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Joseph Colella, Plaintiff**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Cheryl Fernandez, Plaintiff**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Johana Garcia, Plaintiff**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Sandra Styles-Horvath, Plaintiff**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Kelly Styles Longo, Plaintiff**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Joseph Timmerman, Plaintiff**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Deborah Rosenthal  
Simmons Hanly Conroy LLC**

\_\_\_\_\_  
**Date**

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**Matthew L. Dameron**  
**Williams Dirks Dameron LLP**

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**Date**

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**David A. Straite**  
**Kaplan Fox & Kilsheimer, LLP**

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**Date**

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**Jason “Jay” Barnes**  
**Simons Hanly Conroy LLC**

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**Date**

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**Randall Barnes**  
**Barnes & Associates**

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**Date**

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**Timothy Kraft**  
**Atkins Nutritionals, Inc.**

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**Date**

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**Michael Duvall**  
**Dentons US LLP**

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**Date**

## **XII. EXECUTION**

The undersigned, being duly authorized, have caused this Settlement Agreement to be executed on the dates shown below and agree that it shall take effect on that date upon which it has been executed by the last of all of the undersigned.

  
\_\_\_\_\_  
**Amanda Smith, Plaintiff**

10/3/19  
\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Sharon Marie Betsill, Plaintiff**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Joseph Colella, Plaintiff**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Cheryl Fernandez, Plaintiff**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Johana Garcia, Plaintiff**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Sandra Styles-Horvath, Plaintiff**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Kelly Styles Longo, Plaintiff**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Joseph Timmerman, Plaintiff**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Deborah Rosenthal  
Simmons Hanly Conroy LLC**

\_\_\_\_\_  
**Date**

## **XII. EXECUTION**

The undersigned, being duly authorized, have caused this Settlement Agreement to be executed on the dates shown below and agree that it shall take effect on that date upon which it has been executed by the last of all of the undersigned.

\_\_\_\_\_  
Amanda Smith, Plaintiff

\_\_\_\_\_  
Date

  
Sharon Marie Betsill, Plaintiff

\_\_\_\_\_  
10-24-19  
Date

\_\_\_\_\_  
Joseph Colella, Plaintiff

\_\_\_\_\_  
Date

\_\_\_\_\_  
Cheryl Fernandez, Plaintiff

\_\_\_\_\_  
Date

\_\_\_\_\_  
Johana Garcia, Plaintiff

\_\_\_\_\_  
Date

\_\_\_\_\_  
Sandra Styles-Horvath, Plaintiff

\_\_\_\_\_  
Date

\_\_\_\_\_  
Kelly Styles Longo, Plaintiff

\_\_\_\_\_  
Date

\_\_\_\_\_  
Joseph Timmerman, Plaintiff

\_\_\_\_\_  
Date

\_\_\_\_\_  
Deborah Rosenthal  
Simmons Hanly Conroy LLC

\_\_\_\_\_  
Date

## **XII. EXECUTION**

The undersigned, being duly authorized, have caused this Settlement Agreement to be executed on the dates shown below and agree that it shall take effect on that date upon which it has been executed by the last of all of the undersigned.

\_\_\_\_\_  
**Amanda Smith, Plaintiff**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Sharon Marie Betsill, Plaintiff**

\_\_\_\_\_  
**Date**

  
\_\_\_\_\_  
**Joseph Colabella, Plaintiff**

\_\_\_\_\_  
**10-16-2019**  
**Date**

\_\_\_\_\_  
**Cheryl Fernandez, Plaintiff**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Johana Garcia, Plaintiff**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Sandra Styles-Horvath, Plaintiff**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Kelly Styles Longo, Plaintiff**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Joseph Timmerman, Plaintiff**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Deborah Rosenthal**  
**Simmons Hanly Conroy LLC**

\_\_\_\_\_  
**Date**

The undersigned, being duly authorized, have caused this Settlement Agreement to be executed on the dates shown below and agree that it shall take effect on that date upon which it has been executed by the last of all of the undersigned.

