

## CLASS SETTLEMENT AGREEMENT AND RELEASE

This Class Settlement Agreement and Release is made and entered into by and between Iraj Dowlatshahi, individually and on behalf of the Class, and McIlhenny Company. This Class Settlement and Release sets forth the terms, conditions and provisions of a settlement of all Claims as defined herein.

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## **RECITALS**

WHEREAS, Dowlatshahi, through counsel, sent a letter serving as notice and demand for corrective action pursuant to the Consumers Legal Remedies Act, Cal. Civ. Code § 1782 (“CLRA”) to McIlhenny Company dated September 15, 2015, asserting the Claims, as defined herein;

WHEREAS, the parties subsequently entered into a confidentiality agreement, exchanged confidential information of McIlhenny Company, and participated in a mediation before Hon. Edward A. Infante (Ret.), a professional mediator skilled in mediating consumer protection and food labeling class actions in California;

WHEREAS, McIlhenny Company denies the Claims; and

WHEREAS, in order to resolve their differences on a class-wide basis, the parties hereto desire to enter into this Class Settlement Agreement and Release subject to approval by the Court.

### **1. DEFINITIONS**

Unless otherwise expressly stated herein, the following terms, as capitalized and used in this Class Settlement Agreement and Release, shall have the following meanings and definitions:

1.1 “Advertising” means point of sale materials, product shippers, and print, television, and electronic advertisements of all types.

1.2 “Claim Form” means the Claim Form attached hereto as Exhibit 4.

1.3 “Claim Submission” means the submission of a claim by a Class Member, pursuant to the Final Judgment and Order.

1.4 “Claims” mean all allegations, demands and assertions in the Complaint regarding the country of origin of any of the Products, which claims are denied by McIlhenny.

1.5 “Class” means the persons included in the Class Definition.

1.6 “Class Action” means the class action to be filed by Dowlatshahi and Class Counsel as defined herein, with Dowlatshahi as the named plaintiff and Class Representative, in

the Superior Court in and for the County of Orange, California, pursuant to this Settlement Agreement.

1.7 “Class Counsel” means the following attorneys: who represent Dowlatshahi and who shall seek to be appointed as counsel for the class: Abbas Kazerounian of Kazerouni Law Group, APC, Joshua B. Swigart of Hyde & Swigart, APC, and Mona Amini of Kazerouni Law Group, APC.

1.8 “Class Definition” or “Class as Defined” mean the following:

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

In the event the Court should alter or modify the above Class Definition, and such amended Class Definition is accepted in writing by the Dowlatshahi and McIlhenny, such amended Class Definition shall be considered the “Class Definition” or “Class as Defined” under this Settlement Agreement, and all references thereto in this Settlement Agreement means and refer to such accepted, amended Class Definition.

1.9 “Class Members” or “Class Member” means those persons and/or entities who or which are included within the Class Definition and do not timely opt out. The terms “Class Members” or “Class Member” shall not include the Opt-Out Parties.

1.10 “Class Settlement Fund” means the total amount of settlement funds deposited with the Settlement Administrator pursuant to Section 12.1 and Section 12.2, together with all interest earned or accrued thereon.

1.11 “Class Settlement Notice” means the Notice to Class Members Re: Pendency of Class Action Settlement and Notice of Hearing on Proposed Settlement substantially in the form of Exhibit 2.

1.12 “Court” means the Superior Court of California for the County of Orange, where the Class Action shall be filed.

1.13 “Dowlatshahi” means Iraj Dowlatshahi and his predecessors, successors and assigns.

1.14 “Final Approval Hearing” means the hearing to be conducted by the Court to determine whether to approve finally and implement the terms of this Agreement.

1.15 “Final Judgment and Order” or “Final Judgment” means the order and judgment to be entered by the Court pursuant to Section 10 below.

1.16 “McIlhenny” means McIlhenny Company and its predecessors, successors, assignors, assignees, subsidiaries, parents, affiliates, acquired entities, officers, insurers and reinsurers, directors, employees, agents, legal representatives, partnerships, joint ventures, attorneys, owners, and/or shareholders.

1.17 “Opt-Out Parties” or “Opt-Out Party” means those persons who are included within the Class Definition but timely opt out of the Class pursuant to the procedures specified by the Court.

1.18 “Order of Preliminary Approval” means the order to be entered by the Court pursuant to Section 5.

1.19 “Packaging” means product labels, product cartons, and other product packaging.

1.20 “Parties” or “Party” means and refer to Dowlatshahi, the Class, and McIlhenny.

1.21 “Products” means all McIlhenny products, including but not limited to pepper sauces, condiments, jellies and giftware, that are sold in the California markets. This term includes but is not limited to products manufactured or sold by McIlhenny as well as products bearing its name manufactured for or under license from McIlhenny.

1.22 “Settlement Administrator” means Kurtzman Carson Consultants, LLC (KCC), and any successors designated by McIlhenny to effectuate the Settlement.

1.23 “Settlement Agreement” means this Class Settlement Agreement and Release, all exhibits and properly perfected amendments thereto, and all judgments or orders of the Court approving or incorporating this Class Settlement Agreement and Release.

1.24 “Settlement Effective Date” means the day after the occurrence of all of the following three events: (a) the Settlement Agreement is executed and delivered by all Parties and approved by the Court, (b) entry of the Final Judgment and Order Approving Settlement, and (c) the Final Judgment becomes “Final.” For purposes of this Section, “Final” means the occurrence of any of the following: (i) final affirmance on an appeal of the Final Judgment, the expiration of the time for a petition for review of the Final Judgment and, if the petition is granted, final affirmance of the Final Judgment following review pursuant to that grant, or (ii) final dismissal of any appeal from the Final Judgment or the final dismissal of any proceeding to review the Final Judgment, or (iii) if no appeal is filed, the expiration of the time for the filing or noticing of any appeal from the Court's Final Judgment.

1.25 “Settlement Website” means a website maintained by the Settlement Administrator, which shall make available to Class Members information required by this Settlement Agreement, as more fully described in Section 6.1.2, with the URL of [www.McIlhennySettlement.com](http://www.McIlhennySettlement.com), or such other URL as mutually agreed by the Parties.

1.26 “Summary Published Notice” means the summary Notice to Class Members Re: Pendency of Class Action Settlement and Notice of Hearing on Proposed Settlement substantially in the form of Exhibit 3.

## **2. NATURE AND STATUS OF THE CLASS CLAIMS**

2.1 Stated generally, the Claims involve, among other claims, claims for injuries and/or damages allegedly related to representations as to the country of origin of the Products made in connection with their sale.

2.2 Stated generally, Dowlatshahi and the Class assert (and McIlhenny denies) that such damages are the responsibility of McIlhenny.

2.3 The claims of the Class have been substantially investigated and/or are substantially understood, such that the Parties are in a reasonable position to assess the merits and weaknesses of their respective claims and defenses.

2.4 Substantial time and effort has been expended by the Parties and their counsel in negotiating this Settlement Agreement.

### **3. BASIS FOR THE PROPOSED SETTLEMENT**

3.1 As a result of the investigation to date, Dowlatshahi and McIlhenny entered into negotiations to settle the Claims regarding the liability of McIlhenny, taking into account the following considerations: (a) the merits of the complaints or the lack thereof covered by the Settlement Agreement; (b) the relative strengths and weaknesses of the Class' claims; (c) the time, expense and effort necessary to file and maintain the Class Action to conclusion; (d) the possibilities of success weighed against the possibilities of loss; (e) the range of final judgment values; (f) the legal complexities of the contested issues regarding the Claims; (g) the risks inherent in protracted litigation; (h) the magnitude of benefits to be gained from immediate settlement in light of both the maximum potential of a favorable outcome with the attendant expense and likelihood of an unfavorable outcome; and (i) the fairness of benefits to or from an immediate settlement under all of the foregoing considerations.

### **4. GENERAL PROVISIONS AND PURPOSES OF THIS SETTLEMENT**

4.1 The Parties have reached agreement on the terms of a settlement of all Claims, through the establishment of a conditional settlement class to afford a procedural vehicle by which all potential liability of McIlhenny to Class Members may finally be concluded and settled. The Parties agree that proceeding in this manner is in their best interests and also shall contribute to judicial efficiency.

4.2 In entering into this Settlement Agreement, each Party hereto has taken into account the uncertainties, delays, expenses and exigencies of the litigation process, including the likelihood of extensive depositions and document production should the matter not settle, as well as the investigation of the Claims to date. The sides have engaged in informal exchange of information and investigation of the claims at issue, and exchanges in a formal mediation, all of which has been taken into consideration. McIlhenny has denied, and continues to deny, any liability, wrongdoing or responsibility for the Claims and believes that they are without merit.

4.3 The Parties hereto have evaluated the Claims, considering the nature and extent of the alleged injury and the alleged liability of McIlhenny.

4.4 In addition to the relief provided for in Section 12 below, McIlhenny agrees to remove the reference to “Made in U.S.A.” from its Packaging released in the California retail market after June 1, 2016, and from its advertising released in the California retail market after February 28, 2017, but (i) McIlhenny will be allowed to market and sell all of its Products and Packaging in existence on June 1, 2016, that bear the “Made in U.S.A.” designation until such Products and Packaging are exhausted in the ordinary course of business and (ii) McIlhenny may continue to use any Advertising created before February 28, 2017 in the California retail market that bears the phrase “Made in U.S.A.” until the retirement of such Advertising in the ordinary course of business. McIlhenny further agrees to use reasonable commercial efforts to cause its licensees to remove the “Made in U.S.A.” phrase from the McIlhenny trademarks on each licensee’s products, Packaging and Advertising produced after February 28, 2017 for use in the California retail market, but such licensees may continue to sell their products and use their Packaging and Advertising with the phrase “Made in U.S.A.” on the McIlhenny trademarks until exhausted in the ordinary course of business.

4.5 McIlhenny is willing to enter into this Settlement Agreement so that it will thereby be relieved and discharged from all liability as it relates to Claims to all Class Members. The Parties recognize the necessity for a procedural means by which any negotiated settlement of

all potential liability for the Claims asserted against McIlhenny may finally be resolved. It is expressly the intention of this Settlement Agreement that no claims by Class Members against McIlhenny arising out of the country of origin of any of the Products will survive the approval of this Settlement Agreement.

4.6 The Parties agree that payment to the proposed Class Settlement Fund and the management thereof by the Settlement Administrator and under the supervision of the Court would more likely result in greater benefit to McIlhenny and the Class Members than would the prosecution of the Class Action. Accordingly, a class certified for settlement purposes in the Class Action meets the standards of Section 382 of the California Code of Civil Procedure so as to permit conditional certification of a settlement class. Accordingly, as more fully described in Section 5 below, the Parties will submit this Settlement Agreement to the Court via a Joint Motion for Preliminary Approval of Proposed Settlement and will marshal and present at any hearing thereon evidence to support the motion.

4.7 Dowlatshahi and Class Counsel are entering into this Settlement Agreement on behalf of the Class to terminate and settle all liability in relation to the Claims against McIlhenny in recognition of (a) the existence of complex and contested issues of law and fact, (b) the risk, difficulty, and uncertainty of success associated with pursuing the claims asserted in this action, (c) the extent of the alleged liability of McIlhenny, (d) the risks inherent in litigation, (e) the likelihood that future proceedings will be unduly protracted and expensive if these matters are not settled by voluntary agreement with the Parties, (f) the magnitude of the benefits derived from the contemplated settlement in light of both the maximum potential and likely range of recovery to be obtained through further litigation and the expense thereof and the exposure associated therewith, and (g) the determination by Dowlatshahi and his counsel that the settlement is fair, reasonable, adequate, and in the best interests of, and will substantially benefit, the members of the Class.



4.8 McIlhenny enters into this Settlement Agreement, notwithstanding its continuing denial of liability for alleged injuries and/or compensatory damages and/or statutory damages in connection with the Claims, and notwithstanding their denials concerning causation of any alleged injuries and/or damages, to resolve all potential Claims, and to avoid protracted litigation, without any admission on the part of McIlhenny of any liability or fault whatsoever.

4.9 It is the intention and a condition of this Settlement Agreement, and the Parties agree, that as of the Settlement Effective Date, this settlement shall fully, completely, finally, and conclusively settle, compromise, and release all liability for the Claims of McIlhenny to Class Members. Without limiting the foregoing, it is also the intention and a condition of this Settlement Agreement, and the Parties hereto agree, that upon the Settlement Effective Date, (a) McIlhenny shall be finally released from all liability for the Claims, by, through, or on behalf of each of the Class Members, (b) the Class Action shall be dismissed with prejudice and with each party to bear its own costs through dismissal, (c) each of the Class Members shall be forever barred and enjoined from instituting, maintaining, or prosecuting any action against McIlhenny with respect to its respective liability for the alleged Claims, and (d) that the exclusive remedy of all Class Members with respect to any liability for the Claims shall be claims against the Class Settlement Fund as described in the Settlement Agreement.

4.10 It is the intention and a condition of this Settlement Agreement that the Final Judgment and Order be entered and become Final. The Parties agree to take all actions reasonably necessary and appropriate to fulfill and satisfy this intention and condition.

4.11 Without limiting the foregoing, it is the intention and a condition of this Settlement Agreement, and the Parties agree, that no Class Member shall recover, directly or indirectly, any sums for liability for the Claims, from McIlhenny other than those received from the Class Settlement Fund under the terms of this Settlement Agreement.

