

## Class Action Settlement Agreement

This Class Action Settlement Agreement (“Agreement”), effective upon the date of the signatories below, is made by and between, on the one hand, NextFoods, Inc. (“NextFoods”), and on the other hand, the Class Representatives (defined below) on behalf of the Class (defined below) (collectively, the “Parties”), in the matters of *Andrade-Heymsfield v. NextFoods, Inc.*, No. 21-cv-1446-BTM-MSB (S.D. Cal.) (“*Andrade-Heymsfield*”) and *Gates v. NextFoods, Inc.*, No. 23-cv-530-FJS (N.D.N.Y.) (“*Gates*,” together with *Andrade-Heymsfield*, the “Action”).

**WHEREAS**, on August 13, 2021, Class Representative Evlyn Andrade-Heymsfield commenced *Andrade-Heymsfield*, alleging violations of California law of unfair competition, false advertising, and breach of warranty in the United States District Court for the Southern District of California;

**WHEREAS**, on April 27, 2023, Class Representative Valerie Gates commenced *Gates*, alleging unfair competition and false advertising, misrepresentation, and unjust enrichment in the United States District Court for the Northern District of New York;

**WHEREAS**, NextFoods denies the allegations in the Action; and

**WHEREAS**, NextFoods and the Class Representatives on behalf of the Class (as defined below) wish to resolve any and all past, present, and future claims the Class has or may have against NextFoods on a nationwide basis as they relate to the allegations in the Action regarding the Class Products (as defined below);

**NOW THEREFORE**, the Parties, for good and valuable consideration, the sufficiency of which is hereby acknowledged, understand and agree to the following terms and conditions.

### **1. DEFINITIONS.**

As used in this Agreement, the following capitalized terms have the meanings specified below.

**1.1.** “**Action**” means the matters of *Andrade-Heymsfield v. NextFoods, Inc.*, No. 21-cv-1446-BTM-MSB (S.D. Cal.) (“*Andrade-Heymsfield*”), and *Gates v. NextFoods, Inc.*, No. 23-cv-530-FJS (N.D.N.Y.) (“*Gates*”).

**1.2.** “**Agreement**” or “**Settlement Agreement**” means this Class Action Settlement Agreement.

**1.3.** “**Cash Award**” means a cash payment from the Settlement Fund to a Settlement Class Member with an Approved Claim.

**1.4.** “**Claim**” means a request for relief submitted by or on behalf of a Class Member on a Claim Form filed with the Class Administrator in accordance with the terms of this Agreement.

**(a)** “**Approved Claim**” means a claim approved by the Class Administrator, according to the terms of this Agreement.

(b) **“Claimant”** means any Class Member who submits a Claim Form for the purpose of claiming benefits, in the manner described in Section 4 of this Agreement.

(c) **“Claim Form”** means the document to be submitted by Claimants seeking direct monetary benefits pursuant to this Agreement.

(d) **“Claims Deadline”** means the date by which a Claimant must submit a Claim Form to be considered timely. The Claims Deadline shall be sixty-three (63) calendar days after the Settlement Notice Date.

(e) **“Claims Process”** means the process by which Class Members may make claims for relief, as described in Section 4 of this Agreement.

**1.5. “Claims Administration”** means the administration of the Claims Process by the Class Administrator.

**1.6. “Class” or “Settlement Class”** means all persons in the United States who, between August 13, 2017 and the Settlement Notice Date, purchased in the United States, for household use and not for resale or distribution, one of the Class Products, as defined below.

**1.7. “Class Administrator”** means the independent company approved by the Court to provide the Class Notice and to administer the Claims Process.

**1.8. “Class Counsel”** means the following attorneys of record for the Class Representatives and Class in the Action, unless otherwise modified by the Court:

Fitzgerald Joseph LLP  
2341 Jefferson Street, Suite 200  
San Diego, California 92110  
Phone: (619) 215-1741

**1.9. “Class Member”** means any person who is a member of the Class.

**1.10. “Class Notice”** means both those documents notifying Class Members, pursuant to the Notice Plan, of the Settlement, and the substance of those documents.

**1.10.1. “Long Form Notice”** refers to the proposed full Class Notice that is attached to this Agreement as Exhibit 1, which the Parties acknowledge may be modified by the Court without affecting the enforceability of this Agreement.

**1.10.2. “Notice Plan”** means the plan for dissemination of Class Notice to be submitted to the Court in connection with a motion for preliminary approval of this Settlement.

**1.10.3. “Settlement Notice Date”** means twenty-one (21) calendar days after the Preliminary Approval Date.

**1.10.4. “Short Form Notice”** means the summary Class Notice that is attached to this Agreement as Exhibit 2, which the Parties acknowledge may be modified by the Court

without affecting the enforceability of this Agreement.

