

**03/19/2018** at 04:01:00 PM

Clerk of the Superior Court  
By Olga Lopez, Deputy Clerk

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**SUPERIOR COURT OF CALIFORNIA  
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

**ORDER GRANTING PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT AND CONDITIONAL  
CERTIFICATION OF SETTLEMENT  
CLASS**

JUDGE: HON. KIM G. DUNNING  
DATE: MARCH 9, 2018  
TIME: 1:30 P.M.  
DEPT: CX104

ACTION FILED: MARCH 24, 2017

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1 The named Plaintiff in this proceeding, Iraj Dowlatshahi (“Plaintiff”), on behalf of  
2 himself and others similarly situated, by, through and in consultation with his counsel of record  
3 herein, and Defendant McIlhenny Company (“Defendant”) have entered into a Class Settlement  
4 and Release Agreement (the “Agreement” or the “Settlement Agreement”), to settle the above-  
5 captioned litigation in its entirety. Having reviewed the Settlement Agreement, the pleadings  
6 and other papers on file in this action, and statements of counsel, and good cause appearing, the  
7 Court hereby finds that this Order should be entered.

8 NOW THEREFORE, IT IS HEREBY ORDERED THAT:

9 1. The Settlement Agreement (Exhibit A to this Order) and the Settlement contained  
10 therein are preliminarily approved as fair, reasonable and adequate. Solely for purposes of  
11 settlement in accordance with the Agreement, the Court conditionally certifies this action to  
12 proceed as a class action on behalf of a “Class” consisting of:

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

20 2. Certification of the foregoing Class is conditioned upon final approval of the  
21 Settlement Agreement and shall be effective at that time. Pursuant to Paragraph 15 below, if the  
22 Settlement Agreement is not finally approved, the foregoing certification is of no force and  
23 effect.

24 3. The Court makes the following findings, subject to Paragraph 15 below:

25 (a) The above-described Class is so numerous the joinder of all members is  
26 impracticable.

27 (b) There are questions of law or fact common to the above-described Class.

28 (c) The claims of the Plaintiff are typical of the claims of the above-described  
Class.

1 (d) The Plaintiff will fairly and adequately protect the interests of the above-  
2 described Class.

3 (e) The questions of law or fact common to the members of the above-  
4 described Class predominate over questions affecting only individual members.

5 (f) Certification of the above-described Class is superior to other available  
6 methods for the fair efficient adjudication of the controversy.

7 4. The Court hereby appoints the named Plaintiff, Iraj Dowlatshahi, as Class  
8 Representative. The Court also hereby appoints Abbas Kazerounian and Mona Amini of the  
9 Kazerouni Law Group APC, and Joshua B. Swigart of Hyde & Swigart, APC as Class Counsel  
10 to represent the Class.

11 5. The Court preliminarily approves an incentive award to the named Plaintiff,  
12 Iraj Dowlatshahi, up to an amount of \$5,000 for serving as Class Representative in this action. In  
13 addition, the Court preliminarily approves attorneys' fees to be awarded to Class Counsel up to  
14 25% of the amount of the Settlement Fund, not to exceed \$162,500. Any attorneys' fees awarded  
15 to Class Counsel shall be divided equally between the law firms appointed as Class Counsel,  
16 with 50% to be apportioned to Kazerouni Law Group, APC and 50% to be apportioned to Hyde  
17 & Swigart, APC.

18 6. The Court hereby appoints Kurtzman Carson Consultants, LLC ("KCC") as the  
19 Settlement Administrator. The total costs for the Settlement Administrator necessary to provide  
20 reasonable Notice to the Class and settlement administration will be tiered depending on the  
21 number of claims, however, the total costs to the Settlement Administrator shall not exceed  
22 \$179,000.

23 7. The Court finds that notice given in the substantially the same form, manner and  
24 content of the notices specified in Section 6 of the Settlement Agreement and Exhibits 2 (Class  
25 Settlement Notice) and 3 (Summary Published Notice) will meet the requirements of due process  
26 and California Rule of Court 3.766 and provide a means of notice reasonably calculated to  
27 apprise the Class of the pendency of the Action and the proposed settlement. This determination  
28 permitting notice to the Class is not a final finding that the Settlement Agreement is fair,

1 reasonable, and adequate, but simply a determination that there is probable cause to submit the  
2 proposed Settlement Agreement to the Class and to hold a fairness hearing to consider final  
3 approval of the proposed Settlement.

4 8. To receive the benefits of the Settlement, Class Members may submit a Claim  
5 Form by U.S. Mail or online via the Settlement Website at [www.McIlhennySettlement.com](http://www.McIlhennySettlement.com). No  
6 receipt is necessary to submit a Claim Form. Class Members shall receive a cash payment of  
7 \$2.50 without the need to present a receipt or, alternatively, a cash payment equal to the amount  
8 of all purchases of McIlhenny Company products for which the Class Member presents a receipt  
9 or receipts.