4.12 Without limiting the foregoing, it is the intention and a condition of this Settlement Agreement, and the Parties agree, that each of the Class Members shall not attempt to

execute or to collect any judgment or any portion of any judgment if such execution or collection could create liability of McIlhenny in connection with the sale of any of the Products, whether through contribution, indemnity or otherwise.

4.13 Anything in this Settlement Agreement to the contrary notwithstanding, McIlhenny shall have the unilateral right, in its sole discretion, to waive, in writing, in whole or in part, any condition inuring to its benefit set forth in Sections 4, 5, 6, 10 and 14 of this Settlement Agreement, which waiver shall be binding upon the Class. Waiver by McIlhenny of any condition as to any Class Member shall not constitute a waiver as to any other condition or any other Class Member.

**5. PRELIMINARY APPROVAL OF THE SETTLEMENT AGREEMENT AND CERTIFICATION OF THE CLASS FOR SETTLEMENT PURPOSES ONLY**

5.1 On or before March 24, 2017, this Settlement Agreement shall be signed by all Parties, and with reasonable promptness the Parties shall submit this Settlement Agreement to the Court for preliminary approval. This submission shall be made by means of the simultaneous filing of a Class Action Complaint and a Joint Motion for Preliminary Approval of Proposed Settlement signed by or on behalf of the Class, Dowlatsahi, and McIlhenny with a proposed form of order of preliminary approval attached thereto, which order of preliminary approval will include the Court's preliminary approval of the Settlement Agreement, a preliminary determination that the settlement set forth therein is fair, reasonable, and adequate, a conditional certification of the Class as Defined for settlement purposes only, and provisions specifying notice to the Class. The Class Action Complaint shall be substantially in the form attached hereto as Exhibit 1, and the Order of Preliminary Approval shall be substantially in the form attached hereto as Exhibit 5.

5.2 At the preliminary approval hearing, McIlhenny shall not object to the conditional certification of the Class as Defined for settlement purposes only and/or the appointment of Dowlatsahi Representative as the appropriate Class Representative for the Class and the

appointment of Abbas Kazerounian and Mona Amini of Kazerouni Law Group, APC and Joshua B. Swigart of Hyde & Swigart, APC as the appropriate Class Counsel. The Parties acknowledge and agree, and shall so stipulate to the Court, that (a) the Class as Defined is being certified for settlement purposes only pursuant to the Settlement Agreement, and (b) McIlhenny reserve the right to object to class certification *de novo* if this Agreement is terminated for any reason.

5.3 Prior to Preliminary Approval, Class Counsel shall be entitled to conduct confirmatory discovery, which shall be limited to:

5.3.1 Document requests to confirm the number of McIlhenny Company Products sold to California consumers and the California sales dollar figures that were previously provided by McIlhenny, with such sales dollar figures to remain confidential and proprietary to McIlhenny and which sales dollar figures shall remain protected pursuant to an agreed-upon Confidentiality Order.

5.3.2 A deposition of the McIlhenny Company's designated person who is qualified to confirm the figures referred to in the above paragraph.

## **6. CLASS NOTICE**

6.1 The Class Settlement Notice will be provided to all Class Members as follows:

6.1.1 Within thirty (30) days after the Court enters the Order of Preliminary Approval, the Settlement Administrator will commence the running of the Summary Published Notice in a quarter-page advertisement in the California edition of the USA Today, on two separate days.

6.1.2 Within thirty (30) days after the Court enters the Order of Preliminary Approval, the Settlement Administrator will make available on the Settlement Website the following materials:

- (a) The Class Settlement Notice
- (b) The Complaint
- (c) This Settlement Agreement

- (d) The Claim Form
- (e) Anything else the Court orders

6.2 Not later than fourteen (14) days prior to the Final Approval Hearing, the Settlement Administrator will serve on Class Counsel and file with the Court a declaration of due diligence setting forth its compliance with its obligations under this Settlement Agreement. Prior to the Final Approval Hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

## **7. OPT-OUT PARTIES**

7.1 All persons and/or entities included within the Class Definition but who properly file a timely written request to opt out of the Class as set forth in Section 7.1.1 below will not be included as Class Members, shall have no rights as Class Members pursuant to this Settlement Agreement, and shall receive no payments as provided herein.

7.1.1 A request to opt out of the Class must be in writing and state the name, address and phone number of the person(s) seeking to opt out. Each request must also contain a duly authorized and signed statement that: “I hereby request that I be excluded from the proposed Class in the *Dowlatshahi* Class Action.” The request must be mailed to the Settlement Administrator at the address provided in the Class Notice and postmarked by the deadline specified in the Class Notice. An opt out request that does not include all of the foregoing information, that is sent to an address other than the one designated in the Class Notice, or that is not postmarked within the time or sent in the manner specified, shall be invalid and the person or entity serving such a request shall be included as a Class Member and shall be bound by this settlement.

7.1.2 Class Counsel shall make best efforts to encourage any and all clients they represent to remain a Class Member and not opt out of the Class.

7.2 The Settlement Administrator shall forward, by e-mail attachment and U.S. mail, copies of all opt out requests to Class Counsel and counsel for McIlhenny promptly and no later than ten (10) days after the deadline for Class Members to submit such opt out requests. Within fifteen (15) business days after the expiration of the period for persons or entities within the Class Definition to opt out of the Class, Class Counsel and counsel for McIlhenny shall collectively prepare a list identifying all Opt-Out Parties, any actions in which such Opt-Out Parties have asserted claims against McIlhenny related to the country of origin of any of the Products, the number of claims asserted by Opt-Out Parties, and the types of claims asserted by such Opt-Out Parties. This description of any such actions shall be amended from time to time as further information becomes available to Class Counsel and counsel for McIlhenny. Further, immediately following the end of such fifteen-day period, Class Counsel and counsel for McIlhenny shall hold a conference to review the nature and status of all Opt-Out Parties.

7.3 Any Class Member who does not comply with the procedures set forth in this section will lose any opportunity to exclude himself or herself from the Class and his or her rights will be determined by the Settlement Agreement, if approved by the Court. Any Class member who does not properly and timely submit a request to opt out of the Class as required herein shall be deemed to have waived all rights to opt out and shall be deemed a member of the Class for all purposes under this Settlement Agreement.

7.4 Notwithstanding anything else contained in this Settlement Agreement, if more than 10,000 of the prospective Class Members request exclusion, then McIlhenny may, in its sole discretion, within five business days from the day it determines that the number of members of the Class who have requested exclusion exceeds the blow-up number, and in any event, at least 15 days prior to the Final Approval Hearing, notify Class Counsel, in writing, that it has elected to terminate this Settlement Agreement. In that event, (a) this Settlement Agreement shall terminate and become null and void, the Preliminary Approval Order and all of its provisions shall be vacated by its own terms, and the Class Action shall revert to the status that existed

immediately after the filing of the Complaint, including no certification of a class; and (b) no term of this Settlement Agreement or any draft thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall have any effect, nor shall any such matter be admissible in evidence for any purpose in the Class Action, or in any other proceeding. Class Counsel may attempt to cause retraction of any election of exclusion by Class Members or any group thereof. If McIlhenny has exercised the option to withdraw from and terminate the settlement and if Class Counsel succeeds in causing the retraction (within the time period specified below for such retractions) of sufficient requests to opt out of the Class such that the remaining requests to opt out of the Class do not exceed the blow-up number, McIlhenny's notice of withdrawal from the settlement automatically shall be deemed a nullity. To retract a prior request to opt out of the Class, the Class Member must provide to the parties, at least three days prior to the Final Approval Hearing, or any adjournment thereof, a written notice stating his or her desire to retract the request to opt out of the Class from the Class. Any dispute among the parties concerning the interpretation or application of this blow-up provision may be presented to the Court for resolution upon the application of any party hereto. McIlhenny shall notify Plaintiff's counsel within three business days of learning of the existence of more than 10,000 Requests for Exclusion.

7.5 The list identifying all Opt-Out Parties prepared pursuant to Section 0 shall be jointly submitted to the Court prior to the final approval hearing. As part of the Final Judgment and Order granting final approval of this settlement, the Court will incorporate a final list of all Opt-Out Parties. The list identifying Opt-Out Parties will be attached as an exhibit to the Final Judgment and Order granting final approval of the Settlement Agreement.

## **8. OBJECTIONS**

8.1 Any Class Member who wishes to object to the Settlement must send a written objection to the Settlement Administrator, and serve copies on Class Counsel and counsel for McIlhenny, by the deadline specified in the Class Notice. The objection must set forth, in clear

and concise terms, the legal and factual arguments supporting the objection. For any attorney representing an objector, the attorney shall file a declaration listing all objections previously filed for anyone, the case name, court, and case number, and how much, if any amount, was paid in connection with the objection. Class Members who fail to serve timely written objections as set forth above shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement.

## **9. CLAIMS PROCESS**

9.1 Class Members shall have sixty (60) days from the date of Preliminary Approval or the date Notice was disseminated to submit a Claim Form. The date of the postmark on the return envelope or the date of the submission through the Settlement Website shall act as the means used to determine whether a Class Member has “timely” returned the Claim Form on or before the Claim Deadline.

9.2 In the event of any dispute over the timeliness or validity of any Claim Form or request to opt out of the Class submitted under Section 7, the Parties shall meet and confer in good faith for the purpose of resolving the dispute and, if the dispute cannot be resolved, shall submit the dispute to the Court for resolution at the Final Approval Hearing.

9.3 A **Class Member** who does not file a timely Claim Form, shall not be eligible to receive a benefit under this Settlement Agreement, but shall be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Court.

## **10. FINAL APPROVAL AND EFFECT OF THE AGREEMENT**

10.1 If the Court enters the Order of Preliminary Approval, the Parties shall proceed with due diligence to conduct the Final Approval Hearing as ordered by the Court.

10.2 Not later than thirty (30) days prior to the last date for Class Members to opt-out or object to the Settlement, Class Counsel will file with the court and serve on counsel for McIlhenny a Notice of Motion for Award of Attorneys’ Fees and Costs and the incentive award

to Dowlatshahi, a supporting memorandum of points and authorities and any necessary declarations in support of Plaintiff's motion.

10.3 Not later than thirty (30) days before the Final Approval Hearing, Class Counsel will file with the Court and serve on counsel for McIlhenny a Notice of Motion for Final Approval of Class Action Settlement, a supporting memorandum of points and authorities, and any necessary supporting declarations for Final Approval for the awards of the incentive award to Dowlatshahi, and the attorney's fees and costs to counsel for Dowlatshahi pursuant to this Settlement Agreement.

10.4 The Settlement Agreement is subject to and conditioned upon (a) the issuance by the Court and subsequent entry, following the Final Approval Hearing, of a Final Judgment and Order granting final approval of the Settlement Agreement in accordance with Rule 3.769 of the California Rules of Court, and (b) such Final Judgment and Order becoming Final. It is a condition of this Settlement Agreement that the Final Judgment and Order shall be substantially in the form attached hereto as Exhibit 6. The Parties shall take all reasonable and necessary actions to obtain the Final Judgment and Order and to have it made Final as promptly as practical.

10.5 This Settlement Agreement shall be the exclusive remedy for any and all Claims of Class Members against McIlhenny. When the Final Judgment and Order becomes Final, each of the Class Members shall be barred from initiating, asserting, prosecuting or continuing to prosecute any such claims.

10.6 The Parties agree that, to the best of their knowledge, information and belief, the Settlement Agreement is made in good faith and in accordance with the laws of the United States and the State of California. The Parties agree to cooperate by providing affidavits and/or testimony concerning the circumstances of this settlement and attesting to the fact that it is a good faith settlement.



10.7 The Court shall retain jurisdiction over the Class Action, the Settlement Agreement, the Final Judgment and Order, the Class Settlement Fund and the Parties to this Settlement Agreement solely for the purpose of administering, supervising, construing, and enforcing the Agreement and the Final Judgment and Order and supervising the management and disbursement of the funds in the Class Settlement Fund.

10.8 Except as otherwise provided herein, and provided that the Final Judgment and Order is consistent with the terms and conditions of this Settlement Agreement, Dowlatshahi, Class Members who did not timely submit an objection to the Settlement, McIlhenny, and their respective counsel hereby waive any and all rights to appeal from the Final Judgment and Order, including all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate or set aside judgment, a motion for new trial, and any extraordinary writ, and the Judgment therefore will become nonappealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment proceedings.

10.9 This Court shall have jurisdiction over any dispute that arises under this Settlement Agreement. If any dispute is so submitted, the Parties shall meet and confer in good faith for the purpose of resolving the dispute and, if the dispute cannot be resolved, shall submit the dispute to the Court for resolution.

## **11. RELEASE AND COVENANT NOT TO SUE**

11.1 Upon the entry of the Final Order and Judgment following the Final Approval Hearing, all Class Members who have not timely requested exclusion from the Class, and each of their respective successors, assigns, legatees, heirs, and personal representatives shall release and forever discharge McIlhenny, and each of its indemnitors, partners, privities, and any of their present and former directors, officers, employees, agents, representatives, attorneys, accountants, and all persons acting by, through, under or in concert with them, or any of them, from any and all manner of action, causes of action, claims, demands, rights, suits, obligations, debts,

contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent, related to or arising out of the Claims, causes of action or demands that were asserted in the Class Action, or that arise from or are related to the acts, omissions or other conduct that have or could have been alleged in the Class Action regarding the country of origin of McIlhenny's Products. This release shall specifically exclude any claims for personal injury arising from the Products.