\_\_\_\_\_  
Amanda Smith, Plaintiff

\_\_\_\_\_  
Date

\_\_\_\_\_  
Sharon Marie Betsill, Plaintiff

\_\_\_\_\_  
Date

\_\_\_\_\_  
Joseph Colella, Plaintiff

\_\_\_\_\_  
Date

Cheryl Fernandez  
Cheryl Fernandez, Plaintiff

10-5-19  
Date

\_\_\_\_\_  
Johana Garcia, Plaintiff

\_\_\_\_\_  
Date

\_\_\_\_\_  
Sandra Styles-Horvath, Plaintiff

\_\_\_\_\_  
Date

\_\_\_\_\_  
Kelly Styles Longo, Plaintiff

\_\_\_\_\_  
Date

\_\_\_\_\_  
Joseph Timmerman, Plaintiff

\_\_\_\_\_  
Date

\_\_\_\_\_  
Deborah Rosenthal  
Simmons Hanly Conroy LLC

\_\_\_\_\_  
Date



## XII. EXECUTION

The undersigned, being duly authorized, have caused this Settlement Agreement to be executed on the dates shown below and agree that it shall take effect on that date upon which it has been executed by the last of all of the undersigned.

\_\_\_\_\_  
Amanda Smith, Plaintiff

\_\_\_\_\_  
Date

\_\_\_\_\_  
Sharon Marie Betsill, Plaintiff


\_\_\_\_\_  
Date

\_\_\_\_\_  
Joseph Colella, Plaintiff

\_\_\_\_\_  
Date

\_\_\_\_\_  
Cheryl Fernandez, Plaintiff

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Johana Garcia, Plaintiff  
Perez

\_\_\_\_\_  
10/11/19  
Date

\_\_\_\_\_  
Sandra Styles-Horvath, Plaintiff

\_\_\_\_\_  
Date

\_\_\_\_\_  
Kelly Styles Longo, Plaintiff

\_\_\_\_\_  
Date

\_\_\_\_\_  
Joseph Timmerman, Plaintiff

\_\_\_\_\_  
Date

\_\_\_\_\_  
Deborah Rosenthal  
Simmons Hanly Conroy LLC

\_\_\_\_\_  
Date

## **XII. EXECUTION**

The undersigned, being duly authorized, have caused this Settlement Agreement to be executed on the dates shown below and agree that it shall take effect on that date upon which it has been executed by the last of all of the undersigned.

Amanda Smith, Plaintiff

Date

Sharon Marie Betsill, Plaintiff

Date

Joseph Colella, Plaintiff

Date

Cheryl Fernandez, Plaintiff

Date

Johana Garcia, Plaintiff

Date

 Sandra Styles-Horyath, Plaintiff

10/29/2019  
Date

Kelly Styles Longo, Plaintiff

Date

Joseph Timmerman, Plaintiff

Date

Deborah Rosenthal  
Simmons Hanly Conroy LLC

Date

## **XII. EXECUTION**

The undersigned, being duly authorized, have caused this Settlement Agreement to be executed on the dates shown below and agree that it shall take effect on that date upon which it has been executed by the last of all of the undersigned.

Amanda Smith, Plaintiff

Date

Sharon Marie Betsill, Plaintiff

Date

Joseph Colella, Plaintiff

Date

Cheryl Fernandez, Plaintiff

Date

Johana Garcia, Plaintiff

Date

Sandra Styles-Horvath, Plaintiff

Date

  
Kelly Styles Longo, Plaintiff

10/17/19  
Date

Joseph Timmerman, Plaintiff

Date

Deborah Rosenthal  
Simmons Hanly Conroy LLC

Date

## **XII. EXECUTION**

The undersigned, being duly authorized, have caused this Settlement Agreement to be executed on the dates shown below and agree that it shall take effect on that date upon which it has been executed by the last of all of the undersigned.

\_\_\_\_\_  
**Amanda Smith, Plaintiff**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Sharon Marie Betsill, Plaintiff**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Joseph Colella, Plaintiff**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Cheryl Fernandez, Plaintiff**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Johana Garcia, Plaintiff**

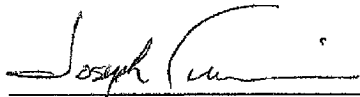
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**Date**

\_\_\_\_\_  
**Sandra Styles-Horvath, Plaintiff**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Kelly Styles Longo, Plaintiff**

\_\_\_\_\_  
**Date**



\_\_\_\_\_  
**Joseph Timmerman, Plaintiff**

\_\_\_\_\_  
**Date**

16 / 14 / 2019

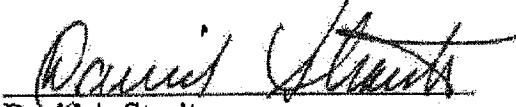
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**Deborah Rosenthal  
Simmons Hanly Conroy LLC**