10 9. Any Class Member who wishes to object to the proposed Settlement must comply  
11 with the requirements for objections as set forth in the Class Notice. Any Class Member who  
12 does not object in accordance with the Class Notice shall be deemed to have waived any such  
13 objection and shall not be permitted to object to the proposed Settlement in this proceeding, by  
14 appeal, collateral attack or otherwise.

15 10. Any Class Member who wishes to be represented by his or her own counsel, at his  
16 or her own expense, must comply with the appearance requirements set forth in the Class Notice.

17 11. Any Class Member who wishes to be excluded from the proposed settlement must  
18 comply with the requirements for requesting exclusion as set forth in the Class Notice.

19 12. Pursuant to California Rule of Court 3.769, this Court shall hold a Final Approval  
20 hearing (“Final Fairness Hearing”) on **August 29, 2018 at 1:30 p.m.** in Department CX104 of  
21 the Orange County Superior Court, Civil Complex Center located at 751 W. Santa Ana Blvd.,  
22 Santa Ana, California 92701, for the purpose of determining whether the proposed settlement is  
23 fair, reasonable and adequate and should be finally approved by the Court. If appropriate, the  
24 Court at the Final Fairness Hearing may enter a Final Order and Judgment as anticipated by  
25 Section 10 of the Settlement Agreement. The Court may adjourn or continue the Final  
26 Settlement Hearing without further notice.

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1           13.     The dates for performance are as follows:

2                   (a)     Notice of this Action and the proposed settlement shall be provided as  
3 required by Section 6 of the Settlement Agreement on or before **April 9, 2018**.

4                   (b)     Plaintiff's Motion for Attorneys' Fees and Costs and Incentive Award for  
5 the Class Representative, as required by Section 10 of the Settlement Agreement, shall be filed  
6 on or before **May 8, 2018**.

7                   (c)     The last day for any member of the Class to request exclusion from the  
8 Settlement, in compliance with the procedures prescribed by the Class Notice, shall be no later  
9 than **June 7, 2018**, pursuant to Section 7 of the Class Notice.

10                  (d)     The last day to serve and file any objections to the Settlement, any  
11 intention to appear at the Final Fairness Hearing, and any comments regarding the Settlement  
12 shall be no later than **June 7, 2018**, pursuant to Section 13 of the Class Notice.

13                  (e)     Plaintiff's Motion for Final Approval of the Settlement, as required by  
14 Section 10 of the Settlement Agreement, and response(s) to any objection(s) to the Settlement,  
15 shall be filed on or before **July 30, 2018**.

16                  (f)     The Settlement Administrator shall file and serve upon Class Counsel and  
17 file with the Court KCC's declaration of due diligence setting forth its compliance with its  
18 obligations under the Settlement Agreement no later than **August 15, 2018**, or fourteen (14) days  
19 before the Final Approval Hearing.

20           14.     Except as may be mutually agreed between Plaintiff and Defendant, and as  
21 necessary to complete any confirmatory discovery, all discovery and pretrial proceedings in this  
22 action are stayed pending further order of this Court.

23           15.     In the event that the proposed Settlement as provided in the Settlement Agreement  
24 is not approved by the Court, or for any reason the parties fail to obtain a Final Order and  
25 Judgment as contemplated in the Settlement Agreement, or the Settlement Agreement is  
26 terminated pursuant to its terms for any reason, then the following shall apply:

27                   (a)     The Settlement Agreement and all orders and findings entered in  
28 connection therewith shall become null and void and of no further force and effect, and shall not

1 be used or referred to for any purposes whatsoever and shall not be admissible for any reason in  
2 any proceeding whatsoever, nor discoverable in any proceeding except as, and unless specifically  
3 required by law;

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

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

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

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

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

18 16. The Court retains continuing and exclusive jurisdiction over the action to consider  
19 all further matters arising out of or connected with the Settlement, including the administration  
20 and enforcement of the Settlement Agreement.

21 17. This action shall proceed pursuant to the following schedule:

Event	Date
Date of Preliminary Approval	March 9, 2018
Notice to be completed by the Settlement Administrator [30 days after Preliminary Approval]	April 9, 2018
Motion for Attorneys' Fees, Costs, and Incentive Award [30 days before last date for Class Members to opt out or object to Settlement]	May 8, 2018

1	Deadline for Class Members to Object [90 days after Preliminary Approval]	June 7, 2018
2	Deadline for Class Members to Opt Out [90 days after Preliminary Approval]	June 7, 2018
3		
4	Motion for Final Approval [30 days before Final Approval Hearing]	July 30, 2018
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6	Deadline for KCC to file Declaration [14 days before Final Approval Hearing]	August 15, 2018
7	Final Approval Hearing	August 29, 2018
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10 **IT IS SO ORDERED.**

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12 **Date Judge Signed: March 19, 2018.**



13

14 By \_\_\_\_\_

15 HON. KIM. G. DUNNING

16 SUPERIOR COURT JUDGE