

**IN THE CIRCUIT COURT OF OREGON
FOR MULTNOMAH COUNTY**

**J. PODAWILTZ, individually and on
behalf of all others similarly situated,**

Plaintiff,

v.

**SWISHER INTERNATIONAL, INC. and
PLAID PANTRY, INC.,**

Defendants.

Case No. 16CV27621

SETTLEMENT AGREEMENT

This Settlement Agreement (all terms as defined below) is made and entered into by and among J. Podawiltz (“Plaintiff”), individually and on behalf of himself and each of the Class Members, and Swisher International, Inc., Plaid Pantries, Inc., and Plaid Pantry, Inc. (collectively, the “Defendants”). The Plaintiff, Class and the Defendants are collectively referred to as the Parties (and individually as a “Party”).

I. RECITALS

A. **WHEREAS**, on August 25, 2016, Plaintiff J. Podawiltz filed a class action complaint in the Circuit Court for the State of Oregon, Multnomah County, captioned *J. Podawiltz v. Swisher International, Inc.*, Case No. 16-cv-27621. The complaint alleges that the “5 for the price of 3” promotion on the Swisher Sweets cigarillos is misleading and violates the Oregon Unlawful Trade Practices Act ORS §§ 646.608 *et seq.*;

B. **WHEREAS**, on October 4, 2016, Levi & Korsinsky, LLP and Geragos & Geragos, on behalf of their client, Reymon Brown (“Brown”), served Swisher with a letter pursuant to Massachusetts General Laws, Chapter 93A, Section 9. The letter gave Swisher notice of Brown’s claim that the Swisher’s “5 for the price of 3” promotion was misleading and in violation of Massachusetts state law, and demanded that Swisher take certain corrective action;

C. **WHEREAS**, on February 27, 2017, OlsenDaines and the Law Offices of Robert Le submitted a letter on behalf of their client, J. Podawiltz, setting forth their position on Defendants’ liability under Oregon law and making a settlement demand;

D. **WHEREAS**, on March 2, 2017, Swisher, through its counsel, Holland & Knight LLP, submitted a mediation statement to the Honorable Ariel E. Belen, the JAMS mediator administering the mediation. In the statement, Swisher indicated it would consider a nationwide voucher-based settlement;

E. **WHEREAS**, on March 3, 2017, Plaintiff Podawiltz and potential claimant Brown submitted their joint mediation statement to Judge Belen;

F. **WHEREAS**, on March 6, 2017, the Parties participated in a JAMS mediation session presided over by Judge Belen. After the mediation, the Parties reached an agreement in principle to resolve the dispute. Thereafter, the parties worked on documenting the settlement.

G. **WHEREAS**, on April 23, 2017, Plaintiff filed an Amended Complaint in the Action, adding as a co-defendant, Plaid Pantry, Inc.

H. **WHEREAS**, Plaintiff is represented by Plaintiff's Class Counsel Levi & Korsinsky, LLP, Geragos & Geragos, OlsenDaines, and the Law Offices of Robert Le;

I. **WHEREAS**, Plaintiff alleges, among other things, that Swisher develops, markets, advertises, brands, promotes, distributes, and sells tobacco products, including Swisher Sweets cigarillos;

J. **WHEREAS**, Plaintiff, on behalf of the Class, alleges that Swisher Sweets cigarillo 5-packs advertised as "5 for the price of 3" were deceptive because such advertising implies that five cigarillos could be purchased for the price of three, but consumers could purchase three individual cigarillos for less than the price of the 5-pack;

K. **WHEREAS**, Plaintiff seeks certification of a nationwide class of all persons who purchased the Swisher Product, but excluding certain persons and entities who/which, by way of example, purchased the Swisher Product for resale;

L. **WHEREAS**, Defendants deny any and all liability, at least because (1) Swisher does not sell cigarillos to consumers but instead manufactures and packages the Swisher Product and then sells to distributors and retailers, who ultimately sell to consumers at a price and in a manner unknown to and uncontrolled by Swisher; (2) Swisher believes that retailers price the

Swisher Product within the scope of the “5 for the price of 3” promotion and thus, the vast majority of consumers did not overpay for their cigarillos; and (3) even assuming some consumers overpaid for their cigarillos, such consumers cannot allege a compensable injury sufficient to state a claim for relief;

M. **WHEREAS**, as a result of arm’s-length negotiations and a mediation session the Parties conducted with Judge Belen, Plaintiff, Plaintiff’s Class Counsel, and Defendants have entered into this Agreement;

N. **WHEREAS**, Plaintiff’s Class Counsel have investigated the facts and underlying events relating to the subject matter of the claims, have carefully analyzed the applicable legal principles, and have concluded, based upon their investigation, and taking into account the risks, uncertainties, burdens and costs of further prosecution of their claims, as well as having evaluated the strengths and weaknesses of Plaintiff’s claims and Defendants’ defenses, and taking into account the substantial benefits to be received pursuant to this Agreement as set forth below, which, in the view of the Plaintiff and Plaintiff’s Class Counsel, is designed for the purpose of putting to rest all controversies with Defendants that were or could have been alleged relating to the Action, that a resolution and compromise on the terms set forth herein is fair, reasonable, adequate, and in the best interests of the Plaintiff and the Class;

O. **WHEREAS**, Defendants, for the purpose of avoiding the burden, expense, risk, and uncertainty of continuing to litigate the claims, and for the purpose of putting to rest all controversies with Plaintiff, the Class, and/or the Action that were or could have been alleged relating to the Action, and without any admission of liability or wrongdoing, desire to enter into this Agreement;

P. **WHEREAS**, Plaintiff's Class Counsel represent and warrant that they are fully authorized to enter into this Agreement on behalf of Plaintiff and the Class, and that Plaintiff's Class Counsel have consulted with and confirmed that Plaintiff fully supports this Agreement; and

Q. **WHEREAS**, it is agreed that this Agreement shall not be deemed or construed to be an admission, concession, or evidence of any violation of any federal, state, or local statute, regulation, rule, or other law, or principle of common law or equity, or of any liability or wrongdoing whatsoever, by Swisher, Plaid Pantries, Inc., Plaid Pantry, Inc., or any of the Released Parties (as defined below), or of the truth or validity of any of the claims that Plaintiff has asserted;

R. **NOW, THEREFORE**, without any admission or concession by Plaintiff or Plaintiff's Class Counsel of any lack of merit to their allegations and claims, and without any admission or concession by Swisher, Plaid Pantries, Inc. or Plaid Pantry, Inc. of any liability or wrongdoing or lack of merit in their defenses, in consideration of the mutual covenants and terms contained herein, and subject to the final approval of the Court, Plaintiff, Plaintiff's Class Counsel, and Defendants agree as follows:

II. DEFINITIONS

A. As used in this Agreement and the attached exhibits (which are an integral part of this Agreement and are incorporated in their entirety by reference), the following terms have the following meanings, unless this Agreement specifically provides otherwise:

1. "Action" means the class action lawsuit pending in the Circuit Court for the State of Oregon, Multnomah County, captioned *J. Podawiltz v. Swisher International, Inc.*, Case No. 16-cv-27621.