**1.11. “Class Period”** means August 13, 2017 to the Settlement Notice Date.

**1.12. “Class Products”** means all flavors of GoodBelly Probiotic JuiceDrinks sold in 1 Quart (32 oz.) containers during the Class Period.

**1.13. “Class Representative(s)”** means Evlyn Andrade-Heymfield and Valerie Gates.

**1.14. “Court”** means the Southern District of California, the Honorable Barry Ted Moskowitz presiding, or any judge who will succeed him as the Judge in this Action.

**1.15. “Effective Date”** means the date on which the Judgment becomes final. For purposes of this definition, the Judgment shall become final: (a) if no appeal from the Judgment is filed, the date of expiration of the time for filing or noticing any appeal from the Judgment; or (b) if an appeal from the Judgment is filed, and the Judgment is affirmed or the appeal dismissed, the date of such affirmance or dismissal; or (c) if a petition for certiorari seeking review of the appellate judgment is filed and denied, the date the petition is denied; or (d) if a petition for writ of certiorari is filed and granted, the date of final affirmance or final dismissal of the review proceeding initiated by the petition for a writ of certiorari.

**1.16. “Fee Award”** means the amount of attorneys’ fees and reimbursement of expenses and costs awarded by the Court to Class Counsel, which will be paid out of the Settlement Fund.

**1.17. “Final Approval Hearing”** means the hearing to be conducted by the Court to determine whether to finally approve the Settlement and to enter Judgment.

**1.18. “Final Approval Order”** means the proposed order to be submitted to the Court in connection with a Motion for Final Approval and the Final Approval Hearing, substantially in the form attached hereto as Exhibit 3.

**1.19. “Injunctive Relief Deadline”** means 6 months after entry of Judgment.

**1.20. “Judgment”** means the Court’s act of entering a final judgment on the docket as described in Federal Rule of Civil Procedure 58.

**1.21. “NextFoods”** means NextFoods, Inc., the Defendant in the Action.

**1.22. “Notice and Other Administrative Costs”** means all costs and expenses actually incurred by the Class Administrator in administering the Settlement, including the publication of Class Notice, establishment of the Settlement Website, providing CAFA notice, the processing, handling, reviewing, and paying of claims made by Claimants, and paying taxes and tax expenses related to the Settlement Fund (including all federal, state, or local taxes of any kind and interest or penalties thereon, as well as expenses incurred in connection with determining the amount of and paying any taxes owed and expenses related to any tax attorneys and accountants), with all such costs and expenses to be paid from the Settlement Fund. All taxes on the income of the Settlement Fund, and any costs or expenses incurred in connection with the taxation of the Settlement Fund shall be paid out of the Settlement Fund, shall be considered to be a Notice and Other Administrative Cost, and shall be timely paid by the Class Administrator without prior order of the

Court. The Parties shall have no liability or responsibility for the payment of any such taxes.

**1.23. “Objection Deadline”** means the date by which Class Members must file with the Court a written statement objecting to any terms of the Settlement or to Class Counsel’s request for fees or expenses and shall be sixty-three (63) calendar days after the Settlement Notice Date.

**1.24. “Opt-Out Deadline”** means the deadline by which a Class Member must exercise his or her option to opt out of the settlement so as not to release his or her claims as part of the Released Claims and shall be sixty-three (63) calendar days after the Settlement Notice Date.

**1.25. “Party” or “Parties”** means the Class Representatives, on behalf of the Class, and NextFoods.

**1.26. “Person”** means any individual, corporation, partnership, association, or any other legal entity.

**1.27. “Plaintiffs”** means the Class Representatives, either individually or on behalf of the Class.

**1.28. “Preliminary Approval Date”** means the date of entry of the Court’s order granting preliminary approval of the Settlement.

**1.29. “Preliminary Approval Order”** means the proposed order to be submitted to the Court in connection with the Motion for Preliminary Approval, substantially in the form attached hereto as Exhibit 4.

**1.30. “Released Claims”** means the claims released by the Class Members via this Agreement.

**1.31. “Released NextFoods Persons”** means NextFoods, and any past, current, or future parent companies (including intermediate parents and ultimate parents) and subsidiaries, affiliates, predecessors, successors, and assigns, and each of their respective officers, directors, employees, agents, attorneys, insurers, stockholders, representatives, heirs, administrators, executors, successors and assigns, and any other person or entity acting on NextFoods’ behalf.

