

### **Amendment to Settlement Agreement**

#### **A. Recitals.**

1. Plaintiffs Lori Cowen, Rochelle Ibarrola, Ava Adames, Amanda Wells, and Barbara Whalen (together, “Plaintiffs”) and Defendant Lenny & Larry’s, Inc. (converted to and now known as Lenny and Larry’s, LLC) (“Defendant”) (collectively, the “Parties”) entered into a Settlement Agreement (“Settlement”) in October 2018 that originally created a \$5 million common fund comprised of \$1.85 million in cash along with up to \$3.15 million in free product to be distributed to Settlement Class Members on a claims made basis during an initial product distribution. The Settlement called for \$350,000 of the cash amount to be available to pay claims as submitted. The Settlement also provided that any remaining amount of unclaimed product, based on retail value, would be distributed to the Settlement Class during a secondary distribution to retail locations, such as GNC and Vitamin Shoppe.

2. The Court preliminarily approved the Settlement on October 31, 2018. Since notice issued on November 30, 2018, the Claims Administrator received more than 90,000 submissions as of the deadline to submit claims; an extraordinary number that vastly exceeded the Parties’ expectations upon entering into the Settlement. As the number of claims exceeded the originally contemplated 10,000 total claims submissions, in late 2018, the Parties began to discuss potential Settlement modifications to account for the data received from the Claims Administrator. According to the settlement administrator, the total number of claims received is 90,677, of which 6,056 were duplicates, 17,915 were fraudulent, and 59 were otherwise not valid. Of the 66,647 valid claims, 7,206 sought recovery in the form of cookies, and 59,441 sought a cash award. The overwhelming majority of claims submitted did not include receipts, and accordingly under the original settlement agreement, those claims were capped at \$10 per claim, while the cookie claims without receipts were capped at \$15 based on retailed value,

including shipping and handling. Given the original limitation of \$350,000 for cash claimants, those Settlement Class Members would receive less than \$5 per claim, absent modification to the Settlement Agreement. Under these circumstances, the Parties and Counsel submit that a modification to the Settlement Agreement is appropriate.

**B. Amendment of Settlement Agreement**

3. The recitals above are incorporated herein. Except as expressly set forth below, the original Settlement Agreement provisions control.

4. The Parties’ agreed upon amendments to the Settlement are set forth below, with the Original Settlement Agreement Provision on the left column and the Revised Settlement Agreement Provisions on the right column.

<b>Original Settlement Provision</b>	<b>Revised Settlement Provision</b>
<p>1.19 “Settlement Class” is all United States resident consumers who purchased one or more of Lenny &amp; Larry’s The Complete Cookie or other Lenny &amp; Larry’s baked goods products at a retail establishment or online any time up to the date of Final Settlement Approval.</p>	<p>1.19 “Settlement Class” is all United States resident consumers who purchased one or more of Lenny &amp; Larry’s The Complete Cookie or other Lenny &amp; Larry’s baked goods products at a retail establishment or online any time up to January 29, 2019.</p>
<p>2.1 <i>Settlement payment.</i> In consideration for the releases herein, Final Settlement Approval, and the other terms and conditions of this Settlement Agreement, Defendant shall contribute \$5 million to a common fund (the “Settlement Payment”) as follows: Defendant shall pay a maximum of \$1.85 million in cash, together with a minimum of \$3.15 million in free product as described below. Defendant will make available \$350,000 of the cash portion of the Settlement Payment to</p>	<p>2.1 <i>Settlement payment.</i> In consideration for the releases herein, Final Settlement Approval, and the other terms and conditions of the Settlement Agreement, Defendant shall pay the valid and timely claims submitted as follows: For valid claims without receipts, Defendant shall pay \$14.60 per claim for cash claims, and will provide one box of 12 cookies to each claimant who requested cookies. For valid claims submitted with receipts seeking cash, Defendant shall pay a</p>