2. "Agreement" or "Settlement Agreement" means this Settlement Agreement and the exhibits attached hereto or incorporated herein, including any amendments and any

exhibits to such amendments, which are the settlement and resolution of the class action lawsuit and all claims of the putative Class thereby (the “Settlement”).

3. “Attorneys’ Fees, Costs, and Expenses” means such funds as may be approved by the Court to compensate Plaintiff’s Class Counsel who have assisted in conferring the benefits upon the Class under this Settlement for their fees and expenses incurred and to be incurred by Plaintiff’s Class Counsel in connection with the Action and the Settlement, as described in Section X of this Agreement. Attorneys’ Fees, Costs and Expenses do not include and are separate from and in addition to the Incentive Awards to be paid to Plaintiff and to Brown. No other attorneys’ fees or related costs and expenses of counsel are contemplated by this Settlement.

4. “Claim” means the claim of a Class Member or his or her or its representative submitted on a claim form as provided in Section VII of this Agreement.

5. “Claimant” means a Class Member who has submitted a Claim.

6. “Claim Process” means the process for submitting and reviewing Claims described in this Agreement.

7. “Class” means, for settlement purposes only, all persons, entities or organizations who, at any time as of or before the entry of the Preliminary Approval Order, purchased Swisher cigar products under any of the following promotions in any of the fifty States, the District of Columbia, and Puerto Rico (collectively, the Swisher Product as defined herein): “5 for the price of 3”; “3 for the price of 2”; “buy 1 get 1 free”; or “buy 4 get 1 free.” Excluded from the Class are: (a) any persons or entities that purchased or acquired the Product for commercial use or resale; (b) Swisher, its officers, directors and employees; its affiliates and affiliates’ officers, directors and employees; its distributors and distributors’ officers, directors and

employees; (c) Plaintiff's Class Counsel; (d) judicial officers and their immediate family members and associated court staff assigned to this case; (e) persons or entities who or which timely and properly exclude themselves from the Class.

8. "Class Member" means a member of the Class.

9. "Court" means the Circuit Court for the State of Oregon, Multnomah County.

10. "Defendants" means Swisher International, Inc., Plaid Pantries, Inc., and Plaid Pantry, Inc., as named parties to this Action.

11. "Fairness Hearing" means the hearing for the purposes of the Court determining whether to approve this Agreement as fair, reasonable, and adequate.

12. "Final Effective Date" means the latest date on which the Final Order and/or Final Judgment approving this Agreement becomes final. For purposes of this Agreement:

a. if no appeal has been taken from the Final Order and/or Final Judgment, "Final Effective Date" means the date on which the time to appeal therefrom has expired; or

b. if any appeal has been taken from the Final Order and/or Final Judgment, "Final Effective Date" means the date on which all appeals therefrom, including petitions for rehearing or re-argument, petitions for rehearing en banc and petitions for certiorari or any other form of review, have been finally disposed of in a manner that affirms the Final Order or Final Judgment; or

c. subject to Court approval, if Plaintiff's Class Counsel and Defendants agree in writing, the "Final Effective Date" can occur on any other agreed date.

13. “Final Judgment” means the Court’s final judgment as described in Section XI of this Agreement, which is to be substantially in the form attached hereto as Exhibit 4.

14. “Final Order” means the Court’s order approving the Settlement and this Agreement, as described in Section XI of this Agreement, which is to be substantially in the form attached hereto as Exhibit 5.

15. “Incentive Awards” means the amounts requested by Plaintiff’s Class Counsel to be paid to the Plaintiff and to Brown for bringing the Action and for their time in connection with the Action.

16. “Long Form Notice” means the Long Form Notice substantially in the form attached hereto as Exhibit 3.

17. “Notice Program” means the notice program described in Section V.

18. “Parties” means Plaintiff and Defendants, collectively, as each of those terms is defined in this Agreement.

19. “Plaid Pantry” means Plaid Pantries, Inc. and Plaid Pantry, Inc., named parties to this Action.

20. “Plaid Pantry’s Counsel” means Lane Powell.

21. “Plaintiff” means J. Podawiltz, as a named party to this Action.

22. “Plaintiff’s Class Counsel” means Levi & Korsinsky, LLP, Geragos & Geragos, OlsenDaines and the Law Offices of Robert Le, and excludes any and all counsel for any Class Member objectors to the Settlement.

23. “Preliminary Approval Order” means the order to be entered by the Court preliminarily approving the Settlement as outlined in Section III of this Agreement and to be substantially in the form attached hereto as Exhibit 1.

24. “Release” means the release and waiver set forth in Section XII of this Agreement and in the Final Judgment and Final Order.

25. “Released Parties” or “Released Party” means each of the Defendants in the Action, Swisher International, Inc., Plaid Pantries, Inc., Plaid Pantry, Inc., and each of their past, present and future parents, predecessors, successors, spin-offs, assigns, holding companies, joint-ventures and joint-venturers, partnerships and partners, members, divisions, stockholders, bondholders, subsidiaries, related companies, affiliates, officers, directors, employees, associates, dealers, representatives, suppliers, vendors, retailers, authorized sellers and re-sellers, advertisers, service providers, distributors and sub-distributors, agents, attorneys, administrators and advisors. The Parties expressly acknowledge that each of the foregoing is included as a Released Party even though not identified by name herein.

26. “Settlement Administrator” means the third-party agent or administrator agreed to by the Parties and appointed by the Court to give notice to the Class and implement the Claims and settlement requirements of this Agreement, subject to the Court’s approval. The Parties agree that JND Legal Administration (or “JND”) shall serve as Settlement Administrator, subject to approval by the Court.

27. “Settlement Website” means an Internet website established and maintained by the Settlement Administrator for the purpose of facilitating notice to, and communicating with, the Class.

28. “Summary Notice” means the short form notice substantially in the form as attached hereto as Exhibit 2.

29. “Swisher” means Swisher International, Inc., a named party to this Action.

30. “Swisher’s Counsel” means Holland & Knight LLP.

31. “Swisher Product” means Swisher cigar products sold as: 5-packs advertised as “5 for the price of 3” or “buy 4 get 1 free”; 3-packs advertised as “3 for the price of 2”; and 2-packs advertised as “buy 1 get 1 free.” A complete list of Swisher Products covered under this Agreement is specifically delineated on Addendum A.