**1.32. “Request for Exclusion”** means the written submission submitted by a Settlement Class Member to be excluded from the Settlement consistent with the terms of this Agreement.

**1.33. “Service Award”** means any award approved by the Court that is payable to the Class Representatives from the Settlement Fund.

**1.34. “Settlement”** means the resolution of this Action embodied in the terms of this Agreement.

**1.35. “Settlement Fund”** means the qualified settlement fund this Agreement obligates NextFoods to fund in the amount of \$1,250,000, which is in the form of a non-reversionary common fund and is established in accordance with 26 C.F.R. §§ 1.468B-1(c) and (e)(1).

**1.36. “Settlement Payment”** means the amount to be paid to valid Claimants as detailed

in Section 4.

**1.37. “Settlement Website”** means a website maintained by the Class Administrator to provide the Class with information relating to the Settlement.

## **2. SETTLEMENT FUND**

**2.1. Settlement Consideration.** NextFoods agrees to establish a non-reversionary common fund of \$1,250,000 (the “Settlement Fund”), which shall be used to pay all Settlement expenses, including Notice and Other Administrative Costs; Class Members’ Claims; Fee Award; and Service Awards.

**2.2. Creation and Administration of Qualified Settlement Fund.** The Class Administrator is authorized to establish the Settlement Fund under 26 C.F.R. §§ 1.468B-1(c) and (e)(1), to act as the “administrator” of the Settlement Fund pursuant to 26 C.F.R. § 1.468B-2(k)(3), and to undertake all duties as administrator in accordance with the Treasury Regulations promulgated under § 1.468B of the Internal Revenue Code of 1986. All costs incurred by the Class Administrator operating as administrator of the Settlement Fund shall be construed as costs of Claims Administration and shall be borne solely by the Settlement Fund. Interest on the Settlement Fund shall inure to the benefit of the Class.

**2.3. NextFoods’ Payment into Settlement Fund.** Within ten (10) calendar days after the Court grants preliminary approval of the Settlement Agreement, or another date agreed upon by the Parties in writing or ordered by the Court, NextFoods shall establish the Settlement Fund by paying (or causing its insurer to pay) \$600,000 into the qualified settlement fund established by the Class Administrator pursuant to Paragraph 2.2. Within ten (10) calendar days after the Court grants final approval of the Settlement Agreement, or another date agreed upon by the Parties in writing or ordered by the Court, NextFoods shall pay (or cause its insurer to pay) \$650,000 (the remainder of the \$1,250,000 total) into the qualified settlement fund established by the Class Administrator pursuant to Paragraph 2.2.

## **3. ATTORNEYS’ FEES, COSTS, AND SERVICE AWARDS.**

**3.1. Application for Attorneys’ Fees and Costs and Service Awards.** At least 14 days before the Objection Deadline, Class Counsel and Class Representatives shall file a motion, set for hearing on the same date as the Final Approval Hearing, requesting a Fee Award and Service Awards, to be paid from the Settlement Fund.

**3.2. Distribution of Attorneys’ Fees and Costs.** The Class Administrator shall pay to Class Counsel from the Settlement Fund the amount of attorneys’ fees and costs awarded by the Court within twenty-one (21) calendar days of entry of Judgment, notwithstanding the filing of any appeals, or any other proceedings which may delay the Effective Date of the Settlement or a final Judgment in the case, subject to Class Counsel providing all payment routing information and tax ID numbers. Payment of the Fee Award will be made from the Settlement Fund by wire transfer to Class Counsel in accordance with wire instructions to be provided by Class Counsel. Notwithstanding the foregoing, if for any reason the Fee Award is overturned, reduced, vacated, or otherwise modified, Class Counsel shall be obligated to return any difference between the amount of the original award and any reduced award.

**3.3. Distribution of Service Awards.** Any Service Award approved by the Court for the Class Representatives shall be paid from the Settlement Fund within the earlier of thirty (30) calendar days after the Effective Date, or the date the Class Administrator begins making distributions to Claimants.

**3.4. Settlement Independent of Award of Fees, Costs, and Service Awards.** The awards of attorneys' fees and costs, and payment to the Class Representatives are subject to and dependent upon the Court's approval. However, this Settlement is not dependent or conditioned upon the Court's approving Class Counsel's and Class Representatives' requests for such payments or awarding the particular amounts sought by Class Counsel and Class Representatives. In the event the Court declines Class Counsel's or Class Representatives' requests or awards less than the amounts sought, this Settlement will continue to be effective and enforceable by the Parties, provided, however, that the Class Representatives and Class Counsel retain the right to appeal any decision by the Court regarding attorneys' fees and costs, and service awards, even if the Settlement is otherwise approved by the Court.

