

**OCT 10 2018**

DAVID H. YAMASAKI, Clerk of the Court

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ORANGE – CIVIL COMPLEX**

**IRAJ DOWLATSHAHI; INDIVIDUALLY  
AND ON BEHALF OF ALL OTHERS  
SIMILARLY SITUATED,**

Plaintiff,

v.

**MCILHENNY COMPANY,**

Defendant.

**CASE NO.: 30-2017-00911222-CU-NP-CXC**

~~[PROPOSED]~~ **AMENDED FINAL  
JUDGMENT AND ORDER GRANTING  
FINAL APPROVAL OF CLASS ACTION  
SETTLEMENT**

The above-entitled matter (“the Action”) having come before the Court for hearing pursuant to the Court’s March 19, 2018 Order Granting Preliminary Approval of Proposed Class Action Settlement and Conditional Certification Of Settlement Class, on the application of the parties herein for final approval of the Settlement Agreement set forth in the Class Settlement Agreement and Release (the “Settlement Agreement”).

The Court has reviewed the papers filed in support of the application for Final Approval, including the Settlement Agreement and exhibits thereto, memoranda and briefs, including application for incentive award, attorneys’ fees and costs, submitted on behalf of Plaintiff Iraj

1 Dowlatshahi (“Representative Plaintiff”), on behalf of himself and the certified Settlement Class,  
2 and Defendant McIlhenny Company (“Defendant”), and supporting declarations.

3 Based on the papers filed with the Court and the presentations made to the Court by the  
4 parties, it appears to the Court that the Settlement Agreement executed by the parties is fair,  
5 adequate, and reasonable.

6 Accordingly, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

- 7 1. The terms used in this Judgment shall have the same meanings as defined in the  
8 Settlement Agreement, except as otherwise specified herein. This Order shall constitute  
9 the Final Judgment and Order Approving Settlement as defined in Section 1.15 of the  
10 Settlement Agreement.
- 11 2. The Court has jurisdiction over the subject matter of the Action and over all parties  
12 thereto, including all members of the Settlement Class, as defined in Paragraph 3 below.
- 13 3. On March 19, 2018, in preliminarily approving the Settlement Agreement, the Court  
14 conditionally certified a Settlement Class in the Action, defined as follows:

15 All retail consumers who made purchases in California of any McIlhenny  
16 Company products, including but not limited to pepper sauces,  
17 condiments, jellies and giftware, over a period beginning four years prior  
18 to September 15, 2015 up to the date of Preliminary Approval of the Class  
19 Settlement and Release Agreement. McIlhenny Company products  
20 includes but is not limited to products manufactured or sold by McIlhenny  
21 as well as products bearing its name that were manufactured for or under  
22 license from McIlhenny.

- 23 4. The Court has determined that the Class Representative Plaintiff, Iraj Dowlatshahi, is an  
24 appropriate representative of the Settlement Class, and that the Settlement Class should  
25 be finally approved as described in Paragraph 2 of this Order.
- 26 5. The Court has determined that the notice that has been given to potential members of the  
27 Settlement Class, in the form, manner and content of the notices specified in Section 6 of  
28 the Settlement Agreement and Exhibits 2 (Class Settlement Notice) and 3 (Summary  
Published Notice) thereto, was in conformity with the Settlement Agreement, and that it  
fully and accurately informed potential members of the Settlement Class of the material  
elements of the proposed settlement, provided the best notice practicable under the

1 circumstances, and constituted valid, due and sufficient notice to all potential Settlement  
2 Class members. Said notice procedures fully satisfied the requirements of due process  
3 and California Rule of Court 3.766.

4 6. The Court has considered, inter alia, the strengths and weaknesses of the claims of  
5 Representative Plaintiff and the Settlement Class, the defenses to those claims, the risks  
6 of finding no liability against Defendant, and the time and expense necessary to  
7 prosecute the action through trial and appeals. The Court finds and concludes in light of  
8 all of the circumstances that the Settlement Agreement is fair, adequate, and reasonable.