B. Other capitalized terms used in this Agreement but not defined in this Section II shall have the meanings ascribed to them elsewhere in this Agreement.

C. The terms “he or she” and “his or her” include “it” or “its” where applicable.

III. CERTIFICATION OF THE CLASS, PRELIMINARY APPROVAL

A. The Parties agree that within 14 days after the execution of this Agreement, and for purposes of this Agreement only (and without any finding of admission or wrongdoing or fault by Defendants), Plaintiff shall seek from the Court, and Defendants will not oppose, a Preliminary Approval Order in a form substantially similar to Exhibit 1. The Preliminary Approval Order shall, among other things:

1. preliminarily certify a nationwide settlement-only Class, approve Plaintiff as class representative and appoint Plaintiff’s Class Counsel as counsel for the Class, pursuant to Oregon Rule of Civil Procedure 32;

2. preliminarily approve the Settlement;

3. determine that the Notice Program complies with all legal requirements, including, but not limited to, the Due Process Clause of the United States Constitution;

4. schedule a date and time for a Fairness Hearing to determine whether the Settlement should be finally approved by the Court;

5. establish a schedule for the Parties to seek to obtain from the Court a Final Approval Judgment and Final Order;

6. appoint the Settlement Administrator; and

7. issue other related orders to effectuate the preliminary approval of the Agreement.

B. Certification of the Class is conditional on the Court's preliminary and final approval of this Agreement. In the event the Court does not approve all terms of the Agreement, or if for any reason the Court does not grant final approval of the Settlement, or if final approval is not granted following appeal of any order by the Court, then the certification shall be void and this Agreement and all orders entered in connection therewith, including but not limited to any order conditionally certifying the Class, shall become null and void and shall be of no further force and effect, and each Party shall retain all their respective rights as they existed prior to the execution of the Agreement.

IV. SETTLEMENT RELIEF

A. In consideration for the dismissal of the Action with prejudice, as contemplated in this Agreement, and for the full and complete Release, Final Judgment and Final Order provided below, Swisher shall offer to Class Members who submit a valid and complete claim form two (2) or more, but no more than a total of five (5), non-personalized, transferrable vouchers, each with a face value of \$1.00 and a two-year expiration date, which can be redeemed at retail for the purchase of Swisher cigar products. There shall be a cap of \$2.5 million on the aggregate dollar amount of vouchers distributed under the terms of the Settlement, and vouchers will be issued beginning no earlier than 30 days from the Final Effective Date and proceeding on an ongoing basis until the date on which the cap of \$2.5 million has been reached or one (1) year from the first date on which a voucher is issued, whichever is earlier.

B. If after one (1) year from the first date on which a voucher is issued the cap of \$2.5 million on the aggregate dollar amount of vouchers distributed under the terms of the Settlement has not been met, an amount equal to \$2.5 million less the aggregate dollar amount of

vouchers distributed under the terms of the Settlement shall be donated as a *cy pres* remedy half to the National Consumer Law Center and half to the Oregon State Bar.

C. The relief and costs associated with providing the relief and otherwise implementing the relief specified in this Section IV of this Agreement shall be paid by Swisher.

V. NOTICE TO THE CLASS

A. No less than [30] days after the entry of a Preliminary Approval Order, and to comply with all applicable laws, including but not limited to, Oregon Rule of Civil Procedure 32, the Due Process Clause of the United States Constitution, and any other applicable statute, law or rule, the Settlement Administrator shall cause notice to be disseminated as described below, unless otherwise specified or provided for as set forth in that order. The costs of disseminating the notice and otherwise implementing the notice specified in this Section V of this Agreement shall be paid by Swisher.

1. Summary Notice.

The Settlement Administrator shall cause the publication of the Summary Notice as described in the Declaration of the Settlement Administrator, and in such additional newspapers, magazines and/or other media outlets as shall be agreed upon by the Parties. The form of Summary Notice agreed upon by the Parties is in the form substantially similar to the one attached to the Agreement as Exhibit 2.

2. Long Form Notice.

Where addresses are reasonably and readily available to Swisher through its own customer registration databases or other such lists as it may possess, the Settlement Administrator shall send the Long Form Notice to potential Class Members thus identified either by email or by first-class regular mail. The Long Form Notice shall be in a form substantially similar to the document attached to this Agreement as Exhibit 3 and shall contain a plain and concise description of the

nature of the Action, the history of the litigation of the claims and the terms of the Settlement, including how the Settlement would provide relief to the Class and Class Members, the rights of Class Members to opt out of or object to the Settlement, and the deadlines and procedures for exercising those rights. The Settlement Administrator shall also send the Long Form Notice by first-class mail to any persons who request it in writing or through the toll-free telephone number. The Long Form Notice shall be available on the Settlement Website.

3. Settlement Website.

The Settlement Administrator shall establish a website that will inform Class Members of the terms of this Agreement, their rights and the deadlines by which those rights must be exercised, important dates, and related information. The Settlement Website shall include materials agreed upon by the Parties and/or required by the Court, including, but not limited to, the Long Form Notice, the Settlement Agreement, Frequently Asked Questions and Answers, and other documents relevant to the administration of the Settlement. The Settlement Website shall also provide an online claim portal.

4. Toll-Free Telephone Number.

The Settlement Administrator shall establish a toll-free telephone number that will provide settlement-related information to Class Members using an automated response system.

5. Internet Banner Notifications.

The Settlement Administrator shall establish banner notifications on the internet that will provide settlement-related information to Class Members.

VI. ADMINISTRATION OF THE SETTLEMENT

A. The Settlement Administrator shall be responsible for, without limitation:

1. arranging for the publication of the Summary Notice;
2. establishing a Post Office box for the receipt of any correspondence;

3. printing, mailing or arranging for the mailing of the Long Form Notice;
4. handling returned mail not delivered to Class Members, including attempting to obtain updated address information for any Long Form Notices returned without a forwarding address;
5. responding to requests for the Long Form Notice;
6. making any additional mailings required under the terms of this Agreement;
7. receiving and maintaining on behalf of the Court any Class Member correspondence regarding requests for exclusion and/or objections to the Settlement, and providing copies of any requests for exclusion, objections and/or related correspondence to the Parties promptly upon receipt;
8. establishing a website and toll-free interactive voice response unit with message capabilities to which Class Members may refer for information about the Action and the Settlement;
9. establishing Internet banner notifications and for consulting on the Notice Program;
10. forwarding written inquiries to Plaintiff's Class Counsel or their designee for a response, if warranted;
11. responding to requests from Plaintiff's Class Counsel and/or Swisher's Counsel; and
12. otherwise implementing and/or assisting with the dissemination of the notice of the Settlement.

B. The Settlement Administrator shall also be responsible for, without limitation, implementing the terms of the Claim Process and related administrative activities.