#### **4. CLAIMS PROCESS.**

**4.1. General Process.** To obtain monetary relief as part of the Settlement, a Class Member must fill out and submit a Claim Form, completed online or in hard copy mailed to the Class Administrator. The claim made via the Claim Form will proceed through the following general steps:

(a) The Claimant will be asked to provide identifying information.

(b) The Claimant will be asked to estimate the number of Class Products purchased since August 2017.

(c) The Claimant will be entitled to a Cash Award of \$1 per Class Product, with a cap of 5 Products without proof of purchase. Claimants who submit proof of purchase of more than 5 Products will be entitled to a Cash Award of \$1 per Class Product on the full number of Class Products purchased during the Class Period.

(d) All Cash Awards will be adjusted pro rata up or down as described in Section 4.5 below.

**4.2. The Claim Form and Timing.** The Claim Form will be available on the Settlement Website and may be submitted to the Class Administrator online. A maximum of one Claim Form may be submitted for each household. Claim Forms must be submitted or postmarked on or before the Claims Deadline to be considered timely. The Claims Deadline shall be clearly and prominently stated in the Preliminary Approval Order, the Class Notice, on the Settlement Website, and on the Claim Form.

**4.3. Substance of the Claim Form.** In addition to the Claimant purchase information set forth in Paragraph 4.1 above, the Claim Form will request customary identifying information (including the Claimant's name, address, email address, and telephone number), and may seek limited additional information from Claimants to provide reasonable bases for the Class Administrator to monitor for and detect fraud. Such additional information may include, for example, retailers and locations (city and state) at which the Class Products were purchased. In

addition, the Claim Form will require the Claimant to declare that the information provided is true and correct to the best of the Claimant's recollection and understanding.

**4.4. Claim Validation.** The Class Administrator shall be responsible for reviewing all claims to determine their validity. The Class Administrator shall reject any Claim that does not comply in any material respect with the instructions on the Claim Form or with the terms of this Section 4, that is submitted after the Claims Deadline, or that the Class Administrator identifies as fraudulent. The Class Administrator shall retain sole discretion in accepting or rejecting claims and shall have no obligation to notify Claimants of rejected claims unless otherwise ordered by the Court.

**4.5. Pro Rata Adjustment of Cash Awards.** If the total value of all approved Claims either exceeds or falls short of the funds available for distribution to Class Members, then the amounts of the cash payments to Claimants will be reduced or increased *pro rata*, as necessary, to use all funds available for distribution to Class Members. Any such *pro rata* adjustment will be calculated prior to distribution of funds (*i.e.*, will be made in a single distribution).

**4.6. Timing of Distribution.** The Class Administrator shall pay out Approved Claims in accordance with the terms of this Agreement commencing within thirty (30) calendar days after the Effective Date, or as otherwise ordered by the Court. The Parties shall work with the Class Administrator to choose one or more manners of payment that are secure, cost-effective, and convenient for Claimants.

**4.7. Uncleared Payments: Second Distribution and Cy Pres.** Those Claimants whose payments are not cleared within one hundred and eighty (180) calendar days after issuance will be ineligible to receive a cash settlement benefit and the Class Administrator will have no further obligation to make any payment from the Settlement Fund pursuant to this Settlement Agreement or otherwise to such Claimant. Any funds that remain unclaimed or remain unused after the initial distribution will be distributed to Claimants who cashed the initial payment, on a *pro rata* basis, to the extent the cost of such redistribution is considered economical by the Class Administrator, Class Counsel, and NextFoods. If such redistribution is not considered economical, or if unpaid funds remain after a second distribution, any unpaid funds will be donated *cy pres* to the UCLA Resnick Center for Food Law and Policy, or, if not approved by the Court, one or more other Court-approved, non-sectarian, not-for-profit organizations whose work is sufficiently tethered to the allegations in this action.

**4.8. Taxes on Distribution.** Any person who receives a Cash Award will be solely responsible for any taxes or tax-related expenses owed or incurred by that person by reason of that Award. Such taxes and tax-related expenses will not be paid from the Settlement Fund. In no event will NextFoods, the Class Representatives, Class Counsel, the Class Administrator, or any of the other Released Parties have any responsibility or liability for taxes or tax-related expenses arising in connection with the issuance of Cash Awards or other payments made from the Settlement Fund to Class Representatives, Settlement Class Members, or any other person or entity.

