

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement” or “Settlement Agreement”) is effective as of July __, 2019, and is entered into by Plaintiff Ashley Hale, (“Plaintiff”), individually and on behalf of the Settlement Class Members, and by Manna Pro Products, LLC, (“Defendant”). Plaintiff and Defendant are referred to collectively in this Agreement as the “Parties” and each is a “Party”

I. RECITALS

1.01 On January 30, 2018, Plaintiff Hale filed a Complaint in the United States District Court for the Central District of California (the “Court”) entitled *Ashley Hale v. Manna Pro Products, LLC*, Case No. 2:18-cv-00209-KJM-DB (the “Hale Action”). The Complaint in the *Hale Action* alleges that Defendant violated the Unfair and Unlawful Violations of Unfair Competition Law (Cal. Business & Professions Code §§ 17200 et seq.); Fraudulent Violations of Unfair Competition Law (Cal. Business & Professions Code §§ 17200 et seq.); and Violations of the False Advertising Law, Cal. Bus. & Prof. Code § 17500, et seq.

1.02 Defendant denies all material allegations of the Complaint filed in the *Hale Action*, as defined below at Section 2.01.

1.03 The Parties wish to compromise and resolve fully and finally, without admission of liability or adjudication of any issue of fact or law, all of their disputes, including any appeal of the *Hale Action* (collectively, the “Parties’ Disputes”), and have agreed to settle the Parties’ Disputes on the terms set forth in this Agreement, subject to Court approval.

1.04 This Agreement resulted from good faith, arm’s-length settlement negotiations, including one full-day mediation session before Hon. James P. Gray (Ret.). Prior to those sessions, Defendant provided extensive information and hundreds of pages of documents and data to Plaintiffs. The Parties also participated in numerous direct discussions about possible resolution of this litigation. As set forth in Section XV, the Parties will engage in confirmatory discovery as a condition of this settlement.

1.05 Class Counsel conducted a thorough examination and evaluation of the relevant law and facts (including engaging in the discovery described in Section 1.04) to assess the merits

of the claims to be resolved in this settlement and how best to serve the interests of the putative class in the Action. Based on this investigation and the negotiations described above, and under the assumption that the information currently known to Plaintiffs is confirmed through the additional confirmatory discovery to be conducted as described below, Class Counsel have concluded, taking into account the sharply contested issues involved, the risks, uncertainty and cost of further prosecution of this litigation, and the substantial benefits to be received by class members pursuant to this Agreement, that a settlement with Defendant on the terms set forth herein is fair, reasonable, adequate and in the best interests of the Settlement Class Members.

1.06 The Parties understand, acknowledge, and agree that the execution of this Agreement constitutes the settlement and compromise of disputed claims. This Agreement is inadmissible as evidence against any party except to enforce the terms of the Agreement and is not an admission of wrongdoing or liability on the part of any Party to this Agreement. It is the Parties' desire and intention to effect a full, complete and final settlement and resolution of all existing disputes and claims as set forth herein.

1.07 The settlement contemplated by this Agreement is subject to preliminary and final approval by the Court, as set forth herein. This Agreement is intended by the Parties to fully, finally and forever resolve, discharge and settle the Released Claims, upon and subject to the terms and conditions hereof.

II. DEFINITIONS

2.01 "Action" means the *Hale* Action.

2.02 "Agreement" or "Settlement Agreement" means this Settlement Agreement and Release.

2.03. "Approved Claims" means claims that have been timely submitted and approved for payment.

2.04 "CAFA Notice" means the notice required by 28 U.S.C. Section 1715(b).

2.05 "Claims Deadline" means the deadline by which Class Members must submit claims; claims submitted after the Claims Deadline will not be timely and will not qualify for approval pursuant to Section XI. The Claims Deadline shall be set by the Court in the Preliminary Approval Order and shall be consistent with Section 7.01.

2.06 “Claims Administrator” shall mean Simpluris, Inc.

2.07 “Class” or “Class Members” means all individuals in California who purchased one or more units of Select Series Pro Formula Rabbit Food, for which the packaging contained a representation which stated: “Contains No Corn” between January 30, 2014 to May 14, 2019 (the “Class Period”)

Excluded from the Class are any employees of Defendant, its parents, affiliates, or subsidiaries; the Judge or Magistrate Judge to whom the Action is assigned; and, any member of those Judges’ staffs or immediate families.

2.08 “Class Counsel” means the Law Offices of Todd M. Friedman, P.C.

2.09 “Class Period” means between January 30, 2014 to May 14, 2019.

2.10 “Class Products” means Select Series Pro Formula Rabbit Food, for which the packaging contained a representation which stated: “Contains No Corn”, purchased between January 30, 2014 and May 14, 2019.

2.11 “Class Representatives” mean Plaintiff Ashley Hale.

2.12 “Court” shall mean the United States District Court for the Eastern District of California and the U.S. District Judge to which the Action is assigned.

2.13 “Deadline for Class Counsel’s Attorney’s Fees Motion” means the deadline for Class Counsel to file its motion for attorneys’ fees. As set forth in Sections 6.04 and 7.01(H)(i), Class Counsel shall file its motion for attorneys’ fees 14 days prior to the expiration of the Objection Deadline.

2.14 “Effective Date” means the date when the Judgment has become final as provided in Section XIV.