C. Not later than [14] days before the date of the Fairness Hearing, the Settlement Administrator shall file with the Court a declaration detailing the scope, method and results of the Notice Program and Claim Process, and containing a list of those persons who have or excluded themselves from the Settlement.

D. The Settlement Administrator and/or the Settlement Administrator may retain one or more persons to assist in the completion of his or her responsibilities.

E. The Settlement Administrator shall minimize costs in effectuating the terms of this Agreement.

F. If the Settlement Administrator makes a material or fraudulent misrepresentation, conceals requested material information, or fails to perform adequately on behalf of Defendants or the Class, the Parties may agree to remove and replace the Settlement Administrator. Disputes regarding the retention or dismissal of the Settlement Administrator shall be referred to the Court for resolution.

VII. CLAIM PROCESS

A. The claim form shall be available on the Settlement Website both as a downloadable .pdf document, which can be completed and submitted to the Settlement Administrator by mail, and as an online claim portal enabling Class Members to directly submit claims electronically through the Settlement Website. Commencing on the earlier of (a) the date on which the Summary Notice is first published, and (b) the date on which the Long Form Notice is first issued to the Class by email or regular first-class mail, Class Members who have not excluded themselves from the Settlement may submit a claim form to the Settlement Administrator for review. The claim form will be available until the date on which the cap of \$2.5 million on the aggregate dollar amount of vouchers distributed under the terms of the Settlement has been reached or one (1) year from the first date on which a voucher is issued, whichever is earlier.

B. Persons or entities who believe that they are Class Members may complete and submit a claim form indicating that they wish to be eligible for the relief provided in this Settlement Agreement.

C. The Settlement Administrator shall receive and process Claims, whether submitted electronically via the Settlement Website or by U.S. Mail, to determine whether submitted Claims are timely, valid and complete. The Settlement Administrator shall use its best efforts to complete its review of Claims within thirty (30) days of receipt.

D. The Settlement Administrator shall review Claims on a first-come, first-serve basis and shall have sole authority to determine whether submitted Claims are timely, valid and complete. If the Settlement Administrator determines that a Claim is incomplete or invalid, or if a Claim is received either after the cap of \$2.5 million on the aggregate dollar amount of vouchers distributed under the terms of the Settlement or after one (1) year from the first date on which a voucher is issued, whichever is earlier, the Claim shall be denied without further notice to the Class Member. The online claim portal shall be configured to only accept Claims that are deemed to be complete and valid. Class Members who submit a Claim by means other than through the online claim portal that is determined to be incomplete or invalid will be notified by mail or email of the deficiency(ies) in their Claim and will have the opportunity to correct the deficiency(ies) thus identified by responding to such notice by mail or email to the Settlement Administrator within twenty-one (21) days of the date of the notice. A complete and valid Claim will not ensure acceptance and issuance of vouchers if all conditions of redemption, as described herein, have not been met.

E. The Settlement Administrator shall have the right to request additional information for any reason, such as proof of age and identity or other validating documentation, prior to

validating any Claim. If a Class Member fails to provide the requested documentation or information within thirty (30) days from the date of the request from the Settlement Administrator, the Claim shall be denied without further notice to the Class Member.

F. Beginning thirty (30) days after the occurrence of the Final Effective Date, and thereafter on a quarterly basis until the cap of \$2.5 million on the aggregate dollar amount of vouchers distributed under the terms of the Settlement has been reached or one (1) year from the first date on which a voucher is issued has elapsed, whichever is earlier, the Settlement Administrator shall notify Swisher of the number of approved Claims that have not previously been reported. A Claim shall be considered approved when the Administrator deems it is timely, valid, and complete.

G. Within thirty (30) days of notifying Swisher of the initial number of approved Claims received, the Settlement Administrator shall issue by regular first-class mail to each Class Member whose approved Claim was reported to Swisher in this manner vouchers equal to the number of vouchers claimed . Thereafter, the Settlement Administrator shall issue vouchers on a quarterly basis to each Class Member whose Claim was newly approved. Any vouchers returned to the Settlement Administrator with a forwarding address will be re-mailed to the new address provided. The Settlement Administrator shall not be obligated to conduct additional research to locate Class Members whose voucher is returned as undeliverable with no forwarding address or to provide any notification to Class Members whose vouchers are returned.

H. No person shall have any claim against the Plaintiff, Plaintiff's Class Counsel, Swisher, Swisher's Counsel, Plaid Pantry, Plaid Pantry's Counsel, or the Settlement Administrator based on any eligibility determinations made in accordance with the Agreement.

VIII. REQUESTS FOR EXCLUSION

A. Any potential Class Member who wishes to be excluded from the Class must mail a written request for exclusion to the Settlement Administrator at the address provided in the Long Form Notice, such that it is received no later than [21] days before the date of the Fairness Hearing. Exclusion requests may not be submitted by phone, email or fax. The written request for exclusion shall include (a) the potential Class Member's full name, telephone number, and address (the potential Class Member's actual residential address must be included); (b) a statement that the potential Class Member wishes to be excluded from the Settlement; and (c) the potential Class Member's dated, handwritten signature (an electronic signature or attorney's signature are not sufficient). The Settlement Administrator shall promptly forward copies of any written requests for exclusion received to Plaintiff's Class Counsel and Swisher's Counsel. If a potential Class Member files a request for exclusion, he or she may not file an objection under Section IX.

B. Any potential Class Member who does not file a timely written request for exclusion as provided in this Section VIII shall be bound by all subsequent proceedings, orders and judgments, including, but not limited to, the Release, Final Judgment and Final Order in the Action.

IX. OBJECTIONS TO SETTLEMENT

A. Any Class Member who has not filed a timely written request for exclusion and who wishes to object to the fairness, reasonableness, or adequacy of this Settlement Agreement, the requested award of Attorneys' Fees, Costs, and Expenses, or the requested Incentive Awards to the Plaintiff and to Brown, must file with the Court and provide copies to Plaintiff's Class Counsel, Swisher's Counsel, and Plaid Pantry's Counsel a written statement of his or her objections, such that it is received no later than twenty-one (21) days before the date of the Fairness Hearing. The written objection of any Class Member must include: (a) a heading which refers to

the Action; (b) the objector's full name, telephone number, and address (the objector's actual residential address must be included); (c) if represented by counsel, the full name, telephone number, and address of all counsel; (d) a statement that the objector is a Class Member, including approximately when and where the Swisher Product(s) was purchased; (e) all of the reasons for his or her objection; (f) whether the objector intends to appear at the Fairness Hearing on his or her own behalf or through counsel; and (g) the objector's dated, handwritten signature (an electronic signature or attorney's signature are not sufficient). Any documents supporting the objection must also be attached to the objection. If any testimony is proposed to be given in support of the objection, the names of all persons who will testify must be set forth in the objection. Class Members may do so either on their own or through an attorney retained at their own expense. The objection must include proof that he or she falls within the definition of the Class.