9 7. There is no evidence of collusion, fraud or tortious conduct by any of the parties to the  
10 Settlement Agreement aimed at causing injury to the interests of any person. Moreover,  
11 the Court finds that the settlement embodied in the Settlement Agreement is entered into  
12 and made in good faith.

13 8. No persons have made timely and valid requests for exclusion from the Settlement Class  
14 pursuant to the Class Notice or filed any objections to Final Approval of the Class  
15 Settlement Agreement.

16 9. Pursuant to California Rule of Court 3.769, this Court hereby grants Final Approval to  
17 the Settlement and finds that the Settlement is, in all respects, fair to the Settlement  
18 Class.

19 10. Each claim released in Section 11 of the Settlement Agreement is hereby fully, finally,  
20 and forever released, relinquished and discharged, and all Persons who are members of  
21 the Settlement Class are hereby barred and permanently enjoined from commencing,  
22 prosecuting or continuing, either directly or indirectly, any such claims against  
23 Defendant or any other entity covered by said release.

24 11. In the event that this Order does not become Final or the Settlement otherwise does not  
25 become effective in accordance with its terms, then the following shall apply:

26 a) The Settlement Agreement and all orders and findings entered in connection  
27 therewith shall become null and void and of no further force and effect, and shall not  
28 be used or referred to for any purposes whatsoever and shall not be admissible for



1 any reason in any proceeding whatsoever, nor discoverable in any proceeding except  
2 as, and unless specifically required by law;

3 b) The certification of the Settlement Class pursuant to this Order shall be vacated  
4 automatically, Plaintiff Iraj Dowlatshahi shall cease to function as a representative of  
5 the Settlement Class, and his counsel shall cease to function as counsel for the  
6 Settlement Class;

7 c) This Action shall revert to its status before the execution of the Agreement;

8 d) Nothing contained in this Order is, or may be construed as an admission or  
9 concession by or against the Defendant on any point of fact or law;

10 e) Nothing in this Order or pertaining to the Settlement Agreement shall be used as  
11 evidence in any further proceeding in this case, including but not limited to any  
12 motion for class certification or any motion for class notice; and

13 f) The Settlement Agreement and all negotiations and proceedings relating thereto shall  
14 be withdrawn without prejudice as to the rights of any and all parties thereto, who  
15 shall be restored to their respective positions as of the date of the execution of the  
16 Settlement Agreement.

17 12. Neither the fact of settlement, the Settlement Agreement, nor any act performed or  
18 document executed pursuant to or in furtherance of the Settlement is, or may be deemed  
19 to be, or may be used as an admission of evidence of:

20 a) the validity of any claim released under the Settlement;

21 b) any wrongdoing or liability of any person or entity released as a part of the  
22 Settlement; or

23 c) any fault or omission in any civil, criminal or administrative proceeding in any  
24 tribunal.

25 The Settlement Agreement and/or this Order may be filed in any other action to support  
26 a defense or counterclaim based on any theory of claim preclusion or issue preclusion or  
27 similar defense or counterclaim, including, but not limited to, res judicata, collateral  
28 estoppel, release, good faith settlement, judgment bar or reduction.

1 Plaintiff's Motion for Final Approval of Class Action Settlement is GRANTED on the  
2 following terms:

3 13. The Court finds the Settlement in this case is fair, adequate and reasonable.

4 14. The Class Representative Plaintiff Iraj Dowlatshahi is granted an enhancement in the  
5 sum of \$2,500.00. This award is based on Plaintiff Dowlatshahi's time assisting counsel,  
6 willingness to serve as a class representative, and risks taken if Defendant had prevailed.  
7 Plaintiff Dowlatshahi's incentive award shall be paid to Plaintiff from the Class  
8 Settlement Fund pursuant to the provisions of the Settlement Agreement.