2.15 “Final Approval Hearing” means the hearing held by the Court to determine whether to finally approve the Settlement set forth in this Agreement as fair, reasonable and adequate, sometimes referred to herein as the “Fairness Hearing.”

2.16 “Final Judgment” means the Court’s Order entered in connection with the Final Approval Hearing, substantially in the form attached hereto as **Exhibit A**.

2.18 “Funding Date” means the date which is no later than ten (10) business days after the Effective Date, on which Defendant shall cause a payment to be made to the Claims Administrator in an amount equal to the total amount of Approved Claims received by the

Claims Administrator, multiplied by \$20.00.

2.19 “Notice” means the notices to be provided to Class Members as set forth in Section 9, including, without limitation, the Q&A Notice (sometimes called the “Long Form Notice”) to be posted on the Settlement Website as set forth in Section 9.01, the direct mail notice to certain Class Members as provided for in Section 9.02, and the publication notice provided for in Section 9.03. The forms of the Q&A Notice, the press release, the direct mail notice, and the publication notice are attached hereto as Exhibits B, C, respectively.

2.20 “Objection Deadline” means the deadline for Settlement Class Members to file and serve objections to the settlement pursuant to Section 12.02; objections filed and served after the Objection Deadline will not be timely and will not be considered. The Objection Deadline shall be set by the Court in the Preliminary Approval Order and shall be consistent with Section 7.01.

2.21 “Opt Out Deadline” means the deadline for Class Members to opt out pursuant to Section 12.01; attempts to opt out after the Opt Out Deadline will not be timely and will not be effective. The Opt Out Deadline shall be set by the Court in the Preliminary Approval Order and shall be consistent with Section 7.01.

2.22 “Preliminary Approval Order” means the Court’s Order entered in connection with the Preliminary Approval Hearing, preliminarily approving this Agreement and the settlement, substantially in the form attached as Exhibit D.

2.23 “Q&A Notice” or “Long Form Notice” means the long-form Question & Answer form notice containing questions and answers relating to the terms of the settlement, which will be made available on the Settlement Website as described in Section 9.01, the form of which is attached hereto as Exhibit B.

2.24 “Qualified Class Member” means a Settlement Class Member who submits a claim for monetary relief under Section 5.03 that meets the requirements of Section 10.3 and is approved pursuant to Section 11.01.

2.25 “Released Claims” means those claims released in Section XVI.

2.26 “Released Parties” means:

(a) Defendant and each of its employees, assigns, attorneys, agents, and all of its past, present, and future officers and directors;

(b) All of Defendant's parents, subsidiaries, divisions, affiliates, predecessors, and successors, and each of their respective employees, assigns, attorneys, agents, resellers and past, present and future officers and directors; and

2.27 The "Settlement Class" or "Settlement Class Members" means those persons who are members of the Class, as set forth in the Class definition in Section 2.07 above, and who do not timely and validly request exclusion from the Settlement Class.

2.28 "Settlement Costs" means all costs incurred in the Action by the Class and Class Counsel, including but not limited to expert witness fees, costs of settlement administration and notice, any attorneys' fees awarded to Class Counsel by the Court, any incentive fee awarded to Plaintiffs by the Court, fees of a special master for settlement approval should one be appointed by the Court, and any taxes or tax-related expenses incurred by or in connection with the creation of the Settlement Fund.

2.29 "Settlement Website" means the Internet website operated by the Claims Administrator as described in Section 9.01.

III. BOTH SIDES RECOMMEND APPROVAL OF THE SETTLEMENT

3.01 Defendant's Position on the Conditional Certification of Settlement Class. Defendant denies the merits of Plaintiffs' claims. However, solely for purposes of avoiding the expense and inconvenience of further litigation, Defendant does not oppose and agrees to certification of the Class defined in Section 2.07, for *settlement purposes only*, pursuant to Fed. R. Civ. P. 23(b)(3). Preliminary certification of the Class for settlement purposes shall not be deemed a concession that certification of a litigation class would be appropriate. Moreover, Defendant reserves the right to challenge class certification in further proceedings in the Action or in any other action if the Settlement is not finalized or finally approved. If the Settlement is not finally approved by the Court for any reason whatsoever, then Defendant's agreement to certification of the Class *for settlement purposes only* will be void, and no doctrine of waiver, estoppel or preclusion will be asserted in any proceedings involving Defendant. No agreements made by or entered into by Defendant in connection with the Settlement may be used by Plaintiff, any person in the Class, or any other person to establish any of the elements of class

certification in any litigated certification proceedings, whether in the Action or any other judicial proceeding.

3.02 Plaintiffs' Belief in the Merits of Case. Plaintiffs believe that the claims asserted in the Action has merit and that the evidence developed to date supports those claims. This Settlement shall in no event be construed or deemed to be evidence of or an admission or concession on the part of Plaintiffs that there is any infirmity in the claims asserted by Plaintiffs, or that there is any merit whatsoever to any of the contentions and defenses that Defendant has asserted. If this Settlement is not finally approved by the Court for any reason whatsoever, Plaintiffs shall maintain their right to fully litigate the Action both individually and on behalf of the putative classes seeking the maximum damages allowed pursuant to the law(s) alleged in the operative pleadings, including but not limited to continuing any and all efforts towards class certification.