B. Any Class Member who files and serves a written objection, as described in the preceding Section IX.A, may appear at the Fairness Hearing, either in person or through personal counsel hired at the Class Member's expense, to object to the fairness, reasonableness, or adequacy of this Agreement or the Settlement, or to the award of Attorneys' Fees, Costs and Expenses or award to the individual Plaintiff. Class Members or their attorneys who intend to make an appearance at the Fairness Hearing must deliver a notice of intention to appear to Plaintiff's Class Counsel identified in the Long Form Notice and to Swisher's Counsel, and file said notice with the Court, on a date ordered by the Court.

C. Any Class Member who objects to the Settlement shall be entitled to all of the benefits of the Settlement (with the exception noted below) if this Agreement and the terms contained herein are approved, as long as the objecting Class Member complies with all requirements of this Agreement applicable to Class Members, including the timely submission of

a claim form and other requirements herein. However, the Parties hereto agree that a Class Member who objects to the Settlement shall not be entitled to recovery of Attorneys' Fees, Costs and Expenses, and that the equitable common-fund doctrine does not apply to this Settlement.

D. No later than fourteen (14) days before the date of the Fairness Hearing, Plaintiff's Class Counsel shall file with the Court their responses to any timely and valid objections received.

X. ATTORNEYS' FEES, COSTS, AND EXPENSES AND PLAINTIFF'S AWARD

A. The Parties did not discuss the payment of Attorneys' Fees, Costs, and Expenses, and Incentive Awards, until after the principal terms of the Settlement Agreement had been agreed upon.

B. After agreeing to the principal terms set forth in this Settlement Agreement, the Parties' counsel negotiated the amount of Attorneys' Fees, Costs, and Expenses that, separate and apart from the consideration for this settlement, following application to the Court and subject to Court approval, would be paid by Swisher as the fee award and costs award to Plaintiff's Class Counsel. As a result of negotiations, Plaintiff's Class Counsel agrees to make and Defendants agree not to oppose, an application for an award of Attorneys' Fees, Costs, and Expenses in the Action in an amount of \$695,000. This Attorneys' Fees, Costs and Expenses award in the amount of \$695,000.00 shall be the sole compensation paid by Swisher for all Plaintiff's Class Counsel and/or for work incurred that inured to the benefit of the Class, and shall be payable through OlsenDaines. This Attorneys' Fees, Costs and Expenses in the amount of \$695,000.00 to be paid by Swisher does not include the Incentive Award payments to Plaintiff and Brown set forth in the paragraph below which shall separately and additionally be paid by Swisher.

C. Plaintiff's Class Counsel may petition the Court for Incentive Awards of up to \$7,500.00 for the Plaintiff and up to \$5,000.00 to Brown for bringing the Action and for their time in connection with the Action, and Defendants agree not to oppose such application. These

Incentive Awards are to be paid by Swisher and are separate from and in addition to the Attorneys' Fees, Costs and Expenses in the amount of \$695,000.00 to be paid by Swisher, as set forth in the paragraph above.

D. Within twenty (20) days after the occurrence of the Final Effective Date, Swisher shall pay the Attorneys' Fees, Costs, and Expenses, plus the separate and additional Incentive Awards that are awarded by the Court to OlsenDaines. Thereafter, Plaintiff's Class Counsel shall distribute the award of Attorneys' Fees, Costs, and Expenses among Plaintiff's Class Counsel and the Incentive Awards to Plaintiff and to Brown.

E. The amount(s) of any Attorneys' Fees, Costs, and Expenses, and the Incentive Awards to Plaintiff and Brown are intended to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement. No order of the Court, or modification or reversal or appeal of any order of the Court, concerning the amount(s) of any Attorneys' Fees, Costs, and Expenses awarded by the Court to Plaintiff's Class Counsel, or concerning the amounts of the Incentive Awards that are awarded by the Court to Plaintiff and Brown, shall affect whether the Final Order and Final Judgment are final or constitute grounds for cancellation or termination of the settlement. In no event shall Swisher pay an amount for Attorneys' Fees, Costs, and Expenses in the Action, as awarded by the Court, in an amount in excess of \$695,000.00.

XI. FINAL JUDGMENT AND FINAL ORDER

A. No later than fourteen (14) days before the date of the Fairness Hearing, Plaintiff's Class Counsel shall file with the Court their motion for final approval of the Settlement seeking to obtain a Final Judgment and Final Order in the forms substantially similar to Exhibits 4 and 5, respectively. The Final Judgment and Final Order shall, among other things:

1. find that the Court has personal jurisdiction over the Plaintiff, the Class Members and the Defendants, that the Court has subject matter jurisdiction over the claims asserted in the Action, and that venue is proper;

2. finally approve the Agreement and Settlement, pursuant to Oregon Rule of Civil Procedure 32;

3. finally certify the Class for settlement purposes only;

4. find that the notice and the notice dissemination methodology complied with all laws, including, but not limited to, the Due Process Clause of the United States Constitution;

5. dismiss the Action with prejudice and without costs (except as provided for herein as to costs);

6. incorporate the Release set forth in the Agreement and make the Release effective as of the date of the Final Judgment and Final Order;

7. authorize the Parties to implement the terms of the Agreement;

8. retain jurisdiction relating to the administration, consummation, enforcement, and interpretation of the Agreement, the Final Judgment and Final Order, and for any other necessary purpose;

9. issue related Orders to effectuate the final approval of the Agreement and its implementation; and

10. make a determination on Plaintiffs' Counsel's unopposed request for Attorneys' Fees and reimbursement of expenses and Plaintiff's and Brown's Incentive Awards.

XII. RELEASE AND WAIVER

A. The Parties agree to the following release and waiver, which shall take effect upon entry of the Final Judgment and Final Order.

B. In consideration for the Settlement, Plaintiff and each Class Member, on behalf of themselves and any other legal or natural persons who may claim by, through or under them, agree to fully, finally and forever release, relinquish, acquit, discharge and hold harmless the Released Parties from any and all claims and damages of any kind and/or type related to Swisher's marketing or sale of the Swisher Product on the basis of a 5 for the price of 3, 3 for the price of 2, buy 1 get 1 free, or buy 4 get 1 free promotion, including, but not limited to, compensatory, exemplary, punitive, expert and/or attorneys' fees or by multipliers, whether past, present, contingent or non-contingent, asserted or un-asserted, whether based on federal, state or local law, statute, ordinance, regulation, code, contract, common law, violations of any state's deceptive, unlawful, or unfair business or trade practices, false, misleading or fraudulent advertising, consumer fraud or consumer protection statutes, any breaches of express, implied or any other warranties, RICO, or the Magnuson-Moss Warranty Act.