## **5. INJUNCTIVE RELIEF.**

**5.1.** As part of the consideration of this Agreement, and without admitting that the previous labels were deceptive, unlawful, or actionable in any way, NextFoods agrees to implement

the following labeling practices with respect to all flavors of GoodBelly Probiotic JuiceDrinks sold in 1 Quart (32 oz.) containers:

**5.1.1.** NextFoods agrees to remove the term “GoodHealth” from the label;

**5.1.2.** NextFoods agrees that any reference to “overall health” or “overall wellness” shall be directly tied to digestive health (for example, rather than stating “may help promote healthy digestion and overall wellness,” stating “may help promote healthy digestion, which in turn can promote overall wellness”); and

**5.1.3.** NextFoods agrees that any time “overall health” or “overall wellness” is used on a label, it will include an asterisk to language on the label, which shall read:

[LP299v] can be found naturally in the intestinal system, and may help promote healthy digestion when consumed daily as part of a nutritious diet and healthy lifestyle. GoodBelly is a food product and not a treatment or cure for any medical disorder or disease. If you have any concerns about your digestive system, please consult your healthcare professional. See Nutrition Facts Box for sugar content.

**5.2. Term of Injunctive Relief; Timeline and Conditions for Implementing Injunctive Relief.** Within 6 months of the entry of Judgment, the Injunctive Relief Deadline, NextFoods shall implement the injunctive relief noted in this Section 5 by changing the labels of all flavors of GoodBelly Probiotic JuiceDrinks sold in 1 Quart (32 oz.) containers that are printed and placed into the marketplace on or after the Injunctive Relief Deadline. Nothing in this Agreement shall require NextFoods to withdraw, change, or otherwise modify labeling or advertising for any products already manufactured, distributed, in distribution or storage, and or stocked in stores prior to the Injunctive Relief Deadline. NextFoods shall be permitted to “sell through” all existing inventory, *i.e.*, need not recall or destroy packaging already in the marketplace or printed. The injunctive relief shall exist for a period of three years from the earliest of the Injunctive Relief Deadline or the date upon which NextFoods implements the injunctive relief, after which it shall expire in its entirety.

**6. CLASS NOTICE AND CLAIMS ADMINISTRATION.**

**6.1. Class Administrator.** The Class Administrator shall assist with various administrative tasks including, without limitation:

**6.1.1** Establishing and operating the Settlement Fund;

**6.1.2** Arranging for the dissemination of the Class Notice pursuant to the Notice Plan agreed to by the Parties and approved by the Court;

**6.1.3** Making any mailings required under the terms of this Agreement or any Court order or law, including handling returned mail;

**6.1.4** Answering inquiries from Class Members and/or forwarding such inquiries to Class Counsel;

**6.1.5** Receiving and maintaining Requests for Exclusion;

**6.1.6** Establishing a Settlement Website;

**6.1.7** Establishing a toll-free informational telephone number for Class Members;

**6.1.8** Receiving and processing (including monitoring for fraud and validating or rejecting) Class Member claims and distributing payments to Class Members;

**6.1.9** Providing regular updates on the claims status to counsel for all Parties; and

**6.1.10** Otherwise assisting with the implementation and administration of the Settlement.

**6.2. Notice.** Notice of the Settlement will be made to the Class, and to certain federal and state officials.

**6.3. To the Class.** Class Notice will be effectuated through advertisement in suitable print publications and through targeted internet and social-media based advertisements. The Class Notice will conform to all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clauses), and any other applicable law, and will otherwise be in the manner and form approved by the Parties and Court.

**6.4. Timing of Class Notice.** Class Notice will commence no later than twenty-one (21) calendar days following entry of the Preliminary Approval Order (“Settlement Notice Date”).

**6.5. CAFA Notice.** The Class Action Fairness Act of 2005 (“CAFA”) requires NextFoods to inform certain federal and state officials about this Agreement and proposed Settlement no later than 10 days after the proposed Settlement Agreement is filed in court. *See* 28 U.S.C. § 1715. In compliance with the provisions of CAFA, the Class Administrator, on behalf of NextFoods, will serve notice upon the appropriate officials by September 29, 2023. *See* 28 U.S.C. § 1715(b). The costs of such notice will be paid from the Settlement Fund.

**6.6. Opt-Out Procedures.** Class Members who wish to opt out of and be excluded from the Settlement must submit a Request for Exclusion to the Class Administrator, postmarked or submitted online no later than the Opt-Out Deadline. The Request for Exclusion must be personally completed and submitted by the Class Member or his or her attorney, and so-called “mass” or “class” opt-outs shall not be permitted or recognized. The Class Administrator shall periodically notify Class Counsel and NextFoods’ counsel of any Requests for Exclusion. All Class Members who submit a timely, valid Request for Exclusion will be excluded from the Settlement and will not be bound by the terms of this Agreement, and all Class Members who do not submit a timely, valid Request for Exclusion will be bound by this Agreement and the Judgment, including the release in Paragraph 8.1 below.