11.2 In addition, Dowlatshahi and each of his respective successors, assigns, legatees, heirs, and personal representatives, expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, and any other similar provision under federal or state law, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

11.3 Dowlatshahi fully understands that the facts upon which this Settlement Agreement is executed may hereafter be other than or different from the facts now believed by him and by Class Counsel to be true, and expressly accepts and assumes the risk of such possible difference in facts and agrees that this Settlement Agreement shall remain effective notwithstanding any such difference in facts.

## **12. CONTRIBUTIONS TO AND DISBURSEMENTS FROM THE CLASS SETTLEMENT FUND**

12.1 Within ten (10) business days after the Court's entry of the Order of Preliminary Approval, McIlhenny will pay into the Class Settlement Fund the sum of Fifty Thousand and No/100 (\$50,000.00) Dollars ("The Initial Funding Amount").

12.2 Within five (5) days after the Settlement Effective Date, McIlhenny shall pay into the Class Settlement Fund the sum of Six Hundred Thousand and No/100 (\$600,000.00) Dollars (“The Final Funding Amount”).

12.3 All of the costs, fees, and expenses for Class Counsel shall come from the contribution made by McIlhenny to the Class Settlement Fund pursuant to Section 12.1 or Section 12.2, respectively; provided, however, that no sums shall be paid for the costs, expenses (other than as otherwise expressly provided for herein), or fees of Class Counsel until after the Settlement Effective Date.

12.4 The costs of Notice to the Class and settlement administration shall be paid out of the Settlement Fund as they are incurred, at any time after the payment referred to in Section 12.1 is made. The Settlement Administrator’s fees and costs for Notice to the Class and settlement administration will be tiered depending on the number of claims, however, the total fees and costs to the Settlement Administrator shall not exceed \$179,000.

12.5 Until the Settlement Effective Date, except as otherwise specifically provided herein, no monies in the Class Settlement Fund shall be used or disbursed.

12.6 Upon the Settlement Effective Date: (a) except as otherwise provided herein, the Class Settlement Fund shall vest in and to the benefit of Class Members; (b) except as otherwise specifically provided for herein, the interests of McIlhenny in the Class Settlement Fund shall cease; and (c) McIlhenny shall have no further obligations to the Class or the Class Members in connection with their respective liability for the Claims.

12.7 All costs or expenses in connection with or incidental to this settlement, shall, to the extent approved by the Court, be paid exclusively from the Class Settlement Fund. McIlhenny shall not be liable for any such costs or expenses, except that McIlhenny shall be responsible for the cost of its own attorneys, expert witnesses, consultants, and employees.

12.8 The Settlement Administrator shall disburse funds from the Class Settlement Fund as follows:

12.8.1 All costs of providing the reasonable notices to the Class.

12.8.2 All costs of administering the settlement.

12.8.3 Subject to court approval, attorney's fees to counsel for Dowlatshahi and the class of 25% of the amount of the fund, not to exceed \$162,500. The attorney's fees awarded by the court shall be divided equally between the two law firms appointed as Class Counsel, with 50% to be apportioned to Kazerouni Law Group, APC and 50% to be apportioned to Hyde & Swigart, APC. McIlhenny shall not object to attorneys' fees requested by counsel for Dowlatshahi in such amount.

12.8.4 Costs incurred by counsel for Dowlatshahi.

12.8.5 Subject to court approval, an incentive award to Dowlatshahi in the amount of \$5,000.

12.8.6 Relief to the class, as follows:

(a) Each Class Member who presents a valid claim for a purchase during the period September 15, 2011 through the Settlement Effective Date shall receive restitution of \$2.50 without the need to submit a receipt or proof of purchase;

(b) Each Class Member who presents a valid claim with receipt(s) or proof(s) of purchase during the period September 15, 2011 through the Settlement Effective Date shall receive restitution up to the amount of the Class Member's claim;

(c) In no event shall the total amount of the approved claims exceed the amount of the funds available in the Class Settlement Fund after deducting the cost of notice to the Class, the costs of administration, the attorney's fees and the incentive award to Dowlatshahi. If the claims exceed the funds available net of the cost of notice to the Class, the costs of administration, the attorney's fees and costs, and the incentive award to Dowlatshahi, then the amount of the restitution to each Class Member shall be reduced proportionately.

(d) Cy Pres Relief: All amounts remaining in the Class Settlement Fund after deducting the cost of notice to the Class, the costs of administration, the attorney's fees, the incentive award to Dowlatshahi and the relief to the Class shall be contributed to a *cy pres* recipient, Slow Food USA, which works to educate consumers on daily food choices. Slow Food USA has approximately 175 local and campus chapters across the United States that coordinates local activities, projects and events that promote a better, cleaner, more transparent and slower food system. The funds shall be used by Slow Food USA in its National School Garden Program, and will sponsor the creation of new school gardens in California, or to an equivalent program by the California chapter of Slow Food USA.

12.9 Within thirty (30) days of the disbursement of the payments set forth above, the Settlement Administrator will serve on the Parties and file a declaration with the Court confirming the disbursements of all funds required under the Settlement and informing the Court of any outstanding checks that remain uncashed. Any uncashed checks shall be void after one hundred eighty (180) days and shall go to the *cy pres* recipient one hundred eighty (180) days after the disbursement of the payments set forth above.

### **13. TERMINATION OF AGREEMENT**

13.1 As provided below, the Agreement may be terminated by McIlhenny or Dowlatshahi upon written notice if any one or more of the following events occur (provided, however, that a Party whose willful conduct causes the event giving rise to the right to terminate shall not have a right to terminate the Agreement by reason of such event and further provided that copies of any written notice of termination shall be provided to the Court and filed in the record of the Class Action):

13.1.1 The Court does not issue the Order of Preliminary Approval substantially in the form attached hereto as Exhibit 5 or in a form mutually acceptable to Class Counsel and McIlhenny;

13.1.2 The Court does not enter the Final Judgment and Order substantially in the form attached hereto as Exhibit 6 or in a form mutually acceptable to Class Counsel and McIlhenny;

13.1.3 The Final Judgment and Order does not become Final;

13.1.4 More than 10,000 of the Class Members opt out of the Settlement;

13.2 In the event of termination of the Agreement, (a) the Settlement Agreement shall be null and void and have no force and effect and, except as otherwise provided in this Settlement Agreement, no Party shall be bound by its terms, (b) all Parties shall be restored to their respective positions immediately before execution of the Settlement Agreement; (c) any and all monies or other contributions paid into the Class Settlement Fund, by McIlhenny (actual and accrued) thereon, shall be returned in accordance with the written direction of McIlhenny, less any funds spent on Settlement Administration and Notice to the Class; and (d) the parties shall jointly petition the court to revert the Class Action to its status before the execution of the Settlement Agreement as if the Motion for Preliminary Approval and all subsequent pleadings had not been filed and as if no orders relating to the settlement had been entered. In the event of such termination, McIlhenny shall have full authority to immediately withdraw from the Class Settlement Fund any and all contributions and payments it made into the Class Settlement Fund, and the earnings (actual and accrued) thereon, without further proceedings or approval of any court, subject to and in accordance with this Settlement Agreement. In the event any settlement funds are to be returned in accordance with this Settlement Agreement, the necessary consent by Class Counsel shall be deemed to have been given as required for Section 468B of the Internal Revenue Code of 1986.

#### **14. ADDITIONAL OBLIGATIONS OF THE PARTIES**

14.1 Dowlatsahi, McIlhenny and their respective counsel each represents and warrants to the other that, as applicable:

14.1.1 Class Counsel and McIlhenny have not been notified of any pending lawsuit, claim, or legal action related to the sale of any of the Products, brought or made by or on behalf of any putative Class Member other than the Class Action;

14.1.2 Class Counsel and McIlhenny have not been notified of any lawsuit, claim, or legal action against McIlhenny related to the sale of any of the Products, brought or made by or on behalf of any person and/or entity who is not a putative Class Member against McIlhenny;

14.1.3 Class Counsel and McIlhenny have exercised due diligence in ascertaining that their respective representations contained in this Settlement Agreement are true and accurate, and Class Counsel and McIlhenny shall have, until the Settlement Effective Date, a continuing obligation to ensure that their representations are accurate, and Class Counsel and McIlhenny shall notify each other within a reasonable time after learning that any of the representations are or become inaccurate.

14.2 Class Counsel further covenants, represents and warrants to McIlhenny that:

14.2.1 Prior to the Final Approval Hearing, Class Counsel shall have explained the terms and effect of this Settlement Agreement to Dowlatshahi;

14.2.2 Class Counsel has not and will not make any undisclosed payment or promise to Dowlatshahi or any other class representative;

14.2.3 Class Counsel has read and reviewed the Settlement Agreement and believes that the settlement embodied therein is in the best interests of each of its clients;

14.2.4 Class Counsel will strongly recommend to each of its clients that they settle their claims under the terms of the Settlement Agreement; and

14.2.5 Dowlatshahi as the named plaintiff has full authority to enter into and execute this Settlement Agreement and all related documents for, and on behalf of and to bind, himself.

14.3 The Parties shall use their best efforts to conclude the settlement and obtain the Final Judgment and Order. The Parties agree that it is essential that this proposed settlement be prosecuted to a successful conclusion in accordance with all applicable provisions of law and in the exercise of good faith on the part of the Parties. Inherent in the accomplishment of this mutual goal is the understanding among the Parties that the Parties assume the mutual obligation to each other to assist and cooperate in the effectuation of the settlement in accordance with all applicable legal requirements. To that end, the Parties are obliged to affirmatively support the settlement in the event of appeal, to maintain the integrity and goals of the settlement in all further proceedings in the Class Action, and to take such actions as may be legally proper to assure the jurisdiction of the Court in this and all subsequent proceedings. The settlement is intended to be a final and binding resolution of all liability for the Claims.

## **15. MISCELLANEOUS PROVISIONS**

15.1 Neither this Settlement Agreement, nor the settlement contemplated thereby, nor any proceeding taken hereunder shall be construed as or deemed to be evidence of any fact or an admission or concession by McIlhenny of any liability or wrongdoing whatsoever, which is expressly denied by McIlhenny, or, on the part of the Class Members, of any lack of merit in their claims. None of the provisions of this Settlement Agreement, nor evidence of any negotiations or proceedings in pursuance of the compromise and settlement herein, shall be offered or received in evidence in the Class Action or any other action or proceeding as an admission or concession of liability or wrongdoing of any nature on the part of McIlhenny, or as an admission of any fact or presumption on the part of the Class, or to establish jurisdiction or venue or to create a waiver of any affirmative defense. The provisions of the Settlement Agreement and/or the Settlement Agreement may be offered or received in evidence solely to enforce the terms and provisions thereof and shall not be offered in evidence or used in the Class Action or any other action or proceeding for any other purpose, including in support of the existence, certification, or maintenance of any purported class. The Parties specifically



acknowledge, agree and admit that this Settlement Agreement and the Agreement, along with all related motions and pleadings, shall be considered an offer to compromise and a compromise within the meaning of California Evidence Code section 1152 and any equivalent rule of evidence of any state or federal court, and shall not be offered or received into evidence as an admission or concession of liability or wrongdoing on the part of McIlhenny. This Section 15.1 shall survive the termination of the Agreement.

15.2 This Settlement Agreement constitutes the entire agreement among the Parties and may not be modified, amended, or waived except by a written instrument duly executed by all the Parties or their authorized representatives; provided, however, McIlhenny may exercise the waiver rights provided under Section 4.13. Each Party hereto represents and warrants that it is not relying on any representation that is not specifically included in this Settlement Agreement. This Settlement Agreement supersedes any previous agreements or understandings between or among the Parties on the subject matter of this Settlement Agreement.

15.3 This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

15.4 The terms and conditions of this Settlement Agreement shall bind and inure to the benefit of the heirs, executors, administrators, predecessors in interest, successors in interest, legal representatives, and assigns of all Parties.

15.5 Except with respect to any waiver provided pursuant to Sections 4.13 or 7.3, any waiver by a Party of any term, condition, covenant, or breach of the Settlement Agreement shall not be deemed to be a continuing waiver of same.

15.6 The Parties agree that the terms and conditions of this Settlement Agreement are the result of arm's length negotiations between the Parties or their counsel. None of the Parties shall be considered to be the drafter of the Settlement Agreement or any provision hereof for the

purpose of any statute, jurisprudential rule, or rule of contractual interpretation or construction that might cause any provision to be construed against the drafter.

15.7 For purposes of this Settlement Agreement, the use of the singular form of any word includes the plural and vice versa.

15.8 The table of contents in this Settlement Agreement are included for convenience only and shall not be deemed to constitute part of this Settlement Agreement or to affect its construction.

15.9 The Parties have agreed that the validity and interpretation of this Settlement Agreement and any of the terms or provisions hereof, as well as the rights and duties of the Parties thereunder, shall be governed solely by the laws of the State of California without giving effect to any conflict of laws principles and that the exclusive forum for any claim related to the interpretation or enforcement of the Settlement Agreement shall be the Superior Court in and for the Orange County, California.

