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

9 MIGUEL RODRIGUEZ, on behalf of himself,
10 all others similarly situated, and the general
11 public,

12 Plaintiff,

13 v.

14 BUMBLE BEE FOODS, LLC,

15 Defendant.
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Case No. 17-cv-2447-MMA-WVG

**CLASS ACTION SETTLEMENT
AGREEMENT**

1 This Class Action Settlement Agreement is made and entered into by and between,
2 on the one hand, plaintiff Miguel Rodriguez, on behalf of himself, all others similarly-
3 situated, and the general public, and on the other hand, defendant Bumble Bee Foods, LLC
4 (“Bumble Bee”), to settle and compromise this action (the “Action”), and settle, resolve,
5 and discharge the Released Claims, as further defined below, according to the terms and
6 conditions herein.

7 RECITALS

8 WHEREAS, Bumble Bee manufactures and sells Premium Select Medium Red
9 Smoked Salmon Fillets in Oil (the “Product” or “Medium Red Smoked Salmon”);

10 WHEREAS, on September 25, 2017, plaintiff sent Bumble Bee, pursuant to Cal.
11 Civ. Code § 1782, a letter asserting that the Product was misleadingly and unlawfully
12 labeled and demanded that Bumble Bee take corrective action;

13 WHEREAS, on December 6, 2017, plaintiff filed an action asserting his claims,
14 including alleged violations of California’s False Advertising Law, the California
15 Consumers Legal Remedies Act, the California Unfair Competition Law, and breach of
16 express and implied warranties;

17 WHEREAS, Bumble Bee denies plaintiff’s allegations;

18 WHEREAS, based upon the discovery taken to date, investigation, and evaluation of
19 the facts and law relating to the matters alleged in the pleadings, and considering the costs,
20 risks, and uncertainties of litigation, as well as all factors bearing on the merits of
21 settlement, the parties have, following an Early Neutral Evaluation Conference before the
22 Honorable William V. Gallo on Thursday, January 4, 2018, agreed to settle the claims
23 asserted in the Action, pursuant to the provisions of this Settlement Agreement; and

24 WHEREAS, Class Counsel understand and acknowledge that Bumble Bee admits no
25 fault or liability, that Bumble Bee expressly denies any fault or liability in connection with
26 plaintiff’s claims and that Bumble Bee has agreed to settle this matter only to avoid the
27 expense, inconvenience, and uncertainty of further litigation.

NOW THEREFORE, subject to the approval of the Court as required by applicable law and rules, the settling parties hereby agree, in consideration of the mutual promises and covenants contained herein, that all Released Claims against all Released Parties shall be settled, compromised, and forever released upon the following terms and conditions.

TERMS & CONDITIONS OF THE SETTLEMENT

1. DEFINITIONS

As used herein, the following terms have the meanings set forth below.

1.1. “Action” means *Rodriguez v. Bumble Bee Foods, LLC*, No. 17-cv-2447-MMA-WVG (S.D. Cal., filed December 6, 2017);

1.2. “Bumble Bee” means defendant Bumble Bee Foods, LLC, a Delaware limited liability company with its principal place of business in San Diego, California.

1.3. “Class” means all persons who, between December 6, 2013 and the date a judgment becomes Final in this Action (the “Class Period”), purchased, for household use, and not for resale or distribution purposes, Bumble Bee’s Medium Red Smoked Salmon.

1.4. “Class Counsel” means the Class Representative’s counsel of record, The Law Office of Jack Fitzgerald, PC, and each of its attorneys.

1.5. “Class Member” means any member of the Class, including the Class Representative.

1.6. “Class Period” means December 6, 2013 through, and including the date a judgment becomes Final in this Action.

1.7. “Class Representative” means plaintiff Miguel Rodriguez.

1.8. “Court” means the United States District Court for the Southern District of California.

1.9. “Defendant” means Bumble Bee, as well as its past, present, and future officers, managers, directors, members, employees, predecessors, affiliates, parents, subsidiaries, partners, distributors, principals, insurers, administrators, agents, servants, successors, trustees, vendors, subcontractors, co-conspirators, buyers, independent

1 contractors, attorneys, representatives, heirs, executors, experts, consultants, and assigns of
2 all of the foregoing persons and entities.

3 1.10. “Defense Counsel” means Bumble Bee’s counsel of record, Patrick S.
4 Thompson, and Donna M. Strain, of Perkins Coie LLP.

5 1.11. “Effective Date” means the first date by which any Judgment entered pursuant
6 to this Settlement Agreement becomes Final.