**6.7. Procedures for Objecting to the Settlement.** Class Members have the right to appear and show cause why the Settlement should not be granted final approval, subject to each of the provisions of this paragraph:

**6.7.1 Timely Written Objection Required.** Any objection to the Settlement must be in writing and must be filed with the Court on or before the Objection Deadline.

**6.7.2 Form of Written Objection.** Any objection regarding or related to the Agreement must contain (i) a caption or title that clearly identifies the Action and that the document is an objection, (ii) information sufficient to identify and contact the objecting Class Member or his or her attorney if represented, (iii) information sufficient to establish the person's standing as a Settlement Class Member, (iv) a clear and concise statement of the Class Member's objection, as well as any facts and law supporting the objection, (v) the objector's signature, and (vi) the signature of the objector's counsel, if any (the "Objection").

**6.7.3 Authorization of Objections Filed by Attorneys Representing Objectors.** Class Members may object either on their own or through an attorney hired at their own expense, but a Class Member represented by an attorney must sign either the Objection itself or execute a separate declaration stating that the Class Member authorizes the filing of the Objection.

**6.7.4 Effect of Both Opting Out and Objecting.** If a Class Member submits both an Opt-Out Form and files an Objection, the Class Member will be deemed to have opted out of the Settlement, and thus to be ineligible to object. However, any objecting Class Member who has not timely submitted a completed Opt-Out Form will be bound by the terms of the Agreement upon the Court's final approval of the Settlement.

**6.7.5 Appearance at Final Approval Hearing.** Objecting Class Members may appear at the Final Approval Hearing and be heard. Such Class Members are requested, but not required, in advance of the Final Approval Hearing, to file with the Court a Notice of Intent to Appear.

**6.7.6 Right to Discovery.** Upon Court order, the Parties will have the right to obtain document discovery from and take depositions of any Objecting Class Member on topics relevant to the Objection.

**6.7.7 Response to Objections.** The Parties shall have the right, but not the obligation, either jointly or individually, to respond to any objection, with a written response due the same day as the Motion for Final Approval, or as otherwise ordered by the Court.

## **7. COURT APPROVAL**

**7.1. Preliminary Approval.** After executing this Agreement, Plaintiffs will submit to the Court the Agreement, and will request that the Court enter the Preliminary Approval Order in substantially similar form as the proposed order attached as Exhibit 4. In the Motion for Preliminary Approval, Plaintiffs will request that the Court grant preliminary approval of the proposed Settlement, provisionally certify the Class for settlement purposes and appoint Class Counsel, approve the forms of Notice and find that the Notice Plan satisfies Due Process and Rule 23 of the Federal Rules of Civil Procedure, and schedule a Final Approval Hearing to determine whether the Settlement should be granted final approval, whether an application for attorneys' fees and costs should be granted, and whether an application for service awards should be granted.

**7.2. Final Approval.** A Final Approval Hearing to determine final approval of the Agreement shall be scheduled as soon as practicable, subject to the calendar of the Court, but no sooner than one hundred (100) calendar days after the Preliminary Approval Date. If the Court

issues the Preliminary Approval Order and all other conditions precedent of the Settlement have been satisfied, no later than fourteen (14) calendar days before the Final Approval Hearing and eighteen (18) calendar days after the Objection Deadline all Parties will request, individually or collectively, that the Court enter the Final Approval Order in substantially similar form as the proposed order attached as Exhibit 3, with Class Counsel filing a memorandum of points and authorities in support of the motion. NextFoods may, but is not required to, file a memorandum in support of the motion.

**7.3. Failure to Obtain Approval.** If this Agreement is not given preliminary or final approval by the Court, or if an appellate court reverses final approval of the Agreement, the Parties will seek in good faith to revise the Agreement as needed to obtain Court approval. Failing this, the Parties will be restored to their respective places in the litigation. In such event, the terms and provisions of this Agreement will have no further force or effect with respect to the Parties and will not be used in this or any other proceeding for any purposes, and any Judgment or Order entered by the Court in accordance with the terms of this Agreement will be treated as vacated. The Parties agree that, in the event of any such occurrence, the Parties shall stipulate or otherwise take all necessary action to resume this Action at the procedural posture it occupied immediately prior to the filing of the Parties' Notice of Settlement, as though this Agreement had never been reached.