\_\_\_\_\_  
**Date**



Matthew L. Dameron  
Williams Dirks Dameron LLP

30 Oct. 2019  
Date



David A. Straite  
Kaplan Fox & Kilsheimer, LLP

10-14-19  
Date

\_\_\_\_\_  
Jason "Jay" Barnes  
Simons Hanly Conroy LLC

\_\_\_\_\_  
Date

\_\_\_\_\_  
Randall Barnes  
Barnes & Associates

\_\_\_\_\_  
Date

\_\_\_\_\_  
Timothy Kraft  
Atkins Nutritionals, Inc.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Michael Duvall  
Dentons US LLP

\_\_\_\_\_  
Date

\_\_\_\_\_  
**Matthew L. Dameron**  
**Williams Dirks Dameron LLP**

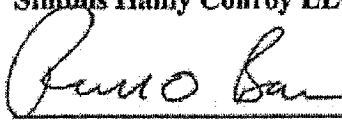
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**Date**

\_\_\_\_\_  
**David A. Straite**  
**Kaplan Fox & Kilsheimer, LLP**

\_\_\_\_\_  
**Date**

  
\_\_\_\_\_  
**Jason "Jay" Barnes**  
**Simons Hanly Conroy LLC**

\_\_\_\_\_  
**Oct 4, 2019**  
**Date**

  
\_\_\_\_\_  
**Randall Barnes**  
**Barnes & Associates**

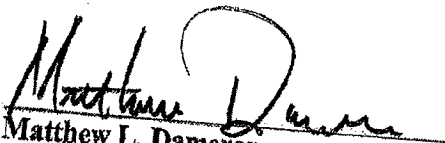
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**10/4/19**  
**Date**

\_\_\_\_\_  
**Timothy Kraft**  
**Atkins Nutritionals, Inc.**

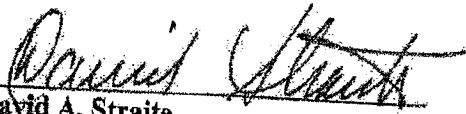
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**Date**

\_\_\_\_\_  
**Michael Duvall**  
**Dentons US LLP**

\_\_\_\_\_  
**Date**

  
Matthew L. Dameron  
Williams Dirks Dameron LLP

30 Oct. 2019  
Date

  
David A. Straite  
Kaplan Fox & Kilsheimer, LLP

10-14-19  
Date

Jason "Jay" Barnes  
Simons Hanly Conroy LLC

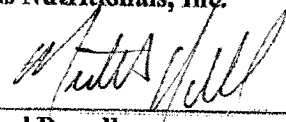
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Date

Randall Barnes  
Barnes & Associates

\_\_\_\_\_  
Date

Timothy Kraft  
Atkins Nutritionals, Inc.

\_\_\_\_\_  
Date

  
Michael Duvall  
Dentons US LLP

11-3-19  
Date

## **XII. EXECUTION**

The undersigned, being duly authorized, have caused this Settlement Agreement to be executed on the dates shown below and agree that it shall take effect on that date upon which it has been executed by the last of all of the undersigned.

  
Amanda Smith, Plaintiff

10/3/19  
Date

Sharon Marie Betsill, Plaintiff

Date

Joseph Colella, Plaintiff

Date

Cheryl Fernandez, Plaintiff

Date

Johana Garcia, Plaintiff

Date

Sandra Styles-Horvath, Plaintiff

Date

Kelly Styles Longo, Plaintiff

Date

Joseph Timmerman, Plaintiff

Date

  
Deborah Rosenthal  
Shimmons Hauly Conroy LLC

10/31/19  
Date

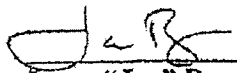


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Matthew L. Dameron  
Williams Dirks Dameron LLP

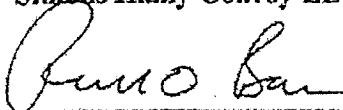
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David A. Straite  
Kaplan Fox & Kilsheimer, LLP

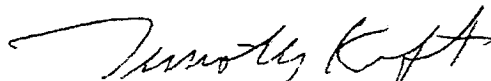
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\_\_\_\_\_  
Jason "Jay" Barnes  
Simons Hanly Conroy LLC

\_\_\_\_\_  
Oct 4, 2019  
Date

  
\_\_\_\_\_  
Randall Barnes  
Barnes & Associates

\_\_\_\_\_  
10/4/19  
Date

  
\_\_\_\_\_  
Timothy Kraft  
Atkins Nutritionals, Inc.