9 15. Class Counsel is awarded reasonable attorney's fees in the sum of \$162,500.00. This  
10 amount is 25% of the gross Class Settlement Fund sum of \$650,000.00. The starting  
11 point for any attorney's fees award is the \$162,500.00, the not-to-exceed amount  
12 preliminarily approved by the court. Class Counsel demonstrated skill in advancing this  
13 "Made in the U.S.A." mislabeling case to a settlement following a full day of mediation.  
14 Also, this case was handled on a contingency basis. The lodestar in this case as claimed  
15 by plaintiff's counsel would result in a higher award of attorney's fees than a percentage  
16 of the class recovery. An attorney fees award based on a percentage of a common fund  
17 recovery is proper. (*See Lafitte v. Robert Half International, Inc.* (2016) 1 Cal.5<sup>th</sup> 480,  
18 503 to 504). Class Counsel's hourly billing rates are reasonable and justified in light of  
19 their experience, skill and expertise and the benefit conferred to the Class and the public  
20 as a result of this Settlement.

21 16. Class Counsel's litigation costs are found to be reasonable. Accordingly, Class Counsel  
22 is granted litigation costs in the amount of \$11,500.00 to be paid from the Class  
23 Settlement Fund pursuant to the provisions of the Settlement Agreement.

24 17. The Settlement Administrator's fees and costs of \$114,000.00 for administering the  
25 Settlement are found to be reasonable and granted. The Settlement Administrator,  
26 Kurtzman Carson Consultants LLC (KCC) shall be paid from the Class Settlement Fund  
27 pursuant to the provisions of the Settlement Agreement.

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1 18. Pursuant to *Code of Civil Procedure* § 384(b)(3), any unpaid cash residue or abandoned  
2 class member funds generally attributable to California residents, plus any accrued  
3 interest that has not otherwise been distributed pursuant to order of the court, shall be  
4 transmitted by the Settlement Administrator as follows:

- 5 a) 25% to the State Treasury for deposit in the Trial Court Improvement and  
6 Modernization Fund;
- 7 b) 25% to the State Treasury for deposit into the Equal Access Fund of the Judicial  
8 Branch;
- 9 c) 50% to Slow Food USA, Inc. located at 68 Summit Street, Unit 2B, Brooklyn, New  
10 York 11231, which the Court finds qualified to receive distributions under *Code of*  
11 *Civil Procedure* § 384(b)(3)(C), to be used by the California Chapter of Slow Food  
12 USA in its National School Garden Program to sponsor the creation of new school  
13 gardens in the State of California.

14 19. Pursuant to *Code of Civil Procedure* § 384(b), Plaintiff shall submit to the Court a final  
15 report on or before April 4, 2019 as to the actual amounts paid to class members. Upon  
16 receiving this report, the Court will determine whether further reports and/or a hearing  
17 will be necessary.

18 20. Defendant shall pay the sum of \$600,000.00 into the Class Settlement Fund for  
19 disbursement by the Settlement Administrator pursuant to the provisions of the  
20 Settlement Agreement and this Order within five (5) days after the occurrence of all of  
21 the following three events: (a) the Settlement Agreement is executed and delivered by all  
22 Parties and approved by the Court, (b) entry of the Final Judgment and Order Approving  
23 Settlement, and (c) the Final Judgment becomes "Final." For purposes of this Section,  
24 "Final" means the occurrence of any of the following: (i) final affirmance on an appeal  
25 of the Final Judgment, the expiration of the time for a petition for review of the Final  
26 Judgment and, if the petition is granted, final affirmance of the Final Judgment following  
27 review pursuant to that grant, or (ii) final dismissal of any appeal from the Final  
28 Judgment or the final dismissal of any proceeding to review the Final Judgment, or (iii)



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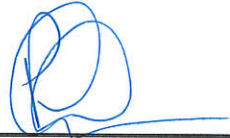
if no appeal is filed, the expiration of the time for the filing or noticing of any appeal from the Court's Final Judgment.

21. This Court determines that there is no just reason for delaying the entry of this Order. Accordingly, the Court hereby directs entry of this Order as a final judgment pursuant to *Code of Civil Procedure* § 664.6 and California Rule of Court 3.769.

22. This Court will retain jurisdiction over the parties to enforce the terms of this Order and Judgment.

**IT IS SO ORDERED.**

DATED: 10/10, 2018.

By  \_\_\_\_\_  
HON. PETER J. WILSON  
SUPERIOR COURT JUDGE