7 1.12. “Final” means (a) if no appeal from the Judgment is filed, the date of
8 expiration of the time for filing or noticing any appeal from the Judgment; or (b) if an
9 appeal from the Judgment is filed, and the Judgment is affirmed or the appeal dismissed,
10 the date of such affirmance or dismissal; or (c) if a petition for certiorari seeking review of
11 the appellate judgment is filed and denied, the date the petition is denied; or (d) if a petition
12 for writ of certiorari is filed and granted, the date of final affirmance or final dismissal of
13 the review proceeding initiated by the petition for a writ of certiorari.

14 1.13. “Judgment” means the judgment to be entered by the Court pursuant to this
15 Settlement Agreement.

16 1.14. “Product” means the product that is the subject of the Action, namely Bumble
17 Bee’s Premium Select Medium Red Smoked Salmon Fillets in Oil.

18 1.15. “Released Claims” means any and all claims, demands, rights, suits,
19 liabilities, and causes of action, for injunctive relief only, matured or unmatured, at law or
20 in equity, existing under federal or state law, that any Class Member has or may have
21 against the Released Persons arising out of or related in any way to the transactions,
22 occurrences, events, behaviors, conduct, practices, and policies alleged in the Action.

23 1.16. “Released Persons” means Bumble Bee, its parent companies, subsidiary
24 companies, affiliated companies, past, present, and future officers (as of the Effective
25 Date), managers, directors, members, employees, predecessors, affiliates, parents,
26 subsidiaries, joint partners, distributors, principals, insurers, administrators, agents,
27 servants, successors, trustees, vendors, subcontractors, co-conspirators, buyers,
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1 independent contractors, attorneys, representatives, heirs, executors, experts, consultants,
2 and assigns of all of the foregoing persons and entities.

3 1.17. "Released Plaintiff Persons" means Class Representative Miguel Rodriguez,
4 and all his agents, servants, successors, trustees, independent contractors, attorneys,
5 representatives, heirs, executors, experts, and consultants, and all other persons acting by
6 their authority or on their behalf, and all assigns of all of the foregoing persons and entities.

7 1.18. "Revised Packaging" means the packaging for the Product substantially in the
8 form attached hereto as Exhibit 1.

9 1.19. "Settlement" means the agreement, compromise, and resolution set forth and
10 embodied in this Settlement Agreement.

11 1.20. The plural of any defined term includes the singular, and the singular of any
12 defined term includes the plural, as the case may be.

13 **2. BENEFITS OF THE SETTLEMENT**

14 2.1. Class Counsel and Class Representative recognize and acknowledge the
15 expense and length of continued proceedings that would be necessary to prosecute the
16 Action through trial and appeals. Class Counsel has also taken into account the uncertain
17 outcome and risk of any litigation, especially in complex actions such as this, as well as the
18 difficulties and delays inherent in such litigation. Class Counsel is mindful of the inherent
19 problems of proof under and possible defenses to the claims asserted in the Action. Class
20 Counsel believes the Settlement confers substantial benefits upon the Class. Based on their
21 evaluation of all these factors, Class Representative and Class Counsel have determined
22 that the Settlement is in the best interests of the Class.

23 2.2. *Injunctive Relief – Packaging Changes.* Beginning in the second (2nd)
24 quarter of 2018, Bumble Bee shall begin replacing the current Product packaging with the
25 Revised Packaging, provided, however, that Bumble Bee shall be under no obligation to
26 recall existing Product bearing the current packaging, which inventory may be allowed to
27 "sell through."
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1 2.3. ***Attorneys' Fees and Costs & Incentive Award.*** Bumble Bee shall pay to
2 Class Representative any incentive award awarded by the Court, and shall pay to Class
3 Counsel any award of attorneys' fees and costs awarded by the Court. The parties agree
4 that Class Representative and Class Counsel shall seek such awards from the Court in
5 conjunction with their motion for approval of the Settlement, and that Bumble Bee may
6 respond to those requests in any manner it deems fit, including not responding to the
7 requests. The parties agree that, in making such requests, Class Representative and Class
8 Counsel shall be limited to seeking an incentive award, attorneys' fees, and costs of no
9 more than \$85,000 total. The parties agree that, to the extent Bumble Bee responds to the
10 requests, it may not argue that any such awards should be in an amount less than \$30,000.
11 The parties agree that Bumble Bee will pay the amount awarded by the Court for the
12 incentive award, attorneys' fees, and costs, but, notwithstanding the foregoing, Bumble
13 Bee is not responsible for, and has no liability for payment of any total amount in excess of
14 \$85,000.