3.03 Both Parties Recognize the Benefits of Settlement. Both Parties recognize and acknowledge the expense and amount of time that would be required to continue to pursue the Action, as well as the uncertainty, risk and difficulties of proof inherent in prosecuting and/or defending such claims. Both Parties have concluded that it is desirable that the Action and any Released Claims be fully and finally settled and released as set forth in this Settlement. Plaintiffs and Class Counsel believe that the agreement set forth in this Settlement confers substantial benefits upon the Class and is in the best interests of individual Class Members.

IV. CLASS COUNSEL AND CLASS REPRESENTATIVES

4.01 Class Representatives and Class Counsel Appointment. For settlement purposes, and subject to Court approval, the Parties agree to the appointment of Ashley Hale as Class Representatives for the Class. For settlement purposes, and subject to Court approval, the Parties agree to the appointment of Class Counsel for the Settlement Class as follows: The Law Offices of Todd M. Friedman, P.C.

V. SETTLEMENT TERMS AND BENEFITS TO THE SETTLEMENT CLASS

5.01 Total Payment/Amount Paid Per Approved Claim. Defendant shall pay a total sum of \$62,500.00 to be paid on a claims made basis to Class Members, with each Class Member

who makes a claim receiving a pro rata share of the amount, via a claims-made settlement, to resolve the Action and obtain a release of all Released Claims in favor of Defendant and the Released Parties. There shall be no cap on the total number of claims accepted. Defendant will also agree to separately pay Settlement Costs, Administration Costs and reasonable Attorneys' Fees, in addition to the amounts to be paid to Qualified Class Members under Section XI of the Agreement. Consequently, the amount of money that each Qualified Class Member receives will not be affected at all by the payment of Attorney's fees or any Costs.

5.02 Qualifying for Payment. Settlement Class Members shall be entitled to submit a claim for a monetary payment pursuant to the process set forth in Section X. To qualify for a monetary payment, a claim must be timely submitted and must be approved for payment under Section 11.01.

5.03 Distribution of Funds to Authorized Claimants receiving Cash – Settlement Amount. Each Authorized Claimant who makes a timely and valid claim shall receive a one-time distribution payment of a pro rata share of \$62,500.00, by way of a check issued by the Settlement Administrator. The funds represented by the check for the Individual Settlement Amount shall become the property of an individual authorized claimant upon their submission of a valid claim form, even in the event the check is not cashed.

VI. ATTORNEYS' FEES, COSTS AND PAYMENT TO CLASS REPRESENTATIVES

6.01 Attorneys' Fees and Costs. Class Counsel will move the Court for an award of attorneys' fees and expenses to be paid by Defendant, completely separate and apart from the compensation to be paid by Defendant to the class. The Court has made no finding on the issue of Defendant's liability on the merits, and Defendant denies any such liability under any theory. Pursuant to Section XVIII below, this settlement shall not be deemed an admission of liability on the part of Defendant for any purpose. However, for the limited purpose of the Court's consideration of Plaintiff's counsel's application for attorneys' fees and costs, Defendant will agree that that Plaintiffs are the "prevailing parties" under applicable state law, as a result of the class settlement reached herein. Defendant agrees to pay attorneys fees, subject to court approval, in an amount not to exceed \$125,000.00.

If no objection to the settlement is made, the payment of all claims, payment of Claims Administration Expenses, Attorneys' Fees, Attorneys' Expenses, and Service Awards, shall be made by the Claims Administrator to Class Counsel within fourteen (14) days of the final approval order. If an objection to the settlement is made but no appeal is filed, then payment of all claims, payment of Claims Administration Expenses, Attorneys' Fees, Attorneys' Expenses, and Service Awards, shall be made by the Claims Administrator to Class Counsel within sixty (60) days of the final approval order. If an appeal is filed, payment of all claims, payment of Claims Administration Expenses, Attorneys' Fees, Attorneys' Expenses, and Service Awards shall occur within sixty (60) days of the date the judgment is final and no longer subject to appeal.

6.02 Payment to Class Representatives. Plaintiffs/Class Representatives will move the Court for an incentive award to the Class Representatives for the time and effort they have personally invested in the Action. Plaintiff/Class Representative Hale agrees that her request for an incentive award shall not exceed \$7,500. Defendant shall not object to any request by Plaintiffs/Class Representatives for an incentive award that is consistent with this Section. The amount of any incentive award approved by the Court shall be paid, separate from, and in addition to the amounts paid to the Settlement Class. Payment of incentive awards should be made consistent with section 6.01.

6.03 Settlement Independent of Award of Fees, Expenses, and Incentive Payments. The payments of attorneys' fees, expenses, and incentive payments set forth in Sections 6.01 and 6.02 are subject to and dependent upon the Court's approval as fair, reasonable, adequate and in the best interests of Class Members. This settlement is not dependent upon the Court's approving Plaintiffs' requests for such payments or awarding the particular amounts sought by Plaintiffs. In the event the Court approves the settlement but declines to award Class Counsel's fees and expenses or incentive awards in the amounts requested by Class Counsel, the settlement will nonetheless be binding on the Parties and the Settlement Class Members.

6.04 Deadline for Class Counsel's Attorney's Fees Motion. No later than fourteen (14) days prior to the Objection Deadline, as defined herein, Class Counsel will move the Court for an award of attorneys' fees and expenses.