\_\_\_\_\_  
11/3/19  
Date

\_\_\_\_\_  
Michael Duvall  
Dentons US LLP

\_\_\_\_\_  
Date

# EXHIBIT A

### ***Injunctive Relief for Non-Maltitol Products***

- Atkins has discontinued using maltitol in twelve of its products and has reformulated these products. Atkins has *never* used maltitol in nine other products. Atkins has discontinued four products that contained maltitol.
- For these products, Atkins will agree to injunctive relief preventing the company from introducing or re-introducing maltitol into the products for no less than two years.
- Atkins will submit declarations and other necessary evidence concerning its re-formulation of these products, including the significant cost of that re-formulation.

### ***Injunctive Relief for Maltitol Products***

- Atkins continues to use maltitol in five other products at a rate of 10g or more in each product and in eight other products that use less than 10g of maltitol.
- Atkins will endeavor in good faith to re-formulate two maltitol products, the Caramel Nut Roll Snack Bar and the Caramel Chocolate Peanut Nougat Snack Bar, to exclude the use of maltitol in the future within two years from the date of preliminary court approval of the settlement.
- Atkins will discontinue four additional maltitol products (in addition to the four already discontinued), the Chocolate Hazelnut Snack, Sweet and Salty Trail Mix, Coconut Almond Delight, and Cashew Trail Mix, within two years from the date of preliminary court approval of the settlement.
- For these products, Atkins will agree to injunctive relief preventing the company from re-introducing maltitol into the products or re-introducing products with maltitol for two years. For such re-formulated and discontinued products, Atkins will be permitted to continue to distribute and sell any products currently in the manufacturing, distribution or sale process or chain.
- Atkins will, within one year of preliminary approval of settlement, remove from all labeling of its products currently containing sugar alcohols or polyols the statement that sugar alcohols minimally impact blood sugar. For such relabeled products, Atkins will be permitted to continue to distribute and sell any products currently in the manufacturing, distribution or sale process or chain.

- Atkins will retain the right to use the “Net Carbs” marketing term, and may continue to calculate “Net Carbs” in the same manner.
- The terms of any new labels will be incorporated into any final approval by the Court, and Atkins will agree to not re-introduce the above “minimally impact” statement on its product labels for two years. Atkins shall otherwise be permitted to change its product labels, including as to any graphics or other statements or explanations.
- Atkins will submit declarations and other necessary evidence concerning its re-formulation and re-labeling of these products substantiating the significant cost of the relabeling and reformulation processes.

### ***Cash Settlement Fund***

- Atkins will create a cash settlement fund of \$3,800,000.
- Consumers who purchased products with 10g or more of maltitol may file a claim against the cash settlement fund. All claims shall be submitted under penalty of perjury or by affidavit. Each consumer who also provides proof of purchase in the form of a receipt or similar evidence will be entitled to receive an amount equal to 25% of the average national purchase price for each product for which proof of purchase is provided, without any cap on the total reimbursement per consumer (but subject to a pro rata reduction if the total amount of the cash fund is exceeded by administration costs, notice costs, plaintiffs’ attorney fees, incentive awards, and claims). For purchases evidenced only by an affidavit or under penalty of perjury attesting to purchase(s), consumers will be entitled to an amount equal to 10% of the average national purchase price of each product purchased, with a cap of \$100 total per consumer (also subject to a pro rata reduction).
- The purchase period is 2013 to the present for Missouri, New York and California and from 2014 to the present for purchasers in any other state or territory.
- All claims are subject to a pro rata reduction if the total amount of the cash fund is exceeded by administration costs, notice costs, plaintiffs’ attorney fees, incentive awards, mediation fees, and claims.
- Atkins agrees not to object to a request for class representative incentive awards of \$10,000 each for Amanda Smith and Cheryl Fernandez, \$5,000 for Joseph Colella, and \$3,000 for the remaining plaintiffs.
- Costs of administration and notice, plaintiffs’ attorney fees, costs, and expenses, incentive awards, and mediation fees shall all be paid out of and deducted from the cash fund.