<p>pay valid claims as submitted to the Claims Administrator as specified below. The balance of the cash portion of the Settlement Payment shall be available to pay for the administration of this Settlement, Plaintiffs' Incentive Awards, and for such fees and costs for Class Counsel as approved by the Court. The Settlement Payment represents the entire amount Defendant will pay in consideration for the settlement of the Litigation, and the entire amount of the Settlement Payment shall be distributed as set forth herein. The Settlement Class shall not receive anything further from Defendant, whether for payment of Plaintiffs' Counsel's fees and costs, costs of administration, notice, any participation awards to any named plaintiff, or otherwise.</p>	<p>minimum of \$20 per claim, up to a maximum of \$50 per claim where such higher amount is supported by proof of purchase in like amount. For valid claims submitted with proof of purchase seeking cookies, Defendant shall provide each claimant with free cookies with a retail value of at least \$22 and up to \$35 as supported by proof of purchase, with such values including shipping and handling. Subject to the final accounting by the Settlement Administrator, and within 60 days after Final Settlement Approval, Defendant shall pay an amount not to exceed \$889,867.17 for the valid cash claims, and up to \$300,000 in free cookies supported by valid claims for cookies. In addition, Defendant shall pay the cost of claims administration not to exceed \$667,132.83, including amounts already paid, and subject to Court approval, an amount not to exceed \$455,000 for Plaintiffs' Incentive Awards (as further described in Section 2.14) and for such attorneys' fees and costs as approved by the Court. If the Court approves less than the amount requested, the balance will be used to upwardly adjust the amount available for cash claimants. The aggregate maximum of these amounts is \$2,312,000, and is hereafter described as the Settlement Payment. The Settlement Payment represents the entire amount Defendant will pay in consideration for the settlement of the Litigation, and the entire amount of the Settlement Payment shall be distributed as set forth herein. The Settlement Class shall not receive anything further from Defendant, whether for payment of attorneys' fees and costs, costs of administration, notice, any participation awards to any named plaintiff, or otherwise.</p>
<p>2.6 <i>Cash distribution.</i> At the conclusion of the 60-day period described in Section 2.5 of this Settlement Agreement, the Claims Administrator shall advise counsel for the Settling Parties of the amount in cash claimed. If more than \$350,000 is claimed,</p>	<p>2.6 <i>Cash distribution.</i> Within 60 days following Final Settlement Approval, Defendant shall provide to the Claims Administrator an amount of money sufficient to pay the cash claims, including any adjustments based upon the Court's approval</p>

<p>each Settlement Class Member's cash claim shall be reduced on a <i>pro rata</i> basis. If less than \$350,000 is claimed, the unclaimed cash shall be returned to Defendant, and value of the free cookie distribution will be increased by like amount. By way of illustration, if \$50,000 in cash remains unclaimed, that \$50,000 will be returned to Defendant, and the free cookie distribution pursuant to the secondary claim distribution described below in section 2.8 shall increase by \$50,000. Regardless of cash claims rate, the total value of product and cash distributed to the class shall be the total Settlement Payment, minus costs of administration, attorneys fees and costs as outlined in this Agreement. Nothing herein shall be construed to increase Defendant's liability beyond this amount. Cash distributions will be paid by the Claims Administrator in the form of a check, which must be cashed within 60 days. If a check is not cashed, the funds will be returned to the Settlement Payment and treated as unclaimed cash under this section for purposes of a Secondary Claim Distribution.</p>	<p>of incentive awards, fees and costs. Cash distributions will be paid by the Claims Administrator in the form of a check, which must be cashed or deposited within 60 days of issuance. Within 90 days of distribution of checks, the Parties shall report to the Court the number of settlement checks, if any, that have not been cashed or deposited, and shall propose a plan for distributing the uncashed funds.</p>
<p>2.11 <i>Class Counsels' attorneys' fees.</i> Class Counsel may receive from the Settlement Payment, subject to Court approval, attorneys' fees, costs, and expenses not to exceed 24% of the Settlement Payment. Class Counsel will petition the Court for an award of such attorneys' fees and Defendant agrees to not object to or otherwise challenge, directly or indirectly, Class Counsel's petition for reasonable attorneys' fees and for reimbursement of costs and expenses if limited to this amount. Class Counsel, in turn, agrees to seek no more than this amount from the Court in attorneys' fees and for reimbursement of costs and expenses. Payment of this fee award (the "Fee Award") will be made from the Settlement Payment and should the Court award less than the amount sought by Class Counsel, the difference in the amount sought and the</p>	<p>2.11 <i>Attorneys' fees.</i> Class Counsel will petition the Court for an award of attorneys' fees, costs, and expenses. Payment of all attorneys' fees awarded (the "Fee Award") will not exceed \$455,000 and will be made from the Settlement Payment. Should the Court award less than \$455,000, the amount not awarded shall increase the amount of the cash distribution on a <i>pro rata</i> basis based on the number of valid cash claims submitted.</p>