VII. PRELIMINARY APPROVAL

7.01 Order of Preliminary Approval. On _____, Plaintiffs shall move the Court for entry of the Preliminary Approval Order in substantially the form attached as **Exhibit D**. Pursuant to the motion for preliminary approval, the Plaintiff will request that the Court:

- A. Conditionally certify the Class for settlement purposes only;
- B. Conditionally appoint Class Counsel as counsel for the Class for settlement purposes only and conditionally appoint Plaintiffs as the Class Representatives;
- C. Preliminarily approve the settlement and this Agreement as fair, adequate and reasonable, and within the reasonable range of possible final approval;
- D. Approve the form of Notice and find that the notice program set forth herein constitutes the best notice practicable under the circumstances and satisfies due process and Rule 23 of the Federal Rules of Civil Procedure;
- E. Authorize dissemination and publication of the Notice to the Class consistent with the notice program;
- F. Approve the claim form;
- G. Set the date and time for the Final Approval Hearing, which may be continued by the Court from time to time without the necessity of further notice; and
- H. Set appropriate deadlines, including:
 - (i) the deadline for filing Class Counsel's motion for attorneys' fees (14 days prior to the expiration of the Objection Deadline);
 - (ii) the Objection Deadline (90 days after entry of the Preliminary Approval Order);
 - (iii) the Claims Deadline (120 days after entry of the Preliminary Approval Order);
 - (iv) the deadline for Class Counsel to move for entry of the Final Approval Order (150 days after entry of the Preliminary Approval Order); and
 - (v) the Final Approval Hearing (no later than 28 days after Class Counsel has moved for entry of the Final Approval Order, provided, however, that the Final

Approval Hearing shall not occur until at least 28 days after the conclusion of the Claims Deadline); and

I. Enjoining all Class Members from prosecuting separate actions against Defendant asserting any of the claims alleged in the Action.

VIII. ADMINISTRATION AND NOTIFICATION PROCESS

8.01 Third-Party Claims Administrator. The Claims Administrator shall be responsible for all matters relating to the administration of this settlement, as set forth herein. Those responsibilities include, but are not limited to, giving notice, setting up and maintaining the settlement website and toll-free telephone number, fielding inquiries about the settlement, processing claims, acting as a liaison between Class Members and the Parties regarding claims information, approving claims, rejecting any claim form where there is evidence of fraud, directing the mailing of settlement payments to Settlement Class Members, and any other tasks reasonably required to effectuate the foregoing. The Claims Administrator will provide monthly updates on the claims status to counsel for all Parties.

8.02 Payment of Notice and Claims Administration Costs. Defendant shall pay the reasonable costs of notice and settlement administration that are incurred in administering this settlement. This payment shall also be paid in addition to, separate and apart from the payment to the Class Members.

The Claims Administrator shall provide an estimate of the amount of costs required to provide notice, establish the settlement website, and establish a toll-free telephone number, as well as any other initial administration costs to the Parties. Defendant shall pay the estimated amount to the Claims Administrator within ten (10) business days after the entry of the Preliminary Approval Order. After that upfront payment of administration costs by Defendant, the Claims Administrator shall bill Defendant monthly for the reasonable additional costs of settlement administration. Any amounts paid by Defendant for the estimated costs of administration that are not incurred by the Claims Administrator shall be deducted from future billings by the Claims Administrator. The Claims Administrator shall maintain detailed records of the amounts spent on the administration of the settlement and shall provide those to the Parties monthly.

8.03 Payment for Approved Claims and Remaining Settlement Costs. Within ten (10) business days after the Effective Date, Defendant shall provide funds to the Claims Administrator in an amount equal to the total amount of Approved Claims, multiplied by \$20.00. These funds shall be maintained in an interest bearing account at Bank of America.

IX. NOTICES

9.01 Settlement Website. No later than fourteen (14) days after entry of the Preliminary Approval Order, the Claims Administrator shall:

- (a) Create a settlement website in both English and Spanish, which shall be operative no later than the first date that the Class publication notice is published and which shall contain downloadable copies of the Preliminary Approval Order, Long Form Notice, Settlement Agreement, claim form, and when filed, Class Counsel's motions for an attorneys' fees and expenses award and for an incentive fee for the Class Representatives.
- (b) Post on the settlement website a Long Form Notice substantially in the form attached hereto as **Exhibit B** which shall set forth in a question and answer format the details of the settlement and the rights of Class Members to participate in the settlement, exclude themselves, or object to the settlement.
- (c) Post on the settlement website any subsequent notices agreed to by the Parties, and rulings issued by the Court.

9.02 Notice to Class – Direct Mail Notice to Certain Class Members.

- (a) No later than fourteen (14) days after entry of the Preliminary Approval Order, Defendant shall deliver to the Claims Administrator physical addresses that are believed to be associated with certain individuals who are potential Class Members.
- (b) No later than thirty (30) days after entry of the Preliminary Approval Order, the Claims Administrator shall provide notice by

first-class postcard, double-sided with postage pre-paid, to the addresses obtained through the process set forth above. The notice shall be substantially in the form set forth as **Exhibit C**, provided, however, that the Parties shall have the discretion to make agreed-upon non-material minor revisions to the notice before mailing it.