15.10 Any notice, request, instruction, or other document to be given by any Party to any other Party (other than class notification) shall be in writing and delivered personally, sent by registered or certified mail, postage prepaid, or sent by private, overnight delivery carrier operating in the United States of America, providing a receipt with evidence of delivery, as follows:

15.11 If to McIlhenny, to:

Covert J. Geary  
Jones Walker, LLP  
201 St. Charles Avenue, Suite 5100  
New Orleans, LA 70170-5100  
cgeary@joneswalker.com

and

Jeffrey Margulies  
Lauren Shoor  
Norton Rose Fulbright US LLP  
555 South Flower Street  
Forty-First Floor

Los Angeles, CA 90071  
jeff.margulies@nortonrosefulbright.com  
lauren.shoor@nortonrosefulbright.com

15.12 If to Class Counsel, the Class, or Dowlatsahi, to:

Abbas Kazerounian  
Mona Amini  
Kazerouni Law Group, APC  
245 Fischer Ave., Suite D1  
Costa Mesa CA 92626  
ak@kazlg.com  
mona@kazlg.com

and

Joshua B. Swigart  
Hyde & Swigart  
2221 Camino Del Rio South, Suite 101  
San Diego, CA 92108  
josh@westcoastlitigation.com

The Parties may change their respective recipients and addresses for notice by giving notice of such change to the other Parties pursuant to this Section.

15.13 McIlhenny agrees that in the event that any appeal is taken with respect to the settlement embodied in this Settlement Agreement, McIlhenny will join in a motion to require any appellant to post an appeal bond set at the maximum amount allowed by law.

15.14 In the event that one or more of the provisions of this Settlement Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision, but only if the Parties mutually elect to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Settlement Agreement.

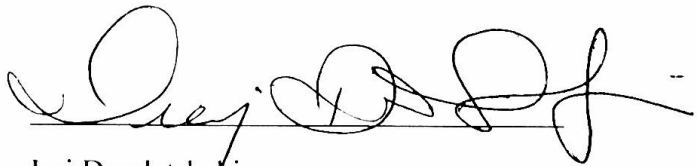
15.15 In entering into this Settlement Agreement, each Party represents and warrants that it has relied upon its own knowledge and judgment and the advice of counsel. It is expressly understood, agreed, and warranted that, in entering into this Settlement Agreement, no Party has

acted in reliance upon any representation, warranty, advice, or action by any other Party except as specifically set forth herein.

15.16 Except as otherwise provided herein or as may be required by law or in connection with notice of the settlement or as otherwise agreed in writing by the Parties, the Parties shall keep the existence of the settlement in confidence until the Court's entry of the Order of Preliminary Approval.

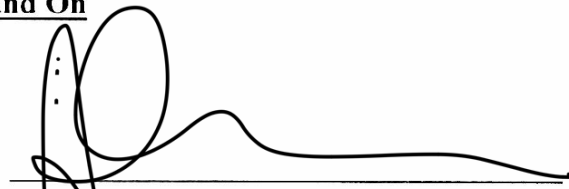
**ACCEPTED AND AGREED**

1/16/18  
Date

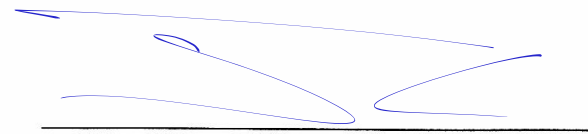
  
Iraj Dowlatshahi

**Representing Dowlatshahi, Individually and On  
Behalf of the Class:**

01/16/18  
Date

  
Abbas Kazerounian  
Chairman and Liaison Counsel  
Kazerouni Law Group, APC  
245 Fischer Ave., Suite D1  
Costa Mesa CA 92626

1/17/18  
Date

  
Joshua B. Swigart  
Hyde & Swigart  
2221 Camino Del Rio South, Suite 101  
San Diego, CA 92108

On Behalf of McIlhenny Company:

1/17/18  
Date

Harold G. Osborn  
Harold G. Osborn  
Senior Vice-President  
McIlhenny Company

January 17, 2018  
Date

Covert J. Geary  
Covert J. Geary  
Jones Walker, LLP  
Counsel for McIlhenny Company

1/17/18  
Date

Jeffrey Margulies  
Jeffrey Margulies  
Norton Rose Fulbright US LLP  
Counsel for McIlhenny Company

## **EXHIBITS**

1. Class Action Complaint
2. Class Settlement Notice
3. Summary Published Notice
4. Claim Form
5. Proposed Order of Preliminary Approval
6. Proposed Final Judgment and Order (with list of Opt-Out Parties attached)

# EXHIBIT 1

1 **KAZEROUNI LAW GROUP, APC**  
2 Abbas Kazerounian, Esq. (SBN: 249203)  
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4 Mona Amini, Esq. (SBN: 296829)  
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6 245 Fischer Avenue, Unit D1  
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7 **HYDE & SWIGART**  
8 Joshua B. Swigart, Esq. (SBN: 225557)  
9 josh@westcoastlitigation.com  
10 2221 Camino Del Rio South, Suite 101  
11 San Diego, CA 92108-3551  
12 Telephone: (619) 233-7770  
13 Facsimile: (619) 297-1022

11 *Attorneys for Plaintiff,*  
12 Iraj Dowlatshahi

13 **SUPERIOR COURT OF CALIFORNIA**  
14 **COUNTY OF ORANGE – CIVIL COMPLEX**

Judge Kim G. Dunning

15 **IRAJ DOWLATSHAHI;**  
16 **INDIVIDUALLY AND ON BEHALF**  
17 **OF ALL OTHERS SIMILARLY**  
18 **SITUATED,**

18 Plaintiff,

19 v.

20 **MCILHENNY COMPANY,**

21 Defendant.

**CLASS ACTION** 30-2017-00911222-CU-NP-CXC

**COMPLAINT FOR VIOLATION OF:**

- 1) **CONSUMERS LEGAL REMEDIES ACT (CAL. CIVIL CODE §§ 1750, ET SEQ.);**
- 2) **CALIFORNIA BUS. & PROF. §§ 17533.7 (CALIFORNIA FALSE “MADE IN U.S.A.” CLAIM);**
- 3) **CALIFORNIA BUS. & PROF. §§ 17200 ET SEQ.; AND**
- 4) **NEGLIGENT MISREPRESENTATION**

**JURY TRIAL DEMANDED**

27 //

28 //



## INTRODUCTION

1. IRAJ DOWLATSHAHI (“Plaintiff”) brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of MCILHENNY COMPANY (“Defendant”) in unlawfully labeling Defendant’s consumable consumer packaged goods, such as condiments with the false designation and representation that the products are/were “MADE IN U.S.A.” The unlawfully labeled products are sold via Defendant’s website, catalogue, and in various stores throughout the United States.<sup>1</sup> Plaintiff alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.
2. As stated by the California Supreme Court in *Kwikset v. Superior Court* (January 27, 2011) 51 Cal.4th 310, 328-29:

**Simply stated: labels matter.** The marketing industry is based on the premise that labels matter, that consumers will choose one product over another similar product based on its label and various tangible and intangible qualities that may come to associate with a particular source...In particular, to some consumers, the “Made in U.S.A.” label matters. A range of motivations may fuel this preference, from the desire to support domestic jobs to beliefs about quality, to concerns about overseas environmental or labor conditions, to simple patriotism. The Legislature has recognized the materiality of this representation by specifically outlawing deceptive and fraudulent “Made in America” representations. (Cal. Bus. & Prof. Code section 17533.7; see also Cal. Civ. Code § 1770, subd. (a)(4) (prohibiting deceptive representations of geographic origin)). The object of section 17533.7 “is to protect consumers from being misled when they purchase products in the belief that they are advancing the interest of the United States and its industries and workers...”

3. The “MADE IN U.S.A.” claim (or some derivative thereof) is prominently printed on Defendant’s products, including the product purchased by Plaintiff. Contrary to

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<sup>1</sup> Plaintiff seeks class wide relief on behalf of all purchasers of any of Defendant’s products that are substantially similar to the consumable consumer packaged product purchased by Plaintiff and labeled as “MADE IN U.S.A.,” or some derivative thereof, that are foreign made or include foreign made components in violation of California law(s), not only the specific Tabasco Brand Pepper Sauce product (the “Product”) purchased by Plaintiff.

1 Defendant's representation and in violation of California law, Defendant's Class  
2 Products<sup>2</sup>, including the specific product purchased by Plaintiff, include foreign  
3 ingredients.

- 4 4. This nationwide sale and advertising of deceptively labeled products constitutes  
5 violations of: (1) California's Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code  
6 §§ 1750 et seq.; (2) California's False Advertising Law ("FAL"), Bus. & Prof. Code §  
7 17533.7; (3) California's Unfair Competition Law ("UCL"), Bus. & Prof. Code §§ 17200  
8 et seq.; and (4) negligent misrepresentation. This conduct caused Plaintiff, and others  
9 similarly situated, damages, and requires restitution and injunctive relief to remedy and  
10 prevent further harm.
- 11 5. Unless otherwise indicated, the use of Defendant's name in this Complaint includes all  
12 agents, employees, officers, members, directors, heirs, successors, assigns, principals,  
13 trustees, sureties, subrogees, representatives and insurers of Defendant.

#### 14 JURISDICTION AND VENUE

- 15 6. Jurisdiction is proper pursuant to this Court's general jurisdiction.
- 16 7. The Court has jurisdiction over Plaintiff's claims for damages, restitution, injunctive  
17 relief, and declaratory relief arising from Defendant's unlawful business practices under  
18 California's CLRA, FAL, and UCL; as well as negligent misrepresentation.
- 19 8. This Court has personal jurisdiction over Defendant because Defendant conducts  
20 substantial business in the State of California and County of Orange, has sufficient  
21 minimum contacts with this State and County, and otherwise purposefully avails itself of  
22 the markets in this State and County through the promotion, sale, and marketing of its  
23 services in this State, to render the exercise of jurisdiction by this Court permissible  
24 under traditional notions of fair play and substantial justice.
- 25 9. Venue is proper in this Court pursuant to California Code of Civil Procedure section  
26

27 <sup>2</sup> Defendant's Class Products include, but are not limited to, all sizes, flavors, configurations  
28 and/or other variations of Tabasco pepper sauce in addition to each and every product found at:  
<http://countrystore.tabasco.com/All-Products/products/77/0/7>.

1 395(a) because Plaintiff resides within this county and many of the acts and transactions  
2 giving rise to this action occurred in this district because Defendant:

- 3 a. is authorized to conduct business in this district and has intentionally availed  
4 itself of the laws and markets within this county;  
5 b. does substantial business within this county; and is subject to personal  
6 jurisdiction in this county;  
7 c. and is subject to personal jurisdiction in this county.

8 **PARTIES**

9 10. Plaintiff is an individual residing in the City of Anaheim Hills, County of Orange, State  
10 of California.

11 11. Defendant is a corporation that is organized and exists under the laws of the State of  
12 Maine, with its principal place of business in Louisiana, and which is doing business in  
13 the State of California and within this county.

14 12. Defendant is a leading manufacturer of pepper-sauce and pepper products in the food  
15 processing industry that conducts business through internet sales and mail orders, and at  
16 numerous grocery stores within the United States. One of the products sold by Defendant  
17 is the Tabasco Brand Pepper Sauce (the "Product") purchased by Plaintiff.

18 **NATURE OF THE CASE**

19 13. At all times relevant, Defendant made, and continues to make, affirmative  
20 misrepresentations regarding its Class Products, including the Product purchased by  
21 Plaintiff, it manufactures, markets and sells. Specifically, Defendant packaged,  
22 advertised, marketed, promoted, and sold its Class Products as "MADE IN U.S.A.," or  
23 some derivative thereof.

24 14. However, although Defendant represents that its Class Products are "MADE IN U.S.A."  
25 (or some derivate thereof), Defendant's Class Products are wholly and/or substantially  
26 manufactured or produced with components that are manufactured, grown and/or sourced  
27 outside of the United States.  
28

1 15. Each consumer, including Plaintiff, was exposed to virtually the same material  
2 misrepresentations, as the similar labels were prominently placed on all of the  
3 Defendant's Class Products that were sold, and are currently being sold, throughout the  
4 United States and within the State of California.

5 16. As a consequence of Defendant's unfair and deceptive practices, Plaintiff and other  
6 similarly situated consumers have purchased Defendant's Class Products under the false  
7 impression that the products were actually made in the U.S.A.

8 17. As a result of Defendant's misrepresentations, Plaintiff and other consumers similarly  
9 situated overpaid for the Defendant's Class Products, and/or purchased the Class  
10 Products under the false belief that the product they purchased was made in the U.S.A.  
11 Had Plaintiff and other consumers similarly situated been made aware that Defendant's  
12 Class Products were not actually made in the U.S.A., they would not have purchased the  
13 products.

14 18. As a result of Defendant's false and misleading statements and failure to disclose (or  
15 adequately disclose), as well as Defendant's other conduct described herein, Plaintiff and  
16 other similarly situated consumers purchased thousands, if not millions, of Defendant's  
17 Class Products and have suffered, and continue to suffer, injury in fact, including the loss  
18 of money and/or property.

19 19. Defendant's conduct as alleged herein violates several California laws, as more fully set  
20 forth herein.

21 20. This action seeks, among other things, equitable and injunctive relief; restitution of all  
22 amounts illegally retained by Defendant; and disgorgement of all ill-gotten profits from  
23 Defendant's wrongdoing alleged herein.