15 2.4. ***Notice.*** The parties have limited this Settlement Agreement to injunctive
16 relief, and accordingly, Class Members are releasing their claims for injunctive relief only,
17 but not for damages. Accordingly, the parties believe and understand that notice is not
18 required under Rule 23, and intend to ask the Court to waive the notice requirement. If the
19 Court nevertheless requires notice, Bumble Bee agrees to pay the costs thereof.

20 3. **RELEASES**

21 3.1. ***Release of Bumble Bee.*** Upon the Effective Date, each Class Member will be
22 deemed to have, and by operation of the Judgment will have, fully, finally, and forever
23 released, relinquished, and discharged the Released Persons from all Released Claims,
24 meaning any and all claims, demands, rights, suits, liabilities, and causes of action, for
25 injunctive relief only, matured or unmatured, at law or in equity, existing under federal or
26 state law, that any Class Member has or may have against the Released Persons arising out
27 of or related in any way to the transactions, occurrences, events, behaviors, conduct,
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1 practices, and policies alleged in the Action, that have been brought, could have been
2 brought, or are currently pending in any forum in the United States. Class Members
3 expressly do not release claims for damages, or for personal injury.

4 3.2. *Release of Released Plaintiff Persons.* Upon the Effective Date, Bumble Bee
5 will be deemed to have, and by operation of the Judgment will have, fully, finally, and
6 forever released, relinquished, and discharged the Released Plaintiff Persons from all
7 Released Claims, meaning any and all claims, demands, rights, suits, liabilities, and causes
8 of action of every nature and description whatsoever, known or unknown, matured or
9 unmatured, at law or in equity, existing under federal or state law, that Bumble Bee has or
10 may have against the Released Plaintiff Persons arising out of or related in any way to the
11 transactions, occurrences, events, behaviors, conduct, practices, and policies alleged in the
12 Action, and in connection with the conduct of the Action, that have been brought, could
13 have been brought, or are currently pending in any forum in the United States.

14 3.3 The parties confirm that they have been advised of and understand, and
15 knowingly and specifically waive their rights under California Civil Code Section 1542
16 which provides as follows:

17 A general release does not extend to claims which the creditor
18 does not know or suspect to exist in his or her favor at the time
19 of executing the release, which if known by him or her must
20 have materially affected his or her settlement with the debtor.

21 **4. SETTLEMENT PRESENTATION & APPROVAL**

22 4.1. Promptly after execution of this Settlement Agreement, the parties will submit
23 to the Court the Settlement Agreement, together with its exhibits, and will request that the
24 Court waive notice and grant final approval of the proposed Settlement.

25 4.2. Concurrently with the filing of a motion for final approval, Class
26 Representative and Class Counsel will submit an application for an incentive award, and
27 for attorneys' fees and costs, respectively, in a total amount not to exceed \$85,000.

1 4.3. The hearing on these motions shall be set for a mutually-agreeable date to
2 give Bumble Bee sufficient time to respond to the incentive and fee award applications,
3 and for Class Representative and Class Counsel to reply.

4 4.4. If the Court requires notice, the parties will meet and confer to discuss
5 additional procedural steps necessary, and to develop an appropriate notice plan to present
6 to the Court.

7 **5. CONDITIONS FOR EFFECTIVE DATE**

8 5.1. The Effective Date of this Settlement Agreement shall be the date the
9 Judgment has become Final.

10 5.2. If this Settlement Agreement is not given final approval by the Court, the
11 parties will seek in good faith to revise the Settlement Agreement as needed to obtain
12 Court approval. Failing this, the parties will be restored to their respective places in the
13 litigation as of the date the first motion for preliminary approval is filed. In such event, the
14 terms and provisions of this Settlement Agreement will have no further force and effect
15 with respect to the settling parties and will not be used in this Action or in any other
16 proceeding for any purposes, and any Judgment or Order entered by the Court in
17 accordance with the terms of this Settlement Agreement will be treated as vacated.

18 **6. NO ADMISSION OF LIABILITY**

19 6.1. Bumble Bee denies any wrongdoing whatsoever in connection with the
20 Action, and its claims and allegations. Bumble Bee has agreed to this Settlement for the
21 purpose of compromising disputed claims and to avoid the time, expense, and uncertainty
22 of litigation. Nothing contained in this Settlement Agreement shall be treated as an
23 admission of any wrongdoing or liability on the part of Bumble Bee.

24 **7. DISMISSAL**

25 Plaintiff Miguel Rodriguez and Bumble Bee agree to voluntary dismissal of the
26 Action with prejudice as to Plaintiff Miguel Rodriguez's individual claims in a manner
27 consistent with Rule 41(a)(1)(A)(ii), within one week (7 days) of Final Approval.
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1 **8. MISCELLANEOUS**

2 8.1. It is the parties' intent to consummate this Settlement Agreement, and the
3 parties agree to cooperate to the extent reasonably necessary to effectuate and implement
4 all terms and conditions of this Settlement Agreement and to exercise their best efforts to
5 accomplish the foregoing terms and conditions of this Settlement Agreement.