9.04 Toll-Free Telephone Number. No later than fourteen (14) days after entry of the Preliminary Approval Order, the Claims Administrator shall set up a toll-free telephone number for receiving toll-free calls related to the settlement. That telephone number shall be maintained until sixty (60) days after the Claims Deadline. After that time, and for a period of 90 days thereafter, either a person or a recording will advise any caller to the toll-free telephone number that the Claims Deadline has passed and the details regarding the settlement may be reviewed on the dedicated settlement website.

9.05 CAFA Notice. The Administrator shall be responsible for serving the Class Action Fairness Act (“CAFA”) notice required by 28 U.S.C. § 1715 within ten (10) days of the filing of the Preliminary Approval Motion.

X. CLAIMS PROCESS

10.01 Potential Claimants. Each Class Member who is a member of the Class, as set forth in the Class definition in Section 2.07 above, and does not timely and validly request exclusion from the Settlement Class, can submit a claim form.

10.02 How to Make a Claim. Each Settlement Class Member shall submit a claim form listing his or her qualifying Class Product. The claim period shall remain open for one hundred and twenty (120) days after entry of the Preliminary Approval Order. When requested in the claim form, the claim form shall be signed under penalty of perjury. Claim forms will be: (a) included on the settlement website to be designed and administered by the Claims Administrator; and (b) made readily available from the Claims Administrator. Any Settlement Class Member who, in accordance with the terms and conditions of this Settlement Agreement and Release, neither seeks exclusion from the Settlement Class nor files a claim form will not be entitled to receive any benefit or other relief pursuant to this Settlement Agreement and Release, but will be bound together with all Settlement Class Members by all of the terms of this Settlement

Agreement and Release, including the terms of the Final Approval Order and Judgment to be entered in the Action and the releases provided for herein, and will be barred from bringing any action against any of the Released Parties concerning the Released Claims.

XI. CLAIM REVIEW PROCESS

11.01 Review of Claims. Each Settlement Class member who timely submits a claim form, shall have their claim reviewed by the Claims Administrator. The Claims Administrator shall review the claims and will make all determinations regarding the sufficiency and validity of Claims. If necessary, the Claims Administrator will consult with Class Counsel and Defendant's counsel to answer any questions or resolve any disputes that arise regarding the validity of Claims.

11.02 Notification to Class Members. The Settlement Administrator shall notify each person who submitted a claim form but is not determined to be an authorized claimant of the basis for that determination. Once the settlement checks have been provided to all Authorized Claimants, the Settlement Administrator shall post a notice on the settlement website stating that all consideration due under the settlement has been paid.

11.03 Mailing of Settlement Check. Settlement checks shall be sent to Qualified Class Members by the Claims Administrator via U.S. mail no later than thirty (30) days after the Effective Date. If any settlement checks are returned, the Claims Administrator shall attempt to obtain a new mailing address for that Settlement Class Member by (a) the Claims Administrator may check each address against the United States Post Office National Change of Address Database before the initial mailing; (b) the Claims Administrator may conduct a reasonable search to locate an updated address for any Class Member whose settlement check is returned as undeliverable; (c) the Claims Administrator shall update addresses based on any forwarding information received from the United States Post Office; and (d) the Claims Administrator shall update addresses based on any requests received from Class Members. If, after a second mailing, the settlement check is again returned, no further efforts need be taken by the Claims Administrator to resend the check. The Claims Administrator shall advise Class Counsel and counsel for Defendant of the names of the claimants whose checks are returned by the postal service as soon as practicable. Each settlement check will be negotiable for one hundred eighty

(180) days after it is issued. Any funds not paid out as the result of uncashed settlement checks shall be paid to the California State Controller's Office: Unclaimed Property, or Texas State Comptroller's Office: Unclaimed Property, in the names of each respective Class Member.

XII. OPT-OUTS AND OBJECTIONS

12.01 Opting Out of the Settlement. Any Class Members who wish to exclude themselves from the Settlement Class ("opt out") must advise the Claims Administrator in writing of that intent, and their opt out request must be postmarked no later than the Opt Out Deadline. The Claims Administrator shall provide the Parties with copies of all opt out requests it receives and shall provide a list of all Class Members who timely and validly opted out of the settlement in their declaration filed with the Court, as required by Section 13.01. Class Members who do not properly and timely submit an opt out request will be bound by this Agreement and the judgment, including the releases in Section XVI below.

A. In the written request for exclusion, the Class Member must state his or her full name, address, and telephone number. Further, the Class Member must include an unequivocal statement in the written request for exclusion that he or she wishes to be excluded from the settlement.

B. Any Class Member who submits a valid and timely request for exclusion will not be a Settlement Class Member and shall not be bound by the terms of this Agreement.

C. After the expiration of the Opt Out Deadline, the Parties shall submit a list of valid opt outs to the Court at or before the Final Approval Hearing.

D. If Defendant determines that any ambiguity exists as to whether a Class Member's communication constitutes a request to opt out, the Parties shall, if possible, resolve such ambiguity by agreement and shall inform the Court of their position at or prior to the Final Approval Hearing. Defendant or Class Counsel may dispute an exclusion request, and the Parties shall, if possible, resolve the disputed exclusion request by agreement and shall inform the Court of their position at or prior to the Final Approval Hearing. The Court shall retain jurisdiction to resolve any disputed exclusion requests.