24 **FACTUAL ALLEGATIONS**

25 21. Plaintiff re-alleges and incorporates by reference all of the above paragraphs of this  
26 Complaint as though fully stated herein.  
27  
28

- 1 22. Defendant manufactures, markets and/or sells various consumable products that have  
2 been and are currently still represented as “MADE IN U.S.A.” Defendant makes these  
3 representations on the Class Products themselves and also on its website.
- 4 23. Contrary to the representation, Defendant’s Class Products are wholly and/or  
5 substantially manufactured or produced with components that are manufactured outside  
6 of the United States.
- 7 24. Based upon information and belief, the offending Product purchased by Plaintiff contains  
8 foreign ingredients not made in the U.S.A.
- 9 25. Based upon information and belief, the offending Product purchased by Plaintiff, and  
10 presumably all of Defendant’s Class Products that are substantially similar and contain  
11 foreign ingredients, are wholly or partially made of and/or manufactured with foreign  
12 materials, contrary to Defendant’s “MADE IN U.S.A.” (or similar words)  
13 representations.
- 14 26. Defendant markets, and continues to market, and represent to the general public via its  
15 Class Products’ labels and its website that the Class Products are “MADE IN U.S.A.” As  
16 such, Defendant has inaccurately stated the true country of origin of the offending  
17 products. Defendant possesses superior knowledge of the true facts that were not  
18 disclosed, thereby tolling the running of any applicable statute of limitations.
- 19 27. Most consumers possess limited knowledge of the likelihood that products, including the  
20 component products therein, claimed to be made in the United States are in fact  
21 manufactured in foreign countries. This is a material factor in many individuals’  
22 purchasing decisions, as they believe they are purchasing superior goods while  
23 supporting American companies and American jobs.
- 24 28. Consumers generally believe that “MADE IN U.S.A.” products are of higher quality than  
25 their foreign-manufactured counterparts.
- 26 29. On information and belief, Defendant charged excess monies for its Class Products in  
27 comparison to Defendant’s competitors during the entirety of the relevant four-year  
28 statutory time period, based on the false “MADE IN U.S.A.” designation (or some

derivative thereof). California laws are designed to protect consumers from such false representations and predatory conduct.

30. On or about August 27, 2015, Plaintiff purchased Defendant's Tabasco Brand Pepper Sauce at a Ralph's grocery store located in the City of Anaheim, California. At the time of Plaintiff's purchase, the description of the offending product described the sauce as "MADE IN U.S.A.," when the product actually was made and/or contained components made outside of the United States. Accordingly, Defendant is not entitled to lawfully make representations that the product was "MADE IN U.S.A."

31. In making the decision to purchase Defendant's Product, Plaintiff relied upon the advertising and/or other promotional materials prepared and approved by Defendant and its agents and disseminated through its Class Products' packaging containing the misrepresentations alleged herein. Had Plaintiff been made aware that the Product was not actually "MADE IN U.S.A.," he would not have purchased the Product. In other words, Plaintiff would not have purchased Defendant's Product, but for the "MADE IN U.S.A." representations on Defendant's Product's label.

32. Plaintiff suffered an "injury in fact" because Plaintiff's money was taken by Defendant as a result of Defendant's false "MADE IN U.S.A." designation set forth on Defendant's Product and elsewhere.

33. In each case when Plaintiff and putative Class members purchased a Class Product, they relied upon Defendant's "MADE IN U.S.A." representation in their purchasing decision, which is typical of most U.S. consumers. Consequently, they were deceived as a result of Defendant's actions. Plaintiff believed at the time he purchased the Product that he was purchasing a superior quality product, supporting U.S. jobs and the U.S. economy, and also supporting ethical working conditions.

34. Component parts made in the U.S.A. are subject to strict regulatory requirements, including but not limited to environmental, labor, and safety standards. Foreign made component parts are not subject to the same U.S. standards and as a result can be potentially much more dangerous to consumers, especially when ingested like

Defendant's products. Further, foreign made component parts are also generally of lower quality than their U.S. made counterparts, and routinely less reliable and less durable than their U.S. made counterparts.

35. Consequently, Defendant's Class Products containing the foreign ingredients, including the Product purchased by Plaintiff, are of inferior quality, potentially more dangerous and less reliable, as Defendant falsely represented that these products are "MADE IN U.S.A." This results in lower overall customer satisfaction than if the products were truly "MADE IN U.S.A." and/or consisting of component parts made in the United States.

36. On information and belief, Defendant's products containing the foreign ingredients, including the Product purchased by Plaintiff, are not worth the purchase price paid by Plaintiff and putative Class members. The precise amount of damages will be proven at the time of trial,

37. Plaintiff and Class members were undoubtedly injured as a result of Defendant's false "MADE IN U.S.A." representations that are at issue in this matter.

#### CLASS ACTION ALLEGATIONS

38. Plaintiff re-alleges and incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

39. Plaintiff brings this action individually and on behalf of all others similarly situated against Defendant, pursuant to California Code of Civil Procedure Section 378.

40. Plaintiff represents, and is a member of the class, ("the Class") consisting of:

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

41. Excluded from the Class are Defendant and any of its officers, directors, and employees.
42. Plaintiff reserves the right to modify or amend the Class definition before the Court determines whether certification is appropriate.
43. The “Class Period” means four years prior to the filing of the Complaint in this action.
44. This action has been brought and may properly be maintained as a class action under the provisions of § 382 of the California Code of Civil Procedure because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.
45. **Ascertainability.** Plaintiff does not know the number of members in the Class, but Plaintiff currently believes that there are hundreds of thousands, if not more, members of the Class within the State of California. Because of the nature of Defendant’s products, Defendant and Defendant’s distributors must keep detailed and accurate records of distribution in order to accurately and effectively execute a recall if so ordered by the Food and Drug Administration or any other organization. Therefore, the members of the Class are ascertainable through Defendant’s records and/or Defendant’s agents’ records regarding retail and online sales, as well as through public notice. This matter should therefore be certified as a Class action to assist in the expeditious litigation of this matter.
46. **Numerosity.** The members of the Class are so numerous and geographically disbursed that joinder of all Class members is impractical, and the disposition of their claims in the Class action will provide substantial benefits both to the parties and to the court.
47. **Existence and Predominance of Common Questions of Law and Fact.** There is a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented. Common questions of fact and law exist in this matter that predominate over questions that may affect individual Class members, including, but not limited to, the following:
- a. Whether Defendant committed the wrongful conduct alleged herein;
  - b. Whether Defendant’s acts, transactions, or course of conduct constitute the violations of law alleged herein;



- c. Whether Defendant, through its conduct, received money that, in equity and good conscience, belongs to Plaintiff and members of the Class;
- d. Whether the members of the Class sustained and/or continue to sustain damages attributable to Defendant's conduct, and, if so, the proper measure and appropriate formula to be applied in determining such damages; and
- e. Whether the members of the Class are entitled to injunctive and/or any other equitable relief

48. **Typicality.** As a person who purchased one or more of Defendant's products, that were advertised with a "MADE IN U.S.A." country of origin designation (or some derivative thereof), but contain foreign-made ingredients and/or composed of foreign-made component parts, Plaintiff is asserting claims that are typical of the Class. Plaintiff's claims involve the same violations of law by Defendant as other Class Members' claims. Plaintiff and members of the Class also sustained damages arising out of Defendant's common course of conduct complained herein.

49. **Adequacy of Representation.** Plaintiff will fairly and adequately represent and protect the interests of other members of the Class in that Plaintiff has no interests antagonistic to any member of the Class. Further, Plaintiff has retained counsel experienced in handling class action claims and claims involving violations of the consumer laws, and specifically violations of the California Business and Professions Code.

50. **Superiority.** A class action is superior to all other available means for the fair and efficient adjudication of this controversy. Individualized litigation would create the danger of inconsistent and/or contradictory judgments arising from the same set of facts. Individualized litigation would also increase the delay and expense to all parties and court system and the issues raised by this action. The damages or other financial detriment suffered by individual Class members may be relatively small compared to the burden and expense that would be entailed by individual litigation of the claims against the Defendant. The injury suffered by each individual member of the proposed class is relatively small in comparison to the burden and expense of individual prosecution of the

1 complex and extensive litigation necessitated by Defendant's conduct. It would be  
2 virtually impossible for members of the proposed Class to individually redress effectively  
3 the wrongs to them. Even if the members of the proposed Class could afford such  
4 litigation, the court system could not. Individualized litigation increases the delay and  
5 expense to all parties, and to the court system, presented by the complex legal and factual  
6 issues of the case. By contrast, the class action device presents far fewer management  
7 difficulties, and provides the benefits of single adjudication, economy of scale, and  
8 comprehensive supervision by a single court.

9 51. Unless the Class is certified, Defendant will retain monies received as a result of  
10 Defendant's unlawful and deceptive conduct alleged herein. Unless a class-wide  
11 injunction is issued, Defendant will also likely continue to, or allow its resellers to,  
12 advertise, market, promote and package Defendant's Class Products in an unlawful and  
13 misleading manner, and members of the Class will continue to be misled, harmed, and  
14 denied their rights under California law.

15 52. Further, Defendant has acted or refused to act on grounds that are generally applicable to  
16 the class so that declaratory and injunctive relief is appropriate to the Class as a whole.

17 **FIRST CAUSE OF ACTION**

18 **VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT**

19 **CAL. CIV. CODE SECTION 1750, ET SEQ.**

20 53. Plaintiff re-alleges and incorporates by reference all of the above paragraphs of this  
21 Complaint as though fully stated herein.

22 54. California Civil Code Section 1750 et seq., entitled the Consumers Legal Remedies Act  
23 (hereinafter "CLRA"), provides a list of "unfair or deceptive" practices in a "transaction"  
24 relating to the sale of "goods" or "services" to a "consumer." The Legislature's intent in  
25 promulgating the CLRA is expressed in Civil Code Section 1760, which provides, *inter*  
26 *alia*, that its terms are to be:

27 Construed liberally and applied to promote its underlying  
28 purposes, which are to protect consumers against unfair and

deceptive business practices and to provide efficient and economical procedures to secure such protection.

55. Defendant's products constitute "goods" as defined pursuant to Civil Code Section 1761(a).

56. Plaintiff, and the Class members, are each a "consumer" as defined pursuant to Civil Code Section 1761(d).

57. Each of Plaintiff's and the Class members' purchases of Defendant's products constituted a "Transaction" as defined pursuant to Civil Code Section 1761(e).

58. Civil Code Section 1770(a)(2), (4), (5), (7) and (9) provides that:

The following unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful:

(2) [m]isrepresenting the source, sponsorship, approval, or certification of goods or services;

(4) [u]sing deceptive representations or designations of geographic origin in connection with goods or services;

(5) [r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have;

(7) [r]epresenting that goods or services are of a particular standard, quality, or grade...; [and]

(9) [a]dvertising goods or services with intent not to sell them as advertised."

59. Defendant violated Civil Code Section 1770(a)(2), (4), (5), (7) and (9) by marketing and representing that its Class Products are "Made in USA" when they actually contain foreign-made or manufactured ingredients.

60. Pursuant to section 1782(d), by letter dated September 15, 2015, Plaintiff notified Defendant in writing by certified mail of the particular violations of section 1770 and demanded that Defendant rectify the problems associated with the actions detailed above and give notice to all affected consumers of Defendant's intent to so act.<sup>3</sup> Defendant failed to rectify or agree to rectify the problems associated with the actions

<sup>3</sup> A true and correct copy of Plaintiff's letter dated September 15, 2015 is attached hereto as Exhibit A.

1 detailed above and give notice to all affected consumers within thirty days of the date  
2 of written notice pursuant to section 1782. Therefore, Plaintiff and the Class further  
3 seek actual, punitive, and statutory damages, as deemed appropriate.

4 61. On information and belief, Defendant's violations of the CLRA set forth herein were  
5 done with awareness of the fact that the conduct alleged was wrongful and was motivated  
6 solely for Defendant's self-interest, monetary gain and increased profit. Plaintiff further  
7 alleges that Defendant committed these acts knowing the harm that would result to  
8 Plaintiff and Defendant engaged in such unfair and deceptive conduct notwithstanding  
9 such knowledge.

10 62. Plaintiff further alleges that Defendant committed these acts knowing the harm that  
11 would result to Plaintiff and Defendant engaged in such unfair and deceptive conduct  
12 notwithstanding such knowledge.

13 63. Plaintiff suffered an "injury in fact" because Plaintiff's money was taken by Defendant as  
14 a result of Defendant's false "MADE IN U.S.A." representations set forth on Defendant's  
15 website and actual products.

16 64. As a direct and proximate result of Defendant's violations of the CLRA, Plaintiff and  
17 members of the Class are entitled to a declaration that Defendant violated the Consumer  
18 Legal Remedies Act.

19 65. Plaintiff, on behalf of himself and the Class demands judgment against Defendant  
20 for damages, restitution, punitive damages, statutory damages, pre- and post-judgment  
21 interest, attorneys' fees, injunctive and declaratory relief prohibiting such conduct in the  
22 future, costs incurred in bringing this action, and any other relief as this Court deems just  
23 and proper.

24 66. Pursuant to section 1780(e) of the California Civil Code, Plaintiff and the Class make  
25 claims for damages and attorneys' fees and costs.

26 67. In prosecuting this action for the enforcement of important rights affecting the public  
27 interest, Plaintiff seeks the recovery of attorneys' fees, which is available to a prevailing  
28 plaintiff in class action cases such as this matter.