## **8. RELEASE**

**8.1. Release of NextFoods and Related Persons.** Upon the Effective Date, each Class Member who has not opted out will be deemed to have, and by operation of the Judgment will have, fully, finally, and forever released, relinquished, and discharged the Released NextFoods Persons (including, without limitation, all past, current, or former agents, employees, contractors, affiliates, heirs, attorneys, insurers, and assignees thereof) from any and all claims, demands, rights, suits, liabilities, injunctive and/or declaratory relief, and causes of action, including costs, expenses, penalties, and attorneys' fees, whether known or unknown, matured or unmatured, at law or in equity, existing under federal or any state's law, that any Class Member has or may have against the Released NextFoods Persons arising out of the transactions, occurrences, events, behaviors, conduct, practices, and policies alleged in the Action regarding the Class Products, which have been, or which could have been asserted in the Action, and that have been brought, could have been brought, or are currently pending in any forum in the United States. The Released Claims include claims that the Class Representatives do not know or suspect to exist in their favor at the time of granting a release, which if known by them might have affected their Settlement of the Action. This Section constitutes a waiver of any and all provisions, rights, and benefits conferred by any law of any state of the United States, or any law of any state or territory of the United States, or principle of common law which is similar, comparable, or equivalent to section 1542 of the California Civil Code, which provides:

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

The Class Representatives understand and acknowledge the significance of this waiver of California Civil Code section 1542 and/or of any other similar applicable law relating to limitations on releases. The Class Representatives acknowledge that they are aware that they and/or Class Counsel may hereafter discover facts in addition to, or different from, those facts that they now know or believe to be true with respect to the subject matter of the Settlement, but that it is their intention to release fully, finally, and forever all Released Claims with respect to the Released NextFoods Persons, and in furtherance of such intention, the release of the Released Claims will be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

**8.2. Covenant Not to Sue.** The Class Representatives agree and covenant, and each Class Member who has not opted out will be deemed to have agreed and covenanted, not to sue any of Released Parties, with respect to any of the Released Claims, or otherwise to assist others in doing so, and agree to be forever barred from doing so, in any court of law or equity, or any other forum.

**8.3. Release of Class Representatives and Related Persons by NextFoods.** Upon the Effective Date, NextFoods will be deemed to have, and by operation of the Judgment will have, fully, finally, and forever released, relinquished, and discharged Class Representatives, the Class, and Class Counsel from any and all claims, demands, rights, suits, liabilities, and causes of action of every nature and description whatsoever, whether known or unknown, matured or unmatured, at law or in equity, existing under federal or state law, that NextFoods has or may have against any of them arising out of the transactions, occurrences, events, behaviors, conduct, practices, and policies alleged in the Action regarding the Class Products, and in connection with the filing and conduct of the Action, that have been brought, could have been brought, or are currently pending in any forum in the United States.

## **9. MISCELLANEOUS**

**9.1. Change of Time Periods.** The time periods and/or dates described in this Settlement Agreement are subject to Court approval and may be modified upon order of the Court or written stipulation of the Parties without notice to Settlement Class Members. The Parties reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extension of time that might be needed to carry out any of the provisions of this Settlement Agreement.

**9.2. Time for Compliance.** If the date for performance of any act required by or under this Settlement Agreement falls on a Saturday, Sunday, or court holiday, that act may be performed on the next business day with the same effect as it had been performed on the day or within the period of time specified by or under this Settlement Agreement.

**9.3. Entire Agreement.** This Agreement shall constitute the entire Agreement among the Parties with regard to the subject matter of this Agreement and shall supersede any previous agreements, representations, communications, and understandings among the Parties with respect to the subject matter of this Agreement. The Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation, or undertaking concerning any part or all of the subject matter of the Agreement has been made or relied upon except as expressly set forth herein.

**9.4. Notices Under Agreement.** All notices or mailings required by this Agreement to

be provided to or approved by Class Counsel and NextFoods, or otherwise made pursuant to this Agreement, shall be provided as follows:

***Class Counsel***

Jack Fitzgerald  
*jack@fitzgeraldjoseph.com*  
Fitzgerald Joseph LLP  
2341 Jefferson Street, Suite 200  
San Diego, CA 92110

***NextFoods***

Ryan Hansen  
*ryan.hansen@brownliehansen.com*  
Brownlie Hansen LLP  
10920 Via Frontera, Suite 550  
San Diego, CA

**9.5. Good Faith.** The Parties acknowledge that each intends to implement the Agreement. The Parties have at all times acted in good faith and shall continue to, in good faith, cooperate and assist with and undertake all reasonable actions and steps in order to accomplish all required events on the schedule set by the Court, and shall use reasonable efforts to implement all terms and conditions of this Agreement.

**9.6. Binding on Successors.** This Agreement shall be binding upon and inure to the benefit of the heirs, successors, assigns, executors, and legal representatives of the Parties to the Agreement and the released Parties and persons.