- The parties will work in good faith to identify and retain an experienced third-party class action administrator to handle notice and the administration of claims. The class notice program may use print and online media including a settlement website, but not use the Defendant's website or any email distribution to its online community members or point-of-sale placards or similar notifications.
- Subject to a possible *cy pres* award (see below), any remaining monies in the fund at the end of the claims period shall revert to Atkins.
- If consumer claims on the fund do not meet or exceed \$500,000 in total value, then Atkins agrees to pay an amount equal to \$500,000 minus the amount of actual consumer claims (or, if lesser, the amount remaining in the cash fund after deduction of claims, plaintiffs' counsel's fees and expenses, class administration and notice, incentive awards, and mediation fees) in the form of *cy pres* to the American Diabetes Association.

#### ***Plaintiffs' Attorneys' Fees, Costs, and Expenses***

- Atkins agrees not to object to a reasonable fee application for plaintiffs' attorneys' fees, costs, and expenses, to be paid out of the cash settlement fund; the request shall not exceed 30% of the below total settlement value.
- If the court awards plaintiffs' counsel attorneys' fees and expenses in an amount different than that permitted by this provision, Atkins shall not be responsible for any remaining or additional fees or expenses, and the settlement agreement shall be otherwise enforceable.

#### ***Total Settlement Value***

- For the purpose of the above fee provision, the total settlement value shall be the sum of (1) the monetary value associated with the injunctive relief, which the parties agree is \$3,000,000 (including the value of the injunctive relief to the settlement class and the costs of re-formulation, relabeling, and discontinuance undertaken by Atkins), and (2) the gross cash settlement fund (\$3,800,000).

#### ***Other Provisions***

- The parties agree to process the settlement through the *Smith* matter pending in the Western District of Missouri. The parties agree to stay all other proceedings during the approval period and then, upon final approval, dismiss the other actions with prejudice.


- Full release, on behalf of certified nationwide settlement class of purchasers of defendant's products containing sugar alcohols or polyols (like glycerin), of any claims relating to the labeling or advertising of those products including but not limited to any statements on the products' packaging, online, or in advertising materials and any claims that have been or could have been asserted in any of plaintiffs' counsel's lawsuits. Settlement class periods from 2013 to present for Missouri, New York, and California, and from 2014 to present for all other states and territories. Representation by plaintiffs' counsel of no knowledge of additional, existing potential plaintiffs.
- Plaintiffs will not advertise or share settlement with media or others who are not necessary to effectuate the terms of the settlement itself. Plaintiffs agree not to disparage Atkins.
- The parties agree to work cooperatively to implement the settlement, including but not limited to in connection with any motions for preliminary and final approval and in jointly agreeing to the form and content of class notice.
- Counsel will prepare complete settlement documents more formally outlining the terms of this agreement including other terms as to be agreed by the parties in order to complete the settlement agreement.
- These terms are conditioned upon final court approval and may not be enforced absent such approval.

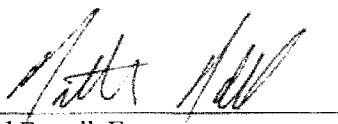
**ADDENDUM  
TO  
STIPULATION OF CLASS ACTION SETTLEMENT**

Undersigned counsel for the Parties to the Stipulation of Class Action Settlement (the "Settlement Agreement") dated November 5, 2019, hereby acknowledge that the executed version of the Settlement Agreement contains a scrivener's error in nomenclature and hereby correct the same by this Addendum. Specifically, the executed version of the Settlement Agreement uses the phrase "10 Grams or More of Maltitol Products" as a defined term on Page 8, Paragraph U of the Settlement Agreement (the "Scrivener's Error"). The Scrivener's Error instead should read "More Than 10 Grams of Maltitol Products" (the "Corrected Phrase"). Undersigned counsel acknowledge and agree that the Scrivener's Error was a technical mistake and that the substitution of the Corrected Phrase constitutes no substantive change to the Settlement Agreement.

Accordingly, undersigned counsel **STIPULATE AND AGREE** that the Corrected Phrase replaces the Scrivener's Error in all instances where the Scrivener's Error was used in the Settlement Agreement as of the date this addendum is executed by undersigned counsel. Further, undersigned counsel acknowledge and document by this Addendum that concurrently with the execution of this Addendum, they have substituted the Corrected Phrase for the Scrivener's Error in all instances where the Scrivener's Error was used in the Settlement Agreement.

Dated: November 5, 2019

  
Matthew L. Dameron, Esq.  
Williams Dirks Dameron LLP  
Counsel for Plaintiffs

  
Michael Duvall, Esq.  
Dentons US LLP  
Counsel for Defendant