**SECOND CAUSE OF ACTION**

**VIOLATION OF BUSINESS & PROFESSIONS CODE**

**BUS. & PROF. CODE, SECTION 17533.7**

68. Plaintiff re-alleges and incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

69. Business & Professions Code § 17533.7 provides:

It is unlawful for any person, firm, corporation or association to sell or offer for sale in this State any merchandise on which merchandise or on its container there appears the words "Made in U.S.A.," "Made in America," "U.S.A.," or similar words when the merchandise or any article, unit, or part thereof, has been entirely or substantially made, manufactured, or produced outside of the United States.

70. Defendant violated Bus. & Prof. Code § 17533.7 by selling and offering to sell products in the State of California with the "MADE IN U.S.A." country of origin designation as fully set forth herein. The Class Products at issue in this matter are wholly manufactured outside of the United States and/or contain ingredients that are manufactured outside of the United States in violation of California law.

71. On information and belief, Defendant's violations of Bus. & Prof. Code § 17533.7 as set forth herein were done with awareness of the fact that the conduct alleged was wrongful and was motivated solely for Defendant's self-interest, monetary gain and increased profit. Plaintiff further alleges that Defendant committed these acts knowing the harm that would result to Plaintiff and Defendant engaged in such unfair and deceptive conduct notwithstanding such knowledge.

72. As a direct and proximate result of Defendant's violations of Bus. & Prof. Code § 17533.7, Plaintiff and the Class are entitled to restitution of excess monies paid to Defendant by Plaintiff and the Class relating to the false "MADE IN U.S.A." representations set forth on the Defendant's website and on Defendant's actual products' labels and/or packaging.

73. In prosecuting this action for the enforcement of important rights affecting the public interest, Plaintiff seeks the recovery of attorneys' fees, which is available to a prevailing plaintiff in class action cases such as this matter.

**THIRD CAUSE OF ACTION**  
**VIOLATION OF BUSINESS & PROFESSIONS CODE**  
**BUS. & PROF. CODE, SECTION 17200, ET SEQ.**

74. Plaintiff re-alleges and incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

75. Plaintiff and Defendant are each "person[s]" as defined by California Business & Professions Code § 17201. California Business & Professions Code § 17204 authorizes a private right of action on both an individual and representative basis.

76. "Unfair competition" is defined by Business and Professions Code Section § 17200 as encompassing several types of business "wrongs," four of which are at issue here: (1) an "unlawful" business act or practice, (2) an "unfair" business act or practice, (3) a "fraudulent" business act or practice, and (4) "unfair, deceptive, untrue or misleading advertising." The definitions in § 17200 are drafted in the disjunctive, meaning that each of these "wrongs" operates independently from the others.

77. By and through Defendant's conduct alleged in further detail above and herein, Defendant engaged in conduct which constitutes unlawful, unfair, and/or fraudulent business practices prohibited by Bus. & Prof. Code § 17200 et seq.

**A. "Unlawful" Prong**

78. Beginning at a date currently unknown through the time of this Complaint, Defendant has committed acts of unfair competition, including those described above, by engaging in a pattern of "unlawful" business practices, within the meaning of Bus. & Prof. Code § 17200 et seq. by manufacturing, distributing, and/or marketing Defendant's Class Products with a false country of origin designation, in violation of California's CLRA, Civil Code § 1750, et seq., California's False Made In the USA statute, Bus. & Prof. Code §§ 17533.7 by falsely representing that the products referenced herein are "MADE

1 IN U.S.A.” when Defendant’s products are in fact foreign-made and/or composed of  
2 component parts manufactured and/or grown outside of the United States.

3 **B. “Unfair” Prong**

4 79. Beginning at a date currently unknown and continuing up through the time of this  
5 Complaint, Defendant has committed acts of unfair competition that are prohibited by  
6 Bus. & Prof. Code section 17200 et seq. Defendant engaged in a pattern of “unfair”  
7 business practices that violate the wording and intent of the statutes by engaging conduct  
8 and practices that threaten an incipient violation of law/s or violate the policy or spirit of  
9 law/s by manufacturing, distributing, and/or marketing Defendant’s products with a false  
10 country of origin designation, in violation of California’s CLRA, Civil Code § 1750, et  
11 seq. and California’s False Made In the USA statute, Bus. & Prof. Code §§ 17533.7 by  
12 falsely representing that the products referenced herein are “MADE IN U.S.A.” when  
13 Defendant’s products are in fact foreign-made and/or composed of component parts  
14 manufactured and/or grown outside of the United States.

15 80. Alternatively, Defendant engaged in a pattern of “unfair” business practices that violate  
16 the wording and intent of the abovementioned statute/s by engaging in practices that are  
17 immoral, unethical, oppressive or unscrupulous, the utility of such conduct, if any, being  
18 far outweighed by the harm done to consumers and against public policy by  
19 manufacturing, distributing, and/or marketing Defendant’s Class Products with a false  
20 country of origin designation, in violation of California’s CLRA, Civil Code § 1750, et  
21 seq. and California’s False Made In the USA statute, Bus. & Prof. Code §§ 17533.7 by  
22 falsely representing that the products referenced herein are “MADE IN U.S.A.” when  
23 Defendant’s products are in fact foreign-made and/or composed of component parts  
24 manufactured and/or grown outside of the United States.

25 81. Alternatively, Defendant engaged in a pattern of “unfair” business practices that violate  
26 the wording and intent of the abovementioned statute/s by engaging in practices,  
27 including manufacturing, distributing, marketing, and/or advertising Defendant’s  
28 products with a false country of origin designation, wherein: (1) the injury to the

1 consumer was substantial; (2) the injury was not outweighed by any countervailing  
2 benefits to consumers or competition; and (3) the injury was not of the kind that  
3 consumers themselves could not have reasonably avoided.

4 **D. “Unfair, Deceptive, Untrue or Misleading Advertising” Prong**

5 82. Defendant’s advertising is unfair, deceptive, untrue or misleading in that consumers are  
6 led to believe that Defendant’s Class Products are made in the USA, when Defendant’s  
7 products are in fact foreign-made and/or composed of component parts manufactured  
8 and/or grown outside of the United States.

9 83. Plaintiff, a reasonable consumer, and the public would likely be, and, in fact were,  
10 deceived and misled by Defendant’s advertising as they would, and did, interpret the  
11 representation in accord with its ordinary usage, that the products are actually made in the  
12 USA.

13 84. Defendant’s unlawful, unfair, and fraudulent business practices and unfair, deceptive,  
14 untrue or misleading advertising presents a continuing threat to the public in that  
15 Defendant continues to engage in unlawful conduct resulting in harm to consumers.

16 85. Defendant engaged in these unlawful, unfair, and fraudulent business practices motivated  
17 solely by Defendant’s self-interest with the primary purpose of collecting unlawful and  
18 unauthorized monies from Plaintiff and all others similarly situated; thereby unjustly  
19 enriching Defendant.

20 86. Such acts and omissions by Defendant are unlawful and/or unfair and/or fraudulent and  
21 constitute a violation of Business & Professions Code §§ 17200, et seq. Plaintiff reserves  
22 the right to identify additional violations by Defendant as may be established through  
23 discovery.

24 87. As a direct and proximate result of the aforementioned acts and representations described  
25 above and herein, Defendant received and continues to receive unearned commercial  
26 benefits at the expense of their competitors and the public.

27 88. As a direct and proximate result of Defendant’s unlawful, unfair and fraudulent conduct  
28 described herein, Defendant has been and will continue to be unjustly enriched by the



1 receipt of ill-gotten gains from customers, including Plaintiff, who unwittingly provided  
2 money to Defendant based on Defendant's representations.

3 89. Plaintiff suffered an "injury in fact" because Plaintiff's money was taken by Defendant as  
4 a result of Defendant's false representations set forth on the Defendant's Products.

5 90. In prosecuting this action for the enforcement of important rights affecting the public  
6 interest, Plaintiff seeks the recovery of attorneys' fees, which is available to a prevailing  
7 plaintiff in class action cases such as this matter.

8 **FOURTH CAUSE OF ACTION FOR**  
9 **NEGLIGENT MISREPRESENTATION**

10 91. Plaintiff repeats, re-alleges and incorporates by reference the above allegations as if fully  
11 stated herein.

12 92. At a date presently unknown to Plaintiff, but at least four years prior to the filing of this  
13 action, and as set forth above, Defendant represented to the public, including Plaintiff, by  
14 packaging and other means, that Defendant's Class Products are made in the USA, when  
15 Defendant's products are in fact foreign-made and/or composed of component parts  
16 manufactured and/or grown outside of the United States.

17 93. Defendant made the representations herein alleged with the intention of inducing the  
18 public, including Plaintiff and putative class members, to purchase Defendant's Class  
19 Products.

20 94. Plaintiff and other similarly situated persons in California saw, believed, and relied upon  
21 Defendant's advertising representations and, in reliance on them, purchased the Class  
22 Products, as described herein.

23 95. At all times relevant, Defendant made the misrepresentations herein alleged when  
24 Defendant should have known these representations to be untrue, and Defendant had no  
25 reasonable basis for believing the representations to be true.

26 96. As a proximate result of Defendant's negligent misrepresentations, Plaintiff and other  
27 consumers similarly situated were induced to purchase, purchase more of, or pay more  
28

1 for Defendant's Class Products, due to the unlawful acts of Defendant, in an amount to be  
2 determined at trial, during the Class Period.

3 **PRAYER FOR RELIEF**

4 **WHEREFORE**, Plaintiff respectfully requests the Court grant Plaintiff and the Class  
5 members the following relief against Defendant:

- 6 • That the Court determine that this action may be maintained as a Class Action by  
7 certifying this case as a Class Action;
- 8 • That the Court appoint Plaintiff to serve as the Class representative in this matter;
- 9 • That the Court appoint Plaintiff's Counsel as Class Counsel in this matter;
- 10 • That Defendant's wrongful conduct alleged herein be adjudged and decreed to violate  
11 the consumer protection statutory claims asserted herein;
- 12 • That Plaintiff and each of the other members of the Class recover the amounts by  
13 which Defendant has been unjustly enriched;
- 14 • That Defendant be enjoined from continuing the wrongful conduct alleged herein and  
15 required to comply with all applicable laws;
- 16 • That Plaintiff and each of the other members of the class recover their costs of suit,  
17 including reasonable attorneys' fees and expenses as provided by law; and
- 18 • That Plaintiff and the members of the Class be granted any other relief the Court may  
19 deem just and proper.

20 **TRIAL BY JURY**

21 97. Pursuant to the Seventh Amendment to the Constitution of the United States of America,  
22 Plaintiff is entitled, and demands, a trial by jury.

23  
24 Dated: March 24, 2017

Respectfully submitted,

25 **KAZEROUNI LAW GROUP, APC**

26  
27 By: 

28 ABBAS KAZEROOUNIAN, ESQ.

✓ MONA AMINI, ESQ.

ATTORNEYS FOR PLAINTIFF

# EXHIBIT 2

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ORANGE**

**If you are a consumer and purchased any  
McIlhenny Company Tabasco® brand products in  
California between September 15, 2011 and the  
present, your rights may be affected by a class  
action settlement.**

Please read this Notice carefully and in its entirety. Your rights, whether you act, or don't act, will be affected by the settlement of this case.

	<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>
<b>SUBMIT A VALID CLAIM</b>	The only way to receive a cash payment, if you qualify.
<b>DO NOTHING</b>	If you do nothing you will be bound by the Settlement, you may receive no direct compensation, and you will give up the right to sue McIlhenny Company for the claims that this settlement resolves.
<b>EXCLUDE YOURSELF</b>	You reserve your right to take part in another lawsuit against McIlhenny Company about the legal issues in this case.
<b>OBJECT</b>	Write to the Court about why you don't like the Settlement.
<b>GO TO A HEARING</b>	Ask to speak in Court about the fairness of the Settlement.

These rights and options – **and the deadlines to exercise them** – are explained in this Notice.

The Court in charge of this case still has to decide whether to approve the Settlement. No claims will be paid until after the Court approves the Settlement and after any appeals are resolved.

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## **BASIC INFORMATION**

### **1. Who is this notice intended for?**

You may be a retail consumer who purchased McIlhenny Company Tabasco® brand products that contained “Made in U.S.A.” statement in California between September 11, 2011 and the present. You are being provided this notice because you have a right to know about a proposed settlement of a class action lawsuit, and about your options, before the Court decides whether to approve the settlement. If the Court approves it, and after objections and appeals are resolved, McIlhenny Company will make the payments described in this notice.

This Notice explains the lawsuit, the settlement, and your legal rights. The Court in charge of the case is the Superior Court of the State of California, County of Orange, and the case is known as *Iraj Dowlatshahi v. McIlhenny Company*, Case No. 30-2017-00911222-CU-NP-CXC. The person who filed this lawsuit is called the Plaintiff, and the company he sued, McIlhenny Company, is called the Defendant.

### **2. What is this lawsuit about?**

The lawsuit claims that McIlhenny Company violated California law by making inaccurate representations as to the country of origin of its Tabasco® brand products. Specifically, the lawsuit claims that McIlhenny Company violated California law by describing its products on its packaging, labeling and promotional materials as “Made in the U.S.A.” when portions of its product were allegedly foreign sourced. The Plaintiff claims that in doing so, McIlhenny Company violated California laws that protect consumers: the Unfair Competition Law, California Business & Professions Code §§ 17200 *et seq.*, the False Advertising Law, California Business & Professions Code §§ 17500 *et seq.*, and its Consumers Legal Remedies Act, California Business & Professions Code §§ 1770(a)(2), (4), (5), (7) and (9). McIlhenny Company denies that it did anything wrong.