E. Any Class Member who does not timely comply with all requirements for opting out contained in this Agreement shall be a Settlement Class Member, bound by this

Agreement, this settlement, and the Release set forth in Section XVI herein.

12.02 Objections. Any Settlement Class Member who intends to object to the fairness of this settlement must file a written objection with the Court no later than the Objection Deadline and simultaneously provide a copy to Class Counsel and counsel for Defendant at the addresses set forth in the Notice.

A. In the written objection, the Settlement Class Member must state his or her full name, current address, telephone number, the reasons for his or her objection, and whether he or she intends to appear at the Fairness Hearing on his or her own behalf or through counsel. Any documents supporting the objection must also be attached to the Objection, and if the Settlement Class Member intends to call witnesses at the Fairness Hearing, those witnesses must be identified, including providing each witness' name, address and telephone number in the Objection. Objections must be signed by the Settlement Class Member making them or by his or her counsel.

B. Any Settlement Class Member who has timely filed a written objection, as provided for above, may appear at the Fairness Hearing, either in person or through an attorney hired at the Class Member's own expense, to object to the fairness, reasonableness, or adequacy of this Agreement or the settlement. A Settlement Class Member or his or her attorney intending to make an appearance at the Fairness Hearing must: (a) file a notice of appearance with the Court no later than ten (10) days prior to the Fairness Hearing, or as the Court may otherwise direct; and (b) serve a copy of such notice of appearance on all counsel for all Parties. Any Class Member who fails to comply with the provisions of this Section 12.02 shall waive and forfeit any and all rights to appear separately and/or to object, and shall be bound by all the terms of this settlement, and by all proceedings, orders, and judgments in the litigation.

XIII. FINAL APPROVAL AND JUDGMENT ORDER

13.01 No later than fourteen (14) days prior to the Final Approval Hearing, the Claims Administrator shall file with the Court and serve on counsel for all Parties a declaration stating that the Notice required by the Agreement has been completed in accordance with the terms of the Preliminary Approval Order.

13.02 If the settlement is approved preliminarily by the Court, and all other conditions precedent to the settlement have been satisfied, no later than fourteen (14) days prior to Final Approval Hearing:

A. The Parties shall both request, individually or collectively, that the Court enter the Final Approval Order in substantially the form attached as **Exhibit A**, with Class Counsel filing a memorandum of points and authorities in support of the motion.

B. Counsel for the Class and Defendant may file a memorandum addressing any Objections submitted to the settlement.

13.03 At the Final Approval Hearing, the Court will consider and determine whether the provisions of this Agreement should be approved, whether the settlement should be finally approved as fair, reasonable and adequate, whether any objections to the settlement should be overruled, whether the fee award and incentive payments to the Class Representatives should be approved, whether Class Counsel is entitled to an award of attorneys' fees, and whether a judgment finally approving the settlement should be entered.

13.04 This Agreement is subject to and conditioned upon the issuance by the Court of a Final Approval Order which grants final approval of this Agreement and:

A. Finds that the Notice provided satisfies the requirements of due process and Fed. R. Civ. P. 23(e)(1);

B. Finds that Settlement Class Members have been adequately represented by the Class Representative and Class Counsel;

C. Finds that the Settlement Agreement is fair, reasonable and adequate to the Settlement Class, that each Settlement Class Member shall be bound by this Agreement, including the releases in Sections XVI, and the covenant not to sue in Section 16.02, and that this Settlement Agreement should be and is finally approved;

D. Dismisses on the merits and with prejudice all claims of the Settlement Class Members asserted against Defendant in the Action, with each Party waiving all rights to appeal and waiving all rights to seek reimbursement of attorneys' fees or costs (except as expressly provided in this Agreement);

E. Permanently enjoins each and every Settlement Class Member from bringing, joining, or continuing to prosecute any Released Claims against Defendant or the Released Parties; and,

F. Retains jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation and enforcement of this settlement.

XIV. FINAL JUDGMENT

14.01 The judgment entered at the Final Approval Hearing shall be deemed final on the last date on which all of the following have occurred:

A. The Court enters a Final Approval Order and Judgment that are consistent with Section XIII and that: (i) dismisses all claims in the Action with prejudice; and (ii) finally approves settlement of the Action without any material modification of the terms of this Agreement; and

B. Either: (i) thirty (30) days have passed after entry of the judgment described in Section 14.01(A) above and no appeal is taken after the judgment's entry and no motion or other pleading has been filed with the Court (or with any other court) seeking to set aside, enjoin, or in any way alter the judgment or Final Approval Order or to toll the time for appeal of the judgment or Final Approval Order; OR (ii) all appeals, reconsideration, rehearing, or other forms of review and potential review of the Court's judgment and Final Approval Order are exhausted, and the Court's judgment and Final Approval Order are upheld without any material modification of the terms of this Agreement.

XV. CONFIRMATORY DISCOVERY

15.01 Class Counsel shall be entitled to conduct limited written discovery to confirm the accuracy of the information provided to them during the course of the litigation and the Parties' settlement negotiations. The deadline for Class Counsel to propound such written discovery shall be thirty (30) days after the execution of this Settlement Agreement and Release. The purpose of that discovery shall be to confirm the total number of Class Members, the process used to determine that number, and the names and contact information of Class Members, for purposes of sending Notice. This discovery is to be used solely for purposes of finalizing this

settlement and, consistent with Section 17.03 below, may not be used for any purpose in the event this Agreement is terminated or is otherwise not fully and finally approved by the Court.