<p>amount ultimately awarded pursuant to this Section of this Settlement Agreement shall be returned to Defendant, who shall increase the free cookie distribution value by like amount, consistent with the operation of Section 2.6 of this Settlement Agreement.</p>	
<p>2.14 <i>Incentive Award.</i> Subject to Court approval and in recognition of Plaintiffs’ efforts on behalf of the Settlement Class, Plaintiffs may be paid an incentive award from the Settlement Payment in the amount of \$1,500.00 each, in addition to any settlement payment as a result of an approved claim pursuant to this Settlement Agreement. Defendant will not object to or otherwise challenge, directly or indirectly, Class Counsel’s application for the Incentive Award to the class representatives if limited to this amount. Class Counsel, in turn, agrees to seek no more than this amount from the Court as the Incentive Award for the class representatives. Such award will be paid from the Settlement Payment (in the form of a check to the class representatives that is sent care of Class Counsel) 30 days (or the next business day thereafter) after Final Settlement Approval.</p>	<p>2.14 <i>Incentive Award.</i> Subject to Court approval and in recognition of Plaintiffs’ efforts on behalf of the Settlement Class, Plaintiffs may be paid an incentive award from the Settlement Payment in the amount of \$1,500.00 each, in addition to any settlement payment as a result of an approved claim pursuant to this Settlement Agreement. Such award will be paid from the Settlement Payment (in the form of a check to the class representatives that is sent care of Class Counsel) within 60 days after Final Settlement Approval. Should the Court award less than \$1,500 to each Plaintiff, the amount not so awarded shall increase the amount of the cash distribution on a <i>pro rata</i> basis based on the number of valid cash claims submitted.</p>

ACCEPTED AND AGREED:

Dated: \_\_\_\_\_, 2019

By: \_\_\_\_\_  
Rochelle Ibarrola

Dated: \_\_\_\_\_, 2019

By: \_\_\_\_\_  
Lori Cowen

Dated: \_\_\_\_\_, 2019

By: \_\_\_\_\_  
Ava Adames

Dated: \_\_\_\_\_, 2019

By: \_\_\_\_\_  
Amanda Wells

Dated: \_\_\_\_\_, 2019

By: \_\_\_\_\_  
Barbara Whalen

Dated: \_\_\_\_\_, 2019

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
For Lenny & Larry's, LLC

<p>this Section of this Settlement Agreement shall be returned to Defendant, who shall increase the free cookie distribution value by like amount, consistent with the operation of Section 2.6 of this Settlement Agreement.</p>	
<p>2.14 <i>Incentive Award.</i> Subject to Court approval and in recognition of Plaintiffs’ efforts on behalf of the Settlement Class, Plaintiffs may be paid an incentive award from the Settlement Payment in the amount of \$1,500.00 each, in addition to any settlement payment as a result of an approved claim pursuant to this Settlement Agreement. Defendant will not object to or otherwise challenge, directly or indirectly, Class Counsel’s application for the Incentive Award to the class representatives if limited to this amount. Class Counsel, in turn, agrees to seek no more than this amount from the Court as the Incentive Award for the class representatives. Such award will be paid from the Settlement Payment (in the form of a check to the class representatives that is sent care of Class Counsel) 30 days (or the next business day thereafter) after Final Settlement Approval.</p>	<p>2.14 <i>Incentive Award.</i> Subject to Court approval and in recognition of Plaintiffs’ efforts on behalf of the Settlement Class, Plaintiffs may be paid an incentive award from the Settlement Payment in the amount of \$1,500.00 each, in addition to any settlement payment as a result of an approved claim pursuant to this Settlement Agreement. Such award will be paid from the Settlement Payment (in the form of a check to the class representatives that is sent care of Class Counsel) within 60 days after Final Settlement Approval. Should the Court award less than \$1,500 to each Plaintiff, the amount not so awarded shall increase the amount of the cash distribution on a <i>pro rata</i> basis based on the number of valid cash claims submitted.</p>