### **3. Why is this a class action?**

In a class action, one or more people called Class Representatives (in this case Iraj Dowlatshahi), sue on behalf of people who have similar claims. All of these people are called a Class or Class Members. One court resolves the issues for all Class Members, except for those who exclude themselves from the Class. The Honorable Kim G. Dunning, Judge of the California Superior Court, has determined that the case should proceed as a class action, for settlement purposes only.

### **4. Why is there a settlement?**

The Court did not decide in favor of Plaintiff or Defendant. Instead, both sides agreed to a settlement in order to avoid the continued expense of litigation. That way, they avoid the uncertainty and cost of a trial and can provide benefits now to Class Members. The Class Representative and the attorneys think the settlement is in the best interests of the people in the Class. To see if you are affected by the settlement, you first have to decide if you are a Class Member.

## **WHO IS INCLUDED IN THE SETTLEMENT?**

### **5. How do I know if I am part of the settlement?**

For purposes of the settlement, the Court has certified a Class of:

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

## **THE SETTLEMENT BENEFITS**

### **6. What does the Settlement Provide?**

McIlhenny Company has agreed that Class Members who made purchases between September 15, 2011 and the present, and up to the date that the Court's order approving the settlement becomes final, who made their purchase or purchases before they viewed or received notice of settlement and who submit a valid Claim Form, will receive benefits as follows. They shall receive a cash payment of \$2.50 without the need to present a receipt, and a cash payment equal to the amount of all purchases of Tabasco® brand products during the period for which the Class Member presents a receipt or receipts.

The payments shall be made out of a settlement fund of \$650,000. Payments out of the settlement fund shall also include the costs of administering the settlement, the cost of notice to the Class, attorney's fees for counsel representing the Class, costs incurred by counsel representing the Class, an incentive award payable to the Plaintiff in the amount of \$5,000, and other items as set forth in the Settlement Agreement. If the total amount of the approved claims exceeds the amount of the funds available to the class after deducting the costs and other items, then the amount of the payment to each Class Member shall be reduced proportionately. If the total of the approved claims is less than the amount of the funds available to the class after deducting the costs and other items, then the remainder of the relief shall be contributed to a recipient agreed upon by the parties and approved by the Court, Slow Food USA. This organization works to educate consumers on daily food choices, and shall use any available funds in its National School Garden Program, to sponsor the creation of new school gardens in California.

McIlhenny Company has made changes to its packaging, labeling and promotional materials to address the issues raised by this lawsuit. Such changes were the result of this lawsuit.

### **7. What do I have to give up in order to stay in the class?**

Unless you exclude yourself, you are staying in the Class. That means that you will receive no direct payments from this settlement, unless you submit a claim. You cannot sue,

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**QUESTIONS? VISIT [WWW.MCILHENNYSETTLEMENT.COM](http://WWW.MCILHENNYSETTLEMENT.COM)**

continue to sue, or be part of any other lawsuit against McIlhenny Company about the source of its Tabasco® brand products between September 15, 2011 and the date this settlement is finally approved by the Court, under California law. It also means that all of the Court's orders will apply to you and legally bind you.

**8. How do I receive the benefits of the settlement?**

If you want to receive a cash payment, submit your Claim Form April 12, 2018. No receipt is necessary to submit a Claim Form. You may submit a Claim Form by U.S. Mail or online at [www.McIlhennySettlement.com](http://www.McIlhennySettlement.com). If the settlement is approved by the Court and if your Claim Form satisfies the requirements, you shall receive a cash payment.

**WHAT ABOUT EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you want to keep the right to sue or continue to sue McIlhenny Company on your own about the legal issues in this case, then you must take steps to get out. This is sometimes referred to as “opting out” of the settlement.

**8. How do I get out of the settlement?**

To exclude yourself from the settlement, you must send a letter by mail saying that you want to be excluded from *Iraj Dowlatshahi v. McIlhenny Company*, Case No. 30-2017-00911222-CU-NP-CXC. Be sure to include your full name, address, telephone number, your signature and information demonstrating that you are a Class Member. You must mail your exclusion request postmarked no later than April 12, 2018 to the Settlement Administrator:

<b>SETTLEMENT ADMINISTRATOR</b>
KCC, LLC [P.O. Box XXXX] [City, State, Zip Code]

You cannot exclude yourself on the phone or by e-mail. If you ask to be excluded, you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue (or continue to sue) McIlhenny Company in the future.

**9. If I do not exclude myself, can I sue McIlhenny Company for the same thing later?**

No. Unless you exclude yourself, you give up the right to sue McIlhenny Company for the claims that this settlement resolves. If you have a pending lawsuit, speak to your lawyer in that lawsuit immediately. You must exclude yourself from *this* Class to continue your own lawsuit. Remember, the exclusion deadline is April 12, 2018.



## THE LAWYERS REPRESENTING YOU

### 10. Do I have a lawyer in this case?

The Court appointed the law firms of Kazerouni Law Group, APC and Hyde & Swigart to represent you and other Class Members in this settlement. The lawyers are called “Class Counsel.” You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

### 11. How will the lawyers be paid?

Class Counsel will ask the Court for attorney’s fees of up to \$162,500.00, plus litigation costs, and a payment of \$5,000 to the Class Representative, Iraj Dowlatshahi, to compensate them for prosecuting this case. The fees and expenses that the Court awards shall be paid out of the settlement fund. The fees awarded by the Court shall be divided equally between the two law firms appointed as Class Counsel, with 50% the fees awarded to be apportioned to Kazerouni Law Group, APC and 50% of the fees awarded to be apportioned to Hyde & Swigart, APC. McIlhenny Company has agreed not to oppose these fees and expenses.

### 12. Who will pay for the costs to administer the settlement?

Payments out of the settlement fund shall also include the costs of administering the settlement and the cost of providing this notice to the class. The total costs for the Settlement Administrator necessary to provide reasonable Notice to the Class and settlement administration will depend on the number of claims filed by the class, however, the total costs to the Settlement Administrator shall not exceed \$179,000.

## OBJECTING TO THE SETTLEMENT

You can tell the Court that you don’t like the Settlement, or some part of it.

### 13. How can I tell the Court if I don’t like the Settlement?

If you’re a Class Member, you can object to the settlement if you don’t like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter saying that you object to *Iraj Dowlatshahi v. McIlhenny Company*, Case No. 30-2017-00911222-CU-NP-CXC. Be sure to include your name, address, telephone number, your signature, the reasons you object to the settlement, and information demonstrating that you are a Class Member. You must mail the objection to these addresses, postmarked no later than April 12, 2018:

SETTLEMENT ADMINISTRATOR	CLASS COUNSEL	DEFENSE COUNSEL
KCC, LLC [P.O. Box XXXX] [City, State, Zip Code]	Abbas Kazerounian Mona Amini Kazerouni Law Group, APC 245 Fischer Ave., Suite D1 Costa Mesa CA 92626	Jeffrey B. Margulies Norton Rose Fulbright US LLP 555 South Flower Street, 41st Floor Los Angeles, CA 90071 (213) 892-9200

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QUESTIONS? VISIT [WWW.MCILHENNYSETTLEMENT.COM](http://WWW.MCILHENNYSETTLEMENT.COM)

	and  Joshua B. Swigart Hyde & Swigart 2221 Camino Del Rio South, Suite 101 San Diego, CA 92108	and  Covert J. Geary Jones Walker, LLP 201 St. Charles Avenue, Suite 5100 New Orleans, LA 70170-5100
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For more detail, you may refer to the Settlement Agreement found at [www.McIlhennySettlement.com](http://www.McIlhennySettlement.com).

**14. What’s the difference between objecting and excluding?**

Objecting is simply telling the Court that you don’t like something about the settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you don’t want to be a part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

**THE COURT’S FAIRNESS HEARING**

The Court will hold a hearing to decide whether to approve the settlement. You do not have to attend the Hearing. However, you are welcome to attend if you choose to and you may ask to speak, but you don’t have to.

**15. When and where will the Fairness Hearing take place?**

The Court will hold a Fairness Hearing at 1:30 p.m. on June 6, 2018, in Department CX104 of the Orange County Superior Court of the State of California, Civil Complex Center located at 751 W. Santa Ana Blvd., Santa Ana, California 92701. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are valid objections, the Court will consider them. Judge Kim G. Dunning will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay Class Counsel. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

**16. Do I have to come to the Hearing?**

You do not need to come to the Hearing. Class Counsel will answer questions Judge Kim G. Dunning may have. But, you are welcome to come at your own expense. If you send an objection, you don’t have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it’s not necessary.

**17. May I ask to speak at the Hearing?**

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your Notice of Intention to Appear in *Iraj Dowlatshahi v. McIlhenny Company*, Case No. 30-2017-00911222-CU-NP-CXC. Be sure to include your name, address, telephone number, your signature and information demonstrating that you are a Class

Member. Your Notice of Intention to Appear must be postmarked no later than on April 12, 2018, and be sent to the Settlement Administrator, Class Counsel, and Defense Counsel, at the addresses above.

### **IF YOU DO NOTHING**

**18. What happens if I do nothing at all?**

If you do nothing, you will receive no money, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against McIlhenny Company about the legal issues in this case, ever again.

### **GETTING MORE INFORMATION**

**19. Are there more details about the settlement?**

This notice summarizes the proposed settlement. More details are in a Settlement Agreement. You can get a copy of the Settlement Agreement by writing to Class Counsel, or by visiting [www.McIlhennySettlement.com](http://www.McIlhennySettlement.com).

**20. How do I get more information?**

All of the documents in the litigation are available for your inspection by looking up the case information on the Orange County Superior Court's website at [www.occourts.org](http://www.occourts.org) under Case Number 30-2017-00911222-CU-NP-CXC.

**ANY QUESTIONS YOU HAVE REGARDING THIS NOTICE SHOULD BE MADE TO CLASS COUNSEL IN WRITING. PLEASE DO NOT CONTACT THE COURT WITH SUCH QUESTIONS.**

# EXHIBIT 3

## **LEGAL NOTICE**

**IF YOU ARE A RETAIL CONSUMER AND PURCHASED ANY MCILHENNY COMPANY TABASCO® BRAND PRODUCTS IN CALIFORNIA BETWEEN SEPTEMBER 15, 2011 AND THE PRESENT, YOU COULD RECEIVE BENEFITS FROM A CLASS ACTION SETTLEMENT.**

### **WHO'S INCLUDED?**

You are a class member if you are a retail consumer and purchased any McIlhenny Company Tabasco® brand products in California between September 15, 2011 and the present.

If you're not sure you are included, you can get more information, including a detailed notice, at [www.McIlhennySettlement.com](http://www.McIlhennySettlement.com) or by calling toll free 1-800-xxx-xxxx.

### **WHAT'S THIS ABOUT?**

The lawsuit claims that McIlhenny Company violated California law by making inaccurate representations as to the country of origin of its products. Specifically, the lawsuit claims that McIlhenny Company violated California law by describing its Tabasco® brand products on its packaging, labeling and promotional materials as "Made in the U.S.A." when portions of its product were allegedly foreign sourced. McIlhenny Company denies that it did anything wrong. The Court did not decide which side was right. But both sides agreed to the settlement to resolve the case and provide benefits to customers.

### **WHAT DOES THE SETTLEMENT PROVIDE?**

For class members who made purchases between September 15, 2011 and the present and up to the date that the Court's order approving the settlement becomes final, and who submit a valid Claim Form, McIlhenny Company has agreed to provide a cash payment of \$2.50 without the need to present a receipt, and a cash payment equal to the amount of all purchases of McIlhenny Company products during the period if the class member presents a receipt or receipts.

The payments shall be made out of a settlement fund of \$650,000. Payments out of the settlement fund shall also include the costs of administering the settlement, the cost of notice to the class, attorney's fees for counsel representing the class, and other items as set forth in the Settlement Agreement. If the total of the approved claims exceeds the amount of the funds available to the class after deducting the costs and other items, then the amount of the payment to each class member shall be reduced proportionately. If the total of the approved claims is less than the amount of the funds available to the class after deducting the costs and other items, then the remainder of the relief shall be contributed to a court-approved recipient, the Slow Foods USA organization.

McIlhenny Company has made changes to its packaging, labeling and promotional materials in response to this lawsuit.

A Settlement Agreement, available at the website below, describes all of the details about the proposed settlement.

### **HOW DO YOU RECEIVE YOUR CASH PAYMENT ?**

If you want to receive a cash payment, submit your Claim Form by April 12, 2018. If the settlement is approved by the Court and if your Claim Form satisfies the requirements, you shall receive a cash payment.

A detailed notice and Claim Form package contains everything you need. Just call or visit the website below to get one. Claim Forms, along with any supporting documents, are due by April 12, 2018. You may submit a Claim Form by U.S. Mail or online at [www.McIlhennySettlement.com](http://www.McIlhennySettlement.com).