C. Notwithstanding the foregoing, the Released Parties shall be held harmless by any Plaintiff or Class Member for any released claim asserted against the Released Parties, by that Plaintiff or Class Member, either directly or by any legal or natural persons who claim by, through, or under that Plaintiff or Class Member.

D. The Final Judgment and Final Order will reflect these terms.

E. Plaintiff and each Class Member expressly agree that this Release, the Final Order, and/or the Final Judgment is, will be, and may be raised as a complete defense to any claims or actions hereby released, and will preclude any action or proceeding encompassed by, this Release.

F. Plaintiff and each Class Member shall not now or hereafter institute, maintain, prosecute, assert, and/or cooperate in the institution, commencement, filing, or prosecution of any suit, action, and/or proceeding, against the Released Parties, either directly or indirectly, on their

own behalf, on behalf of a class or on behalf of any other person or entity with respect to the claims, causes of action and/or any other matters released through this Settlement.

G. In connection with this Agreement, Plaintiff and each Class Member acknowledge that they may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those that they now know or believe to be true concerning the subject matter of the Action and/or the Release herein. Nevertheless, it is the intention of Plaintiff's Class Counsel, Plaintiff, and each Class Member fully, finally and forever to settle, release, discharge, and hold harmless all such matters, and all claims relating thereto which exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in any action or proceeding) with respect to the Action.

H. Plaintiff expressly understands and acknowledges and all Class Members will be deemed by the Final Judgment and Final Order to acknowledge and waive Section 1542 of the Civil Code of the State of California, which provides that:

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

Plaintiff and Class Members expressly waive and relinquish any and all rights and benefits that they may have under, or that may be conferred upon them by, the provisions of Section 1542 of the California Civil Code, or any other law of any state or territory that is similar, comparable or equivalent to Section 1542, to the fullest extent they may lawfully waive such rights.

I. Plaintiff represents and warrants that he is the sole and exclusive owner of all claims that he personally is releasing under this Agreement. Plaintiff further acknowledges that he has not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Action,

including without limitation, any claim for benefits, proceeds or value under the Action, and that Plaintiff is not aware of anyone other than himself claiming any interest, in whole or in part, in the Action or in any benefits, proceeds or values under the Action. Class Members submitting a claim form shall represent and warrant therein that they are the sole and exclusive owner of all claims that they personally are releasing under the Settlement and that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Action, including without limitation, any claim for benefits, proceeds or value under the Action, and that such Class Member(s) are not aware of anyone other than themselves claiming any interest, in whole or in part, in the Action or in any benefits, proceeds or values under the Action.

J. Without in any way limiting its scope, and, except to the extent otherwise specified in the Agreement, this Release covers by example and without limitation, any and all claims for attorneys' fees, costs, expert fees, or consultant fees, interest, or litigation fees, costs or any other fees, costs, and/or disbursements incurred by any attorneys, Plaintiff's Class Counsel, Plaintiff, or Class Members who claim to have assisted in conferring the benefits under this Settlement upon the Class.

K. In consideration for the Settlement, the Released Parties and their past or present officers, directors, employees, agents, attorneys, predecessors, successors, affiliates, subsidiaries, divisions, and assigns shall be deemed to have, and by operation of the Final Approval Order shall have, released Plaintiff's Class Counsel and each current and former Plaintiff and Brown from any and all causes of action that were or could have been asserted pertaining solely to the conduct in filing and prosecuting the litigation or in settling the Action.

L. Plaintiff's Class Counsel who receive attorneys' fees and costs from this Settlement acknowledge that they have conducted sufficient independent investigation to enter into this Settlement Agreement and, by executing this Settlement Agreement, state that they have not relied upon any statements or representations made by the Released Parties or any person or entity representing the Released Parties, other than as set forth in this Settlement Agreement.

M. The Parties specifically understand that there may be further pleadings, discovery requests and responses, testimony, or other matters or materials owed by the Parties pursuant to existing pleading requirements, discovery requests, or pretrial rules, procedures, or orders, and that, by entering into this Agreement, the Parties expressly waive any right to receive, hear, or inspect such pleadings, testimony, discovery, or other matters or materials.

N. Nothing in this Release shall preclude any action to enforce the terms of the Agreement, including participation in any of the processes detailed herein.

O. Plaintiff and Plaintiff's Class Counsel hereby agree and acknowledge that the provisions of this Release together constitute an essential and material term of the Agreement and shall be included in any Final Judgment and Final Order entered by the Court.

XIII. MODIFICATION OR TERMINATION OF THIS AGREEMENT

A. The terms and provisions of this Agreement may be amended, modified, or expanded by written agreement of the Parties and approval of the Court; provided, however, that after entry of the Final Judgment and Final Order, the Parties may by written agreement effect such amendments, modifications, or expansions of this Agreement and its implementing documents (including all exhibits hereto) without further notice to the Class or approval by the Court if such changes are consistent with the Court's Final Judgment and Final Order and do not limit the rights of Class Members under this Agreement.

B. If, for any reason, the Settlement is not approved by the Court, terminated by a Party, overturned, or materially modified on appeal or as a result of further proceedings on remand, or otherwise does not become effective, unless the Parties shall agree otherwise, the Parties shall revert to their litigation positions immediately prior the execution to the Settlement agreement without waiver of any rights, claims or defenses.

C. Termination by a Party, as referenced in Section XIII.B., is limited to modifications to the Agreement or Settlement that are reasonably determined to be material, in the terminating Party's sole judgment and discretion. Swisher shall have the right, but not the obligation, to terminate this Agreement if the total number of timely and valid requests for exclusion exceed 5% of the \$2.5 million cap on the aggregate dollar amount of vouchers distributed under the terms of the Settlement. The terminating Party must exercise any option to withdraw from and terminate this Agreement, as provided in this Section, by providing written notice served on the other Parties no later than 20 days after receiving notice of the event prompting the termination.

D. If an option to withdraw from and terminate this Agreement arises under this Section XIII above, neither Swisher nor Plaintiff are required for any reason or under any circumstance to exercise that option and any exercise of that option shall be in good faith.