**9.7. Arms'-Length Negotiations.** This Agreement compromises claims that are contested, and the Parties agree that the consideration provided to the Class and other terms of this Agreement were negotiated in good faith and at arms' length by the Parties, and reflect an Agreement that was reached voluntarily, after consultation with competent legal counsel. The Parties reached the Agreement after considering the risks and benefits of litigation. The determination of the terms of, and the drafting of, this Agreement, has been by mutual agreement after negotiation, with consideration by and participation of all Parties hereto and their counsel. Accordingly, the rule of construction that any ambiguities are to be construed against the drafter shall have no application.

**9.8. Waiver.** The waiver by one Party of any provision or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.

**9.9. Modification in Writing Only.** This Agreement and any and all parts of it may be amended, modified, changed, or waived only by a writing signed by duly authorized agents of the Parties.

**9.10. Headings.** The descriptive headings of any paragraph or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.

**9.11. Governing Law.** This Agreement shall be interpreted, construed and enforced according to the laws of the State of California, without regard to conflicts of law.

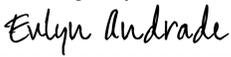
**9.12. Continuing Jurisdiction.** After entry of the Judgment, the Court shall have continuing jurisdiction over the Action solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as may be appropriate under court rules or applicable law.

**9.13. Execution.** This Agreement may be executed in one or more counterparts. All

executed counterparts and each of them will be deemed to be one and the same instrument. Photocopies and electronic copies (e.g., PDF copies) shall be given the same force and effect as original signed documents.

**IN WITNESS WHEREOF**, each of the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below and agree that it shall take effect on that date upon which it has been executed by all of the undersigned.

**Plaintiffs, on behalf of the Class**

DocuSigned by:  
  
\_\_\_\_\_  
Evlyn Andrade 4591647A18DF4DD... Dated: 9/22/2023

\_\_\_\_\_  
Valerie Gates Dated: \_\_\_\_\_

**Class Counsel**

\_\_\_\_\_  
Jack Fitzgerald Dated: \_\_\_\_\_

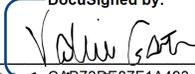
**NextFoods, Inc.**

\_\_\_\_\_  
Name: \_\_\_\_\_ Dated: \_\_\_\_\_  
Position: \_\_\_\_\_

executed counterparts and each of them will be deemed to be one and the same instrument. Photocopies and electronic copies (e.g., PDF copies) shall be given the same force and effect as original signed documents.

**IN WITNESS WHEREOF**, each of the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below and agree that it shall take effect on that date upon which it has been executed by all of the undersigned.

**Plaintiffs, on behalf of the Class**

_____	Dated: _____
Evlyn Andrade	
<small>DocuSigned by:</small>	
	Dated: 9/22/2023
_____	_____
Valerie Gates	

**Class Counsel**

_____	Dated: _____
Jack Fitzgerald	

**NextFoods, Inc.**

_____	Dated: _____
Name:	
Position:	

executed counterparts and each of them will be deemed to be one and the same instrument. Photocopies and electronic copies (e.g., PDF copies) shall be given the same force and effect as original signed documents.

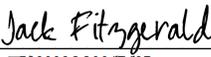
**IN WITNESS WHEREOF**, each of the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below and agree that it shall take effect on that date upon which it has been executed by all of the undersigned.

**Plaintiffs, on behalf of the Class**

\_\_\_\_\_ Dated: \_\_\_\_\_  
Evlyn Andrade

\_\_\_\_\_ Dated: \_\_\_\_\_  
Valerie Gates

**Class Counsel**

DocuSigned by:  
  
\_\_\_\_\_ Dated: 9/22/2023  
7568002CC961748B...  
Jack Fitzgerald

**NextFoods, Inc.**

\_\_\_\_\_ Dated: \_\_\_\_\_  
Name:  
Position:

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**IN WITNESS WHEREOF**, each of the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below and agree that it shall take effect on that date upon which it has been executed by all of the undersigned.

**Plaintiffs, on behalf of the Class**

\_\_\_\_\_ Dated: \_\_\_\_\_, 2023  
Evlyn Andrade-Heymsfield

\_\_\_\_\_ Dated: \_\_\_\_\_, 2023  
Valerie Gates

**Class Counsel**

\_\_\_\_\_ Dated: \_\_\_\_\_, 2023  
Jack Fitzgerald

**NextFoods, Inc.**

\_\_\_\_\_ Dated: September 22, 2023  
Name: \_\_\_\_\_  
Position: Barbara Keiger  
CFO