### **WHAT ARE YOUR OPTIONS?**

If you don't want to be legally bound by the settlement, you must exclude yourself by April 12, 2018, or you won't be able to sue McIlhenny Company about the legal claims in this case. If you exclude yourself, you can't get money from this settlement. If you stay in the settlement, you may object to it by April 12, 2018. The detailed notice explains how to exclude yourself or object. The Court will hold a hearing in this case (*Iraj Dowlatshahi v. McIlhenny Company*, Superior Court of the State of California, County of Orange, Case No. 30-2017-00911222-CU-NP-CXC) on June 6, 2018 to consider whether to approve the settlement and a request by the lawyers representing all Class Members (Kazerouni Law Group, APC, of Costa Mesa, CA and Hyde & Swigart of San Diego CA) for up to \$162,500.00 in attorneys' fees, plus costs, for investigating the facts, litigating the case, and negotiating the settlement. You may ask to appear at the hearing, but you don't have to. For more information, call toll free 1-800-xxx-xxxx, visit the website [www.McIlhennySettlement.com](http://www.McIlhennySettlement.com), or write to KCC, LLC, P.O. Box 000, City, STATE 0000-0000.

# EXHIBIT 4

## INSTRUCTIONS AND CLAIM FORM FOR CASH PAYMENTS

This form is to be used to claim a cash payment for retail consumer who purchased McIlhenny Company Tabasco® brand products in California between September 15, 2011 and the present, in connection with the class action settlement reached in the case entitled *Iraj Dowlatshahi v. McIlhenny Company*, Case No. 30-2017-00911222-CU-NP-CXC, Superior Court of the State of California, County of Orange.

If you meet the settlement's eligibility requirements and wish to make a claim for a cash payment, you must (1) completely and truthfully fill out this Claim Form (2) attach copies of your receipt or other documentation (if applicable); and (3) return your completed Claim Form and all required documentation to the Claims Administrator online through [www.McIlhennySettlement.com](http://www.McIlhennySettlement.com) or by first-class United States Mail postmarked no later than April 12, 2018 to:

KCC, LLC

\_\_[insert address]\_\_

\_\_\_\_\_, \_\_\_\_

Before completing this Claim Form, please read the Settlement Notice, dated \_\_\_\_\_, 2018 for more information on your legal rights and options in this settlement and to determine whether you are eligible for a cash payment.

Once the Settlement becomes final in the Courts, the validity of all claims will be determined. If your claim is deemed valid, the cash payments will be distributed automatically if the Court approves the Settlement and after all appeals are finished. If your claim is deemed invalid, you will be notified by e-mail, U.S. Mail, or fax, and will be afforded an opportunity to correct any deficiencies. If any dispute remains, the parties will attempt to resolve any and all disputes in good faith. If the claim is accepted as a result of the appeal process, you will be provided with a payment by check.

**Please note: The Claim Form must be personally submitted by an eligible Class Member on his or her own behalf. Claim Form(s) submitted by anyone else will not be valid. Please keep copies for your records.**

If you have questions or would like a copy of the Settlement Notice, please call **1-800-xxx-xxxx**, or visit **[www.McIlhennySettlement.com](http://www.McIlhennySettlement.com)**.

### INSTRUCTIONS FOR MAKING A CLAIM

You are eligible for cash payment(s) as follows and as further set forth in the Settlement Notice:

If you are a retail consumer and purchased any McIlhenny Company Tabasco® brand products in California between September 15, 2011 and the present, and submit a valid Claim Form, you will receive a cash payment of \$2.50 if you do not present a receipt, and a cash payment equal to the amount of all purchases of Tabasco® brand products during the period if you present a receipt or receipts. You must submit the Claim Form under penalty of perjury, and

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must certify that you made your purchase or purchases before you viewed or received, or were aware of, the Settlement Notice.

You are not eligible for a cash payment if you are not a retail consumer or did not purchase the product in California.



## CLAIM FORM

### I. PERSONAL INFORMATION

*Please provide your full and correct name and address.*

First Name \_\_\_\_\_ Middle Initial \_\_\_\_

Last Name \_\_\_\_\_

Street Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_

**Please note: This information will be used for all communication relevant to this Claim (including payment of the check, if eligible). Failure to submit a valid address will result in a loss of benefits. If this information changes, you MUST notify the CLAIMS ADMINISTRATOR in writing at the address listed on page one.**

*Please provide your contact information:*

Daytime telephone number: ( \_\_\_\_\_ ) \_\_\_\_\_ - \_\_\_\_\_

Evening telephone number: ( \_\_\_\_\_ ) \_\_\_\_\_ - \_\_\_\_\_

Fax number (if available): ( \_\_\_\_\_ ) \_\_\_\_\_ - \_\_\_\_\_

E-mail address (if available): \_\_\_\_\_ @ \_\_\_\_\_

### II. YOUR CLAIM

Please check the following statement that applies to you, and fill out the information requested. **If your purchase occurred between September 15, 2011 and today's date.** You may choose only one of the two statements.

**A**     ☐ I purchased one or more Tabasco® brand products in California between September 15, 2011 and the present. My purchase was a retail, not wholesale, purchase. I do not have receipts or proof of purchase. I wish to claim a cash payment of \$2.50.

**B**     ☐ I purchased one or more Tabasco® brand products in California between September 15, 2011 and the present. My purchase was a retail, not wholesale, purchase. I have attached the receipt or receipts. I wish to claim a cash payment equal to the amount of all purchases for which I present receipts. The total purchases as shown in my receipts, without tax, is \_\_\_\_\_.

**Please note: If you checked statement B, you must attach copies of the receipt or receipts for each transaction.**

All persons submitting this claim form must also sign the following statement **(Please note that you will not be eligible for any compensation unless you sign and date this statement):**

I certify that I made my purchase or purchases before I viewed or received, or was aware of, the Settlement Notice. I declare under penalty of perjury under the laws of the State of California that all information I have provided on or with this Claim Form is true and correct.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

# EXHIBIT 5

**KAZEROUNI LAW GROUP, APC**  
Abbas Kazerounian, Esq. (SBN: 249203)  
ak@kazlg.com  
Mona Amini, Esq. (SBN: 296829)  
mona@kazlg.com  
245 Fischer Avenue, Unit D1  
Costa Mesa, CA 92626  
Telephone: (800) 400-6808  
Facsimile: (800) 520-5523

**HYDE & SWIGART**  
Joshua B. Swigart, Esq. (SBN: 225557)  
josh@westcoastlitigation.com  
2221 Camino Del Rio South, Suite 101  
San Diego, CA 92108-3551  
Telephone: (619) 233-7770  
Facsimile: (619) 297-1022

*Attorneys for Plaintiff,*  
Iraj Dowlatsahi

**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

**[PROPOSED] ORDER RE PRELIMINARY**  
**APPROVAL OF CLASS ACTION**  
**SETTLEMENT AND CONDITIONAL**  
**CERTIFICATION OF SETTLEMENT**  
**CLASS**

**JUDGE:** HON. KIM G. DUNNING  
**DATE:** JANUARY 12, 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, jellies  
15 and giftware, over a period beginning four years prior to September 15, 2015 up  
16 to the date of Final Approval of the Class Settlement and Release Agreement.  
17 McIlhenny Company products includes but is not limited to products  
18 manufactured or sold by McIlhenny as well as products bearing its name that  
19 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 hearing ("Final  
20 Fairness Hearing") on June 6, 2018 at 1:30 p.m. in Department CX104 of the Orange County  
21 Superior Court, Civil Complex Center located at 751 W. Santa Ana Blvd., Santa Ana, California  
22 92701, for the purpose of determining whether the proposed settlement is fair, reasonable and  
23 adequate and should be finally approved by the Court. If appropriate, the Court at the Final  
24 Fairness Hearing may enter a Final Order and Judgment as anticipated by Section 10 of the  
25 Settlement Agreement. The Court may adjourn or continue the Final Settlement Hearing without  
26 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 February 12, 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 March 13, 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 April 12, 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 April 12, 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 May 14, 2018.

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

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

23          (a)     The Settlement Agreement and all orders and findings entered in  
24 connection therewith shall become null and void and of no further force and effect, and shall not  
25 be used or referred to for any purposes whatsoever and shall not be admissible for any reason in  
26 any proceeding whatsoever, nor discoverable in any proceeding except as, and unless specifically  
27 required by law;  
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(b) The certification of the Class pursuant to this Order shall be vacated automatically, Plaintiff Iraj Dowlatshahi, shall cease to function as a representative of the Class, and his counsel shall cease to function as counsel for the Class;

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

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

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

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

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

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

Event	Date
Date of Preliminary Approval	January 12, 2018
Notice to be completed by the Settlement Administrator [30 days after Preliminary Approval]	February 12, 2018
Motion for Attorneys' Fees, Costs, and Incentive Award [30 days before last date for Class Members to opt out or object to Settlement]	March 13, 2018
Deadline for Class Members to Object [90 days after Preliminary Approval]	April 12, 2018
Deadline for Class Members to Opt Out [90 days after Preliminary Approval]	April 12, 2018

Motion for Final Approval [30 court days before Final Approval Hearing]	May 14, 2018
Deadline for KCC to file Declaration [14 days before Final Approval Hearing]	May 23, 2018
Final Approval Hearing	June 6, 2018

**IT IS SO ORDERED.**

DATED: \_\_\_\_\_, 2018.

By \_\_\_\_\_  
HON. KIM. G. DUNNING  
SUPERIOR COURT JUDGE

# EXHIBIT 6

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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

**[PROPOSED] FINAL JUDGMENT AND  
ORDER APPROVING SETTLEMENT**

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

{N3234070.4}

1 The Court has reviewed the papers filed in support of the application for Final Approval,  
2 including the Settlement Agreement and exhibits thereto, memoranda and briefs submitted on  
3 behalf of the Iraj Dowlatshahi (“Representative Plaintiff”), on behalf of himself and the proposed  
4 Settlement Class, and Defendant McIlhenny Company (“Defendant”), and supporting  
5 declarations.

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

9 Accordingly,

10 IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

11 1. The terms used in this Judgment shall have the same meanings as defined in the  
12 Settlement Agreement, except as otherwise specified herein. This Order shall constitute the Final  
13 Judgment and Order Approving Settlement as defined in Section 1.15 of the Settlement  
14 Agreement.

15 2. The Court has jurisdiction over the subject matter of the Action and over all parties  
16 thereto, including all members of the Settlement Class, as defined in Paragraph 3 below.

17 3. On \_\_\_\_\_, in preliminarily approving the Settlement Agreement, the  
18 Court conditionally certified a Settlement Class in the Action, defined as follows:

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

26 4. The Court has determined that the Representative Plaintiff is an appropriate  
27 representative of the Settlement Class, and that the Settlement Class should be certified as  
28 described in Paragraph 3 of this Order.

1           5.       The Court has determined that the notice that has been given to potential members  
2 of the Settlement Class, in the form, manner and content of the notices specified in Section 6 of  
3 the Settlement Agreement and Exhibits 2 (Class Settlement Notice) and 3 (Summary Published  
4 Notice) thereto, was in conformity with the Settlement Agreement, and that it fully and accurately  
5 informed potential members of the Settlement Class of the material elements of the proposed  
6 settlement, provided the best notice practicable under the circumstances, and constituted valid,  
7 due and sufficient notice to all potential Settlement Class members. Said notice procedures fully  
8 satisfied the requirements of due process and California Rule of Court 3.766.

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

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

18           8.       No persons made timely and valid requests for exclusion from the Settlement  
19 Class pursuant to the Class Notice or filed any objections to Final Approval of the Settlement  
20 Agreement.

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

24           10.      Each claim released in Section 11 of the Settlement Agreement is hereby fully,  
25 finally, and forever released, relinquished and discharged, and all Persons who are members of  
26 the Settlement Class are hereby barred and permanently enjoined from commencing, prosecuting  
27

1 or continuing, either directly or indirectly, any such claims against Defendant or any other entity  
2 covered by said release.

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

5 (a) The Settlement Agreement and all orders and findings entered in  
6 connection therewith shall become null and void and of no further force and effect, and shall not  
7 be used or referred to for any purposes whatsoever and shall not be admissible for any reason in  
8 any proceeding whatsoever, nor discoverable in any proceeding except as, and unless specifically  
9 required by law;

10 (b) The certification of the Settlement Class pursuant to this Order shall be  
11 vacated automatically, plaintiff Iraj Dowlatshahi shall cease to function as a representative of the  
12 Settlement Class, and her counsel shall cease to function as counsel for the Settlement Class;

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

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

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

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

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

26 (a) the validity of any claim released under the Settlement;

1 (b) any wrongdoing or liability of any person or entity released as a part of the  
2 Settlement; or

3 (c) any fault or omission in any civil, criminal or administrative proceeding in  
4 any tribunal.

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

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

12 (a) Class Counsel are awarded attorneys' fees in the amount of  
13 \$\_\_\_\_\_ and costs and expenses in the amount of \$\_\_\_\_\_ to be paid by  
14 Defendant pursuant to the provisions of the Settlement Agreement.

15 (b) Defendant will pay, pursuant to the provisions of the Settlement  
16 Agreement, \$5,000 to named plaintiff and class representative Iraj Dowlatshahi as additional  
17 payment for serving as Class Representative.

18 (c) The Settlement Administrator will pay all valid claims that have been  
19 submitted pursuant to the Settlement Agreement, and distribute any monies remaining in the  
20 Class Settlement Fund to Slow Food USA, for use in its National School Garden Program, as set  
21 forth in the Release Agreement.

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

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**IT IS SO ORDERED.**

DATED: \_\_\_\_\_, 2018.

By \_\_\_\_\_  
HON. KIM. G. DUNNING  
SUPERIOR COURT JUDGE