E. If, but only if, this Agreement is terminated pursuant to Section XIII.B-C, above, then:

1. This Agreement shall be null and void and shall have no force or effect, and no Party to this Agreement shall be bound by any of its terms, except for the terms of Section XIV.D herein;

2. The Parties will petition the Court to have any stay orders entered pursuant to this Agreement lifted;

3. All of its provisions, and all negotiations, statements, and proceedings relating to it shall be without prejudice to the rights of Swisher, Plaid Pantry, Plaintiff or any Class Member, all of whom shall be restored to their respective positions existing immediately before the execution of this Agreement, except that the Parties shall cooperate in requesting that the Court set a new scheduling order such that no Party's substantive or procedural rights is prejudiced by the settlement negotiations and proceedings;

4. The Released Parties expressly and affirmatively reserve all defenses, arguments, and motions as to all claims that have been or might later be asserted in the Action, including, without limitation, the argument that the Action may not be litigated as a class action;

5. Plaintiff and all other Class Members, on behalf of themselves and their heirs, assigns, executors, administrators, predecessors, and successors, expressly and affirmatively reserve and do not waive all motions as to, and arguments in support of, all claims, causes of actions or remedies that have been or might later be asserted in the Action including, without limitation, any argument concerning class certification, and other damages;

6. Swisher, and the other Released Parties expressly and affirmatively reserve and do not waive all motions and positions as to, and arguments in support of, all defenses to the causes of action or remedies that have been sought or might be later asserted in the actions, including without limitation, any argument or position opposing class certification, liability, or damages;

7. Neither this Agreement, the fact of its having been made, nor the negotiations leading to it, nor any discovery or action taken by a Party or Class Member pursuant to this Agreement, shall be admissible or entered into evidence for any purpose whatsoever;

8. Any settlement-related order(s) or judgment(s) entered in this Action after the date of execution of this Agreement shall be deemed vacated and shall be without any force or effect.

XIV. GENERAL MATTERS AND RESERVATIONS

A. The obligation of the Parties to conclude the Settlement is and shall be contingent upon each of the following:

1. Entry by the Court of the Final Judgment and Final Order approving the Settlement, from which the time to appeal has expired or which has remained unmodified after any appeal(s); and

2. Any other conditions stated in this Agreement.

B. The Parties and their counsel agree to keep the existence and contents of this Agreement confidential until the date on which the Motion for Preliminary Approval is filed; provided, however, that this Section XIV shall not prevent Swisher from disclosing such information, prior to the date on which the Motion for Preliminary Approval is filed, to state and federal agencies, independent accountants, actuaries, advisors, financial analysts, insurers or attorneys, nor shall it prevent Swisher from disclosing such information based on the substance of this Agreement. Nor shall it prevent the Parties and their counsel from disclosing such information to persons or entities (such as experts, courts, co-counsel, and/or administrators) to whom the Parties agree disclosure must be made in order to effectuate the terms and conditions of this Agreement.

C. Plaintiff and Plaintiff's Class Counsel agree that the confidential information made available to them solely through the settlement process was made available, as agreed to, on the condition that neither Plaintiff nor his counsel may disclose it to third parties (other than experts or consultants retained by Plaintiffs in connection with the Action); that it not be the subject of

public comment; that it not be used by Plaintiff or Plaintiff's Class Counsel in any way in this litigation or otherwise should the Settlement not be achieved, and that it is to be returned if a Settlement is not concluded; provided, however, that nothing contained herein shall prohibit Plaintiff from seeking such information through formal discovery if not previously requested through formal discovery or from referring to the existence of such information in connection with the Settlement of the Action.

D. Information provided by Swisher and/or Swisher's Counsel to the Plaintiff, Plaintiff's Class Counsel, any individual Class Member, counsel for any individual Class Member, and/or administrators, pursuant to the negotiation and implementation of this Agreement, includes trade secrets and highly confidential and proprietary business information and shall be deemed "Highly Confidential" pursuant to the protective orders that have been or will be entered in the Action, and shall be subject to all of the provisions thereof. Any materials inadvertently produced shall, upon Swisher's request, be promptly returned to Swisher's Counsel, and there shall be no implied or express waiver of any privileges, rights, and defenses.

E. Within ninety (90) days after the Final Effective Date (unless the time is extended by agreement of the Parties), Plaintiff's Class Counsel, and any expert or other consultant employed by them in such capacity or any other individual with access to documents provided by Swisher, and/or Swisher's Counsel to Plaintiff's Class Counsel shall either: (i) return to Swisher's Counsel, all such documents and materials (and all copies of such documents in whatever form made or maintained) produced during the settlement process by Swisher and/or Swisher's Counsel and any and all handwritten notes summarizing, describing, or referring to such documents; or (ii) certify to Swisher's Counsel that all such documents and materials (and all copies of such documents in whatever form made or maintained) produced by Swisher, and/or Swisher's Counsel

and any and all handwritten notes summarizing, describing, or referring to such documents have been destroyed, provided, however, that this Section XIV shall not apply to any documents made part of the record in connection with a Claim, nor to any documents made part of a Court filing, nor to Plaintiff's Class Counsel's work product. Six months after the date on which the distribution of vouchers to Class Members has been completed, the Settlement Administrator shall return or destroy all documents and materials to Swisher's and/or Swisher's Counsel and/or Plaintiff's Class Counsel that produced the documents and materials, except that it shall not destroy any and all claim forms, including any and all information and/or documentation submitted by Class Members. Nothing in this Agreement shall affect any confidentiality order or protective order in the Action.

F. Swisher's execution of this Agreement shall not be construed to release – and Swisher expressly does not intend to release – any claim Swisher may have or make against any insurer for any cost or expense incurred in connection with this Settlement, including, without limitation, for attorneys' fees and costs. Plaid Pantry's execution of this Agreement shall not be construed to release – and Plaid Pantry expressly does not intend to release – any claim Plaid Pantry may have or make against any insurer for any cost or expense incurred in connection with the Settlement, including, without limitation, for attorneys' fees and costs.

G. Plaintiff's Class Counsel represent that: (1) they are authorized by the Plaintiff to enter into this Agreement with respect to the claims in this Action; and (2) they are seeking to protect the interests of the Class.

H. Plaintiff's Class Counsel further represent that the Plaintiff: (1) has agreed to serve as the representative of the Class proposed to be certified herein; (2) is willing, able, and ready to perform all of the duties and obligations of representatives of the Class, including, but not limited

to, being involved in discovery and fact finding; (3) has read the pleadings in the Action or has had the contents of such pleadings described to him; (4) is familiar with the results of the fact-finding undertaken by Plaintiff's Class Counsel; (5) has been kept apprised of settlement negotiations among the Parties, and has either read this Agreement, including the exhibits annexed hereto, or has received a detailed description of it from Plaintiff's Class Counsel and he has agreed to its terms; (6) has consulted with Plaintiff's Class Counsel about the Action and this Agreement and the obligations imposed on representatives of the Class; (7) has authorized Plaintiff's Class Counsel to execute this Agreement on his behalf; and (8) shall remain and serve as the representative of the Class until the terms of this Agreement are effectuated, this Agreement is terminated in accordance with its terms, or the Court at any time determines that said Plaintiff cannot represent the Class.