XVI. RELEASE OF CLAIMS

16.01 Released Claims. Plaintiffs and each Settlement Class Member, as well as their respective assigns, heirs, executors, administrators, successors and agents, hereby release, resolve, relinquish and discharge each and all of the Released Parties from each of the Released Claims (as defined below). The Plaintiffs and the Settlement Class Members further agree that they will not institute any action or cause of action (in law, in equity or administratively), suits, debts, liens, or claims, known or unknown, fixed or contingent, which they may have or claim to have, in state or federal court, in arbitration, or with any state, federal or local government agency or with any administrative or advisory body, arising from or reasonably related to the Released Claims. The release does not apply to Class Members who timely opt out of the settlement.

A. “Released Claims” means any and all claims, causes of action, suits, obligations, debts, demands, agreements, promises, liabilities, damages, losses, controversies, costs, expenses, and attorneys’ fees of any nature whatsoever, whether based on any federal law, state law, common law, territorial law, foreign law, contract, rule, regulation, any regulatory promulgation (including, but not limited to, any opinion or declaratory ruling), or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, punitive or compensatory, as of the date of the Final Approval Order, that:

(i) were brought or that could have been brought against the Released Parties, or any of them, 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 Action (including, but not limited to alleged violations of state consumer protection, unfair competition, and/or false or deceptive advertising statutes (including, but not limited to, Cal. Bus. & Prof. Code § 17200 *et seq.*, Cal. Bus. & Prof. Code § 17500 *et seq.*, Cal. Civ. Code § 1750 *et seq.* ; declaratory or injunctive relief, and other equitable claims or claims sounding in contract and tort; and

B. Waiver of Unknown Claims. Without limiting the foregoing, the Released Claims specifically extend to claims that Plaintiffs do not know or suspect to exist in their favor at the time that the settlement and the releases contained therein become effective. This Section constitutes a waiver, without limitation as to any other applicable law, of Section 1542 of the California Civil Code, 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.

Plaintiffs understand and acknowledge the significance of these waivers of California Civil Code Section 1542 and similar federal and state statutes, case law, rules or regulations relating to limitations on releases. In connection with such waivers and relinquishment, Plaintiffs acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts that they now know or believe to be true with respect to the subject matter of the settlement, but that it is their intention to release fully, finally and forever all Released Claims with respect to the Released Parties, and in furtherance of such intention, the releases of the Released Claims will be and remain in effect notwithstanding the discovery or existence of any such additional or different facts. This waiver of Section 1542 shall not be construed to apply to unnamed Class Members, only to the named Plaintiffs.

16.02 Covenant Not To Sue. Plaintiffs agree and covenant, and each Settlement Class Member will be deemed to have agreed and covenanted, not to sue any Released Party with respect to any of the Released Claims, or otherwise to assist others in doing so, and agree to be forever barred from doing so, in any court of law or equity, or any other forum.

XVII. TERMINATION OF AGREEMENT

17.01 Either Side May Terminate the Agreement. Plaintiffs and Defendant shall each have the right to unilaterally terminate this Agreement by providing written notice of his or its

election to do so (“Termination Notice”) to all other Parties hereto within ten (10) days of any of the following occurrences:

- a. The Court rejects, materially modifies, materially amends or changes, or declines to preliminarily or finally approve the Settlement Agreement;
- b. An appellate court reverses the Final Approval Order, and the Settlement Agreement is not reinstated without material change by the Court on remand;
- c. Any Court incorporates into, or deletes or strikes from, or modifies, amends, or changes, the Preliminary Approval Order, Final Approval Order, or the Settlement Agreement in a way that Plaintiff or Defendant reasonably consider material, unless such modification or amendment is accepted in writing by all Parties; or
- d. The Effective Date does not occur; or
- e. Any other ground for termination provided for elsewhere in this Agreement occurs.

17.02 Revert to Status Quo. If Plaintiffs or Defendant terminates this Agreement as provided herein, the Agreement shall be of no force and effect, and the Parties’ rights and defenses shall be restored, without prejudice, to their respective positions as if this Agreement had never been executed, and any orders entered by the Court in connection with this Agreement shall be vacated. However, any payments made to the Claims Administrator for services rendered to the date of termination shall not be refunded to Defendant.

XVIII. NO ADMISSION OF LIABILITY

18.01 Defendant denies any liability or wrongdoing of any kind associated with the alleged claims in the complaints on file in the Action. Defendant has denied and continues to deny each and every material factual allegation and all claims asserted against it in the Action. Nothing herein shall constitute an admission by Defendant of wrongdoing or liability, or of the truth of any allegations in the Action. Nothing herein shall constitute an admission by Defendant that the Action are properly brought on a class or representative basis, or that a class could be certified in the Action, other than for settlement purposes. To this end, the settlement of the Action, the negotiation and execution of this Agreement, and all acts performed or documents executed pursuant to or in furtherance of the settlement: (i) are not and shall not be deemed to

be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of Defendant or of the truth of any of the allegations in the Action; (ii) are not and shall not be deemed to be, and may not be used as, an admission or evidence of any fault or omission on the part of Defendant in any civil, criminal or administrative proceeding in any court, arbitration forum, administrative agency or other tribunal; and, (iii) are not and shall not be deemed to be and may not be used as an admission of the appropriateness of these or similar claims for class certification.