6 8.2. The parties intend the Settlement to be a final and complete resolution of all
7 disputes between them with respect to the Action. The Settlement compromises claims that
8 are contested, and the parties agree that the consideration provided to the Class and other
9 terms of the Settlement were negotiated in good faith and at arms' length by the parties,
10 and reflect a Settlement that was reached voluntarily after consultation with competent
11 legal counsel, and with the assistance of an experienced mediator in the Honorable William
12 V. Gallo.

13 8.3. Exhibits to this Settlement Agreement are material and integral parts hereof
14 and are fully incorporated herein by this reference.

15 8.4. This Settlement Agreement may be amended or modified only by a written
16 instrument signed by or on behalf of all parties or their respective successors-in-interest.

17 8.5. This Settlement Agreement and any exhibits attached hereto constitute the
18 parties' entire agreement and no representations, warranties, or inducements have been
19 made to any party concerning this Settlement Agreement or its exhibits other than the
20 representations, warranties, and covenants memorialized in such documents.

21 8.6. Except as otherwise provided herein and awarded by the Court, the parties
22 will bear their own respective fees and costs.

23 8.7. Class Counsel, on behalf of the Class, are expressly authorized by the Class
24 Representative to take all appropriate action required or permitted to be taken by the Class
25 pursuant to this Settlement Agreement to effectuate its terms, and are expressly authorized
26 to enter into any modifications or amendments to this Agreement on behalf of the Class
27 that Class Counsel deem appropriate.

1 8.8. Each counsel or other person executing this Settlement Agreement or any of
 2 its exhibits on behalf of any party hereby warrants that such person has the full authority to
 3 do so.

4 8.9. This Settlement Agreement may be executed in one or more counterparts. All
 5 executed counterparts and each of them will be deemed to be one and the same instrument.

6 8.10. Upon its execution, this Settlement Agreement will be binding upon, and
 7 inure to the benefit of, the successors and assigns of the settling parties.

8 8.11. The Court will retain jurisdiction with respect to the implementation and
 9 enforcement of the terms of this Settlement Agreement, and all parties hereto submit to the
 10 continuing jurisdiction of the Court for purposes of implementing and enforcing the
 11 Settlement.

12 8.12. None of the settling parties, or their respective counsel, will be deemed the
 13 drafter of this Settlement Agreement or its exhibits for purposes of construing the
 14 provisions thereof. The language in all parts of this Settlement Agreement and its exhibits
 15 will be interpreted according to its fair meaning, and will not be interpreted for or against
 16 any of the settling parties as the drafter thereof.

17 8.13. All notices or mailings required by this Settlement Agreement to be provided
 18 to or approved by Class Counsel and Defense Counsel, shall be provided as follows:

19 Class Counsel

20 Jack Fitzgerald
 21 Law Office of Jack Fitzgerald, PC
 22 3636 4th Ave., Ste. 202
 San Diego, CA 92103

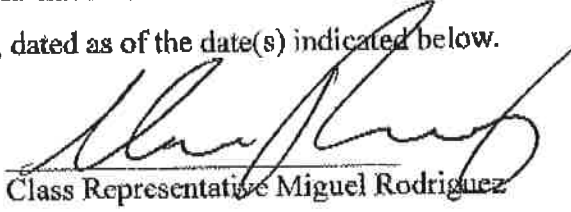
Defense Counsel

Patrick S. Thompson
 Perkins Coie LLP
 505 Howard St., Ste. 1000
 San Francisco, CA 94105

23 8.14. This Settlement Agreement is made and executed in the State of California
 24 and it is agreed that this Settlement Agreement shall be interpreted in accordance with and
 25 governed in all respects by the laws of the State of California.

1 IN WITNESS WHEREOF, the parties have executed and caused this Settlement
2 Agreement to be executed by their attorneys, dated as of the date(s) indicated below.

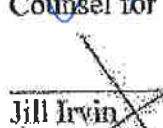
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4 Dated: 1/18/18


Class Representative Miguel Rodriguez


5
6 Dated: 1/18/18


Jack Fitzgerald
Counsel for Plaintiff and the Class

7
8
9 Dated: 1-16-18


Jill Irvin
Senior Vice President, General Counsel
Bumble Bee Foods, LLC
On behalf of Defendant

10
11
12
13 Dated: 17 January 2018


Patrick S. Thompson
Counsel for Defendant Bumble Bee Foods,
LLC