I. The Parties acknowledge and agree that no opinion concerning the tax consequences of the Settlement to Class Members is given or will be given by the Parties, nor are any representations or warranties in this regard made by virtue of this Agreement. Each Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Class Member, each Class Member will be solely responsible for correctly characterizing this payment for tax purposes and for paying any taxes owed on this payment, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Class Member.

J. Swisher represents and warrants that the individual(s) executing this Agreement is authorized to enter into this Agreement on behalf of Swisher.

K. Plaid Pantry represents and warrants that the individual(s) executing this Agreement is authorized to enter into this Agreement on behalf of Plaid Pantry.

L. This Agreement, complete with its exhibits, sets forth the sole and entire agreement among the Parties with respect to its subject matter, and it may not be altered, amended, or modified except by written instrument executed by counsel for each of the Parties. The Parties expressly acknowledge that no other agreements, arrangements, or understandings not expressed in this Agreement exist among or between them, and that in deciding to enter into this Agreement, they rely solely upon their judgment and knowledge. This Agreement supersedes any prior agreements, understandings, or undertakings (written or oral) by and between the Parties regarding the subject matter of this Agreement.

M. This Agreement and any amendments thereto shall be governed by and interpreted according to the laws of Oregon, notwithstanding its conflict of laws provisions.

N. Any disagreement and/or action to enforce this Agreement shall be commenced and maintained only in the Circuit Court for the State of Oregon, Multnomah County.

O. Whenever this Agreement requires or contemplates that one of the Parties shall or may give notice to the other, notice shall be deemed effective upon receipt and provided by e-mail and/or next-day (excluding Saturdays, Sundays and Federal Holidays) express delivery service as follows:

1. If to Swisher, then to:

Peter P. Hargitai
Holland & Knight LLP
50 North Laura Street, Suite 3900
Jacksonville, Florida 32202
Tel.: 904-353-2000
Fax: 904-358-1872
E-mail: Peter.Hargitai@hklaw.com

2. If to Plaid Pantry, then to:

Milo Petranovich
Lane Powell
601 SW 2nd Ave., Suite 2100

Portland, Oregon 97204
Tel.: 503-778-2100
Fax: 503-778-2200
E-mail: petranovichm@lanepowell.com

3. If to Plaintiff and/or Brown, then to:

Michael Fuller
OlsenDaines
US Bancorp Tower
111 SW 5th Ave., Suite 3150
Portland, Oregon 97204
Tel.: 503-743-7000
Fax: 503-362-1375
E-mail: michael@underdoglawyer.com

P. All time periods set forth herein shall be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Agreement or by order of the Court, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a Federal Holiday, or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the clerk of the court inaccessible, in which event the period shall run until the end of the next day that is not one of the aforementioned days. As used in this Section XIV.P, "Federal Holiday" includes New Year's Day, Birthday of Martin Luther King, Jr., Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Patriot's Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President, the Congress of the United States or the Clerk of the Circuit Court for the State of Oregon, Multnomah County.

Q. The Parties reserve the right, subject to the Court's approval, to agree to any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement.

R. The Class, the Parties, and their respective counsel shall not be deemed to be the drafter of this Agreement or of any particular provision, nor shall they argue that any particular provision should be construed against its drafter. All Parties agree that this Agreement was drafted by counsel for the Parties during extensive arm's length negotiations. No parol or other evidence may be offered to explain, construe, contradict, or clarify its terms, the intent of the Parties or their counsel, or the circumstances under which this Agreement was made or executed.

S. The Parties expressly acknowledge and agree that this Agreement and its exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, and correspondence, constitute an offer of compromise and a compromise within the meaning of ORS 40.190 – Rule 408 and any equivalent rule of evidence in any state. In no event shall this Agreement, any of its provisions or any negotiations, statements or court proceedings relating to its provisions in any way be construed as, offered as, received as, used as, or deemed to be evidence of any kind in the Action, any other action, or in any judicial, administrative, regulatory or other proceeding, except in a proceeding to enforce this Agreement or the rights of the Parties or their counsel. Without limiting the foregoing, neither this Agreement nor any related negotiations, statements, or court proceedings shall be construed as, offered as, received as, used as or deemed to be evidence or an admission or concession of any liability or wrongdoing whatsoever on the part of any person or entity, including, but not limited to, the Released Parties, Plaintiff, or the Class; or as a waiver by the Released Parties, Plaintiff, or the Class of any applicable privileges, claims, or defenses.

T. Plaintiff expressly affirms that the allegations contained in the operative complaint were made in good faith, but considers it desirable for the Action to be settled and dismissed because of the substantial benefits that the Settlement will provide to Class Members.

U. The Parties, their successors and assigns, and their counsel undertake to implement the terms of this Agreement in good faith, and to use good faith in resolving any disputes that may arise in the implementation of the terms of this Agreement.

V. The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any prior or subsequent breach of this Agreement.

W. If one Party to this Agreement considers another Party to be in breach of its obligations under this Agreement, that Party must provide the breaching Party with written notice of the alleged breach and provide a reasonable opportunity to cure the breach before taking any action to enforce any rights under this Agreement.

X. The Parties, their successors and assigns, and their counsel agree to cooperate fully with one another in seeking Court approval of this Agreement, and to use their best efforts to effect the prompt consummation of this Agreement and the Settlement.

Y. This Agreement may be signed with a facsimile signature and in counterparts, each of which shall constitute a duplicate original.

Z. In the event any one or more of the provisions contained in this 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 if Swisher and Plaid Pantry, on behalf of Defendants, and Plaintiff's Class Counsel, on behalf of Plaintiff and Class Members, mutually agree in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement. Any such agreement shall be reviewed and approved by the Court before it becomes effective.

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Agreed to on the date indicated below.

APPROVED AND AGREED TO BY PLAINTIFF'S CLASS COUNSEL
AS AUTHORIZED BY PLAINTIFF

BY _____
NANCY A. KULESA
LEVI & KORSINSKY, LLP

DATE: January____, 2019

BY _____
LORI FELDMAN
GERAGOS & GERAGOS

DATE: January____, 2019

BY _____
MICHAEL FULLER
OLSENDAINES

DATE: January____, 2019

BY _____
ROBERT LE
THE LAW OFFICES OF ROBERT LE

DATE: January____, 2019

APPROVED AND AGREED TO BY SWISHER INTERNATIONAL, INC.

BY _____
PETER P. HARGITAI
HOLLAND & KNIGHT

DATE: January____, 2019

APPROVED AND AGREED TO BY PLAID PANTRIES, INC. AND PLAID PANTRY, INC.

BY _____
MILO PETRANOVICH
LANE POWELL

DATE: January____, 2019