18.02 Pursuant to Federal Rule of Evidence Rule 408 and California Evidence Code Sections 1119 and 1152, and any similar provisions under the laws of other states, neither this Agreement nor any related documents filed or created in connection with this Agreement shall be admissible in evidence in any proceeding, except as necessary to approve, interpret or enforce this Agreement or by Court Order.

XIX. MISCELLANEOUS

19.01 Entire Agreement. This Agreement and the exhibits hereto constitute the entire agreement between the Parties. No representations, warranties or inducements have been made to any of the Parties, other than those representations, warranties, and covenants contained in this Agreement.

19.02 Governing Law. This Agreement shall be governed by Federal Rule of Civil Procedure 23 and the laws of the State of California.

19.03 Jurisdiction. The Court shall retain continuing and exclusive jurisdiction over the Parties to this Agreement, including the Plaintiffs and all Settlement Class Members, for purposes of the administration and enforcement of this Agreement.

19.04 No Construction Against Drafter. This Agreement was drafted jointly by the Parties and, in construing and interpreting this Agreement, no provision of this Agreement shall be construed or interpreted against any Party based upon the contention that this Agreement or a portion of it was purportedly drafted or prepared by that Party.

19.05 Headings. Paragraph titles or headings are inserted as a matter of convenience and for reference and in no way define, limit, extend, or describe the scope of this Agreement or any provision hereof. Each term of this Agreement is contractual and not merely a recital.

19.06 Resolution of Disputes. The Parties shall cooperate in good faith in the administration of this settlement. Any unresolved dispute regarding the administration of this Agreement shall be decided by the Court, or by a mediator upon agreement of the Parties.

19.07 Counterparts. This Agreement may be signed in counterparts and the separate signature pages executed by the Parties and their counsel may be combined to create a document binding on all of the Parties and together shall constitute one and the same instrument. The Parties agree that electronic signatures may be provided and shall have the full force and effect as handwritten signatures.

19.08 Time Periods. The time periods and dates described herein are subject to Court approval and may be modified upon order of the Court or written stipulation of the Parties.

19.09 Authority. Each person executing this Settlement Agreement on behalf of any of the Parties hereto represents that such person has the authority to so execute this Agreement.

19.10 No Oral Modifications. This Agreement may not be amended, modified, altered or otherwise changed in any manner, except by a writing signed by a duly authorized agent of Defendant and Plaintiffs, and approved by the Court.

19.11 Notices. Unless otherwise stated herein, any notice required or provided for under this Agreement shall be in writing and may be sent by electronic mail, fax or hand delivery, postage prepaid, as follows:

If to Class Counsel:

Todd M. Friedman, Esq.
Law Offices of Todd M. Friedman, P.C.
21550 Oxnard St. Suite 780
Woodland Hills, CA 91367
Telephone: (877) 206-4741
tfriedman@toddfllaw.com

If to Counsel for Defendant:

Laura Bentele

Armstrong Teasdale
7700 Forsyth Blvd., Suite 1800,
St. Louis, Missouri 63105

IN WITNESS WHEREOF, the Parties and their duly authorized attorneys have caused
this Agreement to be executed this ____ day of July, 2019.

Manna Pro Products, LLC

By: _____

Ashley Hale, Plaintiff and Class Representative

APPROVED AS TO FORM:

Dated: July _____, 2019


LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: _____
Todd M. Friedman, Esq.

Attorneys for Plaintiffs and the Settlement
Class

Dated: July _____, 2019

ARMSTRONG TEASDALE LLP

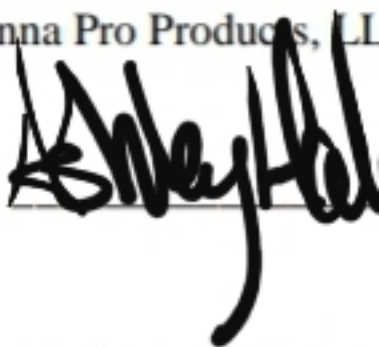
By:  _____
Laura A. Bentele

Attorneys for Manna Pro Products, LLC

IN WITNESS WHEREOF, the Parties and their duly authorized a
this Agreement to be executed this ____ day of July, 2019.

Manna Pro Products, LL

By:

A handwritten signature in black ink, appearing to read "Ashley Hale", written over a horizontal line.

Ashley Hale, Plaintiff ar

APPROVED AS TO FORM:

Dated: July _____, 2019

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: Todd M. Friedman
Todd M. Friedman, Esq.

Attorneys for Plaintiffs and the Settlement
Class

Dated: July _____, 2019

ARMSTRONG TEASDALE LLP

By: _____
Laura A. Bentele

Attorneys for Manna Pro Products, LLC

Armstrong Teasdale
7700 Forsyth Blvd., Suite 1800,
St. Louis, Missouri 63105

IN WITNESS WHEREOF, the Parties and their duly authorized attorneys have caused
this Agreement to be executed this ____ day of _____, 2019.

Manna Pro Products, LLC

By:  _____

Ashley Hale, Plaintiff and Class Representative