ACCEPTED AND AGREED:

Dated: 3/31, 2019

By:   
 Rochelle Ibarrola

Dated: \_\_\_\_\_, 2019

By: \_\_\_\_\_  
 Lori Cowen

Dated: \_\_\_\_\_, 2019

By: \_\_\_\_\_  
 Ava Adames

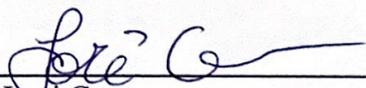
<p>efforts on behalf of the Settlement Class, Plaintiffs may be paid an incentive award from the Settlement Payment in the amount of \$1,500.00 each, in addition to any settlement payment as a result of an approved claim pursuant to this Settlement Agreement. Defendant will not object to or otherwise challenge, directly or indirectly, Class Counsel's application for the Incentive Award to the class representatives if limited to this amount. Class Counsel, in turn, agrees to seek no more than this amount from the Court as the Incentive Award for the class representatives. Such award will be paid from the Settlement Payment (in the form of a check to the class representatives that is sent care of Class Counsel) 30 days (or the next business day thereafter) after Final Settlement Approval.</p>	<p>efforts on behalf of the Settlement Class, Plaintiffs may be paid an incentive award from the Settlement Payment in the amount of \$1,500.00 each, in addition to any settlement payment as a result of an approved claim pursuant to this Settlement Agreement. Such award will be paid from the Settlement Payment (in the form of a check to the class representatives that is sent care of Class Counsel) within 60 days after Final Settlement Approval. Should the Court award less than \$1,500 to each Plaintiff, the amount not so awarded shall increase the amount of the cash distribution on a <i>pro rata</i> basis based on the number of valid cash claims submitted.</p>
---	--

ACCEPTED AND AGREED:

Dated: \_\_\_\_\_, 2019

By: \_\_\_\_\_  
Rochelle Ibarrola

Dated: 4/1, 2019

By:   
Lori Cowen

Dated: \_\_\_\_\_, 2019

By: \_\_\_\_\_  
Ava Adames

Dated: \_\_\_\_\_, 2019

By: \_\_\_\_\_  
Amanda Wells

Dated: \_\_\_\_\_, 2019

By: \_\_\_\_\_  
Barbara Whalen

Dated: April 1, 2019

By: Amanda Wells  
Amanda Wells

Dated: \_\_\_\_\_, 2019

By: \_\_\_\_\_  
Barbara Whalen

Dated: \_\_\_\_\_, 2019

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
For Lenny & Larry's, LLC

Dated: \_\_\_\_\_, 2019

By: \_\_\_\_\_  
Amanda Wells

Dated: 4 / 11, 2019

By: Barbara Whalen  
Barbara Whalen

Dated: \_\_\_\_\_, 2019

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
For Lenny & Larry's, LLC

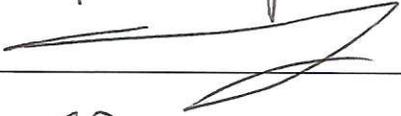
Dated: \_\_\_\_\_, 2019

By: \_\_\_\_\_  
Amanda Wells

Dated: \_\_\_\_\_, 2019

By: \_\_\_\_\_  
Barbara Whalen

Dated: 4.2.19, 2019

By: Apu Mody  


Name:

Title:

CEO  
For Lenny & Larry's, LLC