

REVISED SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Revised Settlement Agreement and Release of Claims (“Agreement”) is entered into by and between plaintiff Alexander Leon, individually and in his representative capacity on behalf of all others similarly situated, (“Plaintiff”), and Defendant Mishima Foods U.S.A., Inc., a California corporation (“Mishima” or “Defendant”) (collectively referred to as the “Parties”) as follows:

I. RECITALS

1. Plaintiff Alexander Leon is the named plaintiff in the matter titled *Alexander Leon, individually and on behalf of all others similarly situated v. Mishima Foods USA, Inc.*, Los Angeles Superior Court Case No. 20STCV38201 (the “Action”).
2. Defendant Mishima Foods U.S.A., Inc., is the sole defendant in the Action.
3. The operative Complaint was filed on October 5, 2020. The Complaint includes causes of action based on violations of the Unfair Competition Law (Bus. & Prof. Code, §§ 17200-17209), the False Advertising Law (Bus. & Prof. Code, §§ 17500-17509), and the Consumers Legal Remedies Act (Civ. Code, §§ 1750-1784).
4. Plaintiff alleges that during the relevant time periods, Defendant’s Wasabi Green Peas products were labeled as containing “Wasabi” even though they did not.
5. Mishima’s total amount of sales of Wasabi Green Peas between April 6, 2016 and June 30, 2021 was 2,093 cases. The retail value of those products was \$49,980.84. Mishima sold no Wasabi Green Peas thereafter.
6. The Wasabi Green Peas have been sold only at certain Albertson’s stores and certain Asian markets located in California.
7. Defendants dispute all factual and legal allegations contained in the Complaint and deny any liability to Plaintiff or any members of the putative class.

8. This Agreement is entered into after the Parties exchanged informal discovery and engaged in extensive arms-length discussions and negotiations between class counsel and counsel for Defendant.

9. The Parties desire to compromise and settle all issues and claims that have been brought or could have been brought against Mishima in the Action. Class Counsel and counsel for Defendant agree that the settlement contemplated by this Agreement is a fair, adequate, and reasonable resolution of the Action.

10. The Parties agree that this Agreement shall not be deemed or construed to be an admission or evidence of any violation of any federal or state statute, rule, or regulation, principle of common law or equity, or of any liability or wrongdoing whatsoever by Mishima.

11. It is agreed that in consideration of the promises and mutual covenants set forth in this Agreement and the foregoing Recitals, and the entry by the Court of a Final Approval Order and Judgment approving the terms and conditions of the settlement as set forth herein, this Action shall be deemed settled and compromised under the following terms and conditions.

II. DEFINITIONS

As used in this Agreement and the related documents attached as exhibits, the terms set forth below shall have the meanings set forth below. The singular will include the plural and vice versa.

1. “Action” means *Alexander Leon v. Mishima Foods USA, Inc.*, Los Angeles County Superior Court Case No. 20STCV38201 (Complaint filed October 5, 2020).

2. “Agreement” means this Settlement Agreement and Release of Claims.

3. “Authorized Claimant” means any Class Member who validly and timely submits a Claim according to the terms of this Agreement and does not request exclusion from the Class.

4. “Claim” means a request for reimbursement from a Class Member.
5. “Claim Form” means the form a Class Member must submit to receive a Settlement Benefit under this Agreement. The Claim Form will be substantially similar to the form attached as **Exhibit C**.
6. “Claimant” means any Class Member who submits a Claim under this Agreement.
7. “Class” and “Settlement Class” means: All persons who purchased, between April 6, 2016 and the date of Preliminary Approval, Mishima’s Wasabi Green Peas Product in California for personal, family or household use.
8. “Class Counsel” means Trenton R. Kashima, of Sommers Schwartz P.C.
9. “Class Member” means a member of the Class.
10. “Class Representative” mean Alexander Leon.
11. “Court” means the Superior Court of California, County of Los Angeles.
12. “Day or Days” means calendar days.
13. “Final Order and Judgment” means the order and judgment entered by the Court approving this Agreement as fair, reasonable, and adequate, and in the best interests of the Class as a whole, as well as making such other findings and determinations as the Court deems necessary and appropriate to effectuate the terms of this Agreement.
14. “Fairness Hearing” means the hearing on final approval of the Settlement.
15. “Household” means all persons residing at the same physical address.
16. “Mishima” refers to Defendant Mishima Foods U.S.A., Inc., and its successors, assigns, predecessors, parents, subsidiaries, divisions, departments, or affiliates; and any of its or their past or present officers, directors, attorneys, stockholders, partners, agents, servants, subrogees, insurers, employees, or representatives.
17. “Mishima’s Counsel” means Derrick K. Takeuchi of Derrick K. Takeuchi Law Firm.
18. “Notice” means the proposed long notice in a form substantially similar to **Exhibit A**.

19. “Notice Plan” means the method of providing notice to the Settlement Class as approved by the Court in its Preliminary Approval Order.

20. “Objection Deadline” means the deadline by which any Class Members must file and serve any objection to the Agreement or to Class Counsel’s request for attorneys’ fees and costs or request for incentive fees to Plaintiff. The Objection Deadline shall be no more than 120 days after entry of the Preliminary Approval Order.

21. “Opt-Out Deadline” means the deadline by which a person who otherwise falls within the definition of the Class must request exclusion from the Class and thereby opt-out of the Settlement under Section VII.A and as set forth in the Preliminary Approval Order. The Opt-Out Deadline shall be no more than 120 days after entry of the Preliminary Approval Order.

22. “Party” or “Parties” means Plaintiff Alexander Leon and Defendant Mishima Foods U.S.A., Inc.

23. “Person” means any natural person, corporation, partnership, business organization or association, or other type of legal entity.

24. “Preliminary Approval Motion” means a motion to be filed by Class Counsel requesting the Court to enter an order granting preliminary approval of the Settlement and Notice Plan as set forth in this Agreement.

25. “Product Voucher” means a voucher for the following Mishima Products: Mishima Wasabi Green Pea or Furikake products redeemable by Mishima.

26. “Publication Notice” means the proposed short notice in a form substantially similar to **Exhibit B**.

27. “Qualified Purchase” means a purchase of Mishima’s Wasabi Green Peas products between April 6, 2016 and the date of Preliminary Approval made by a Class Member for personal, family, or household purposes.

28. “Released Claims” means any and all actions, causes of action, claims, demands, liabilities, obligations, fees, costs, sanctions, proceedings, or rights of any nature and description

whatsoever, including, without limitation, violations of any state or federal statutes, rules, or regulations, or principles of common law, whether liquidated or unliquidated, that are based on, arise out of, or relate to any of the facts or claims alleged in the Action.

29. “Releasing Parties” means Plaintiff and Class Members and their respective heirs, administrators, devisees, predecessors, successors, attorneys, representatives, shareholders, partners, directors, officers, owners, affiliates, subrogees, assignees, or insurers.

30. “Settled Claims” means all claims alleged in, or arising out of facts, asserted in the October 5, 2020 Complaint filed by Plaintiff in the Action, including those facts identified in the Recitals (Section I) above.

31. “Settlement” means the settlement of this Action and related claims effectuated by this Agreement.

32. “Settlement Administrator” means Simpluris.

33. “Settlement Benefit” or “Settlement Benefits” means the benefits provided to Authorized Claimants as set forth in Section III.A of this Agreement based on claims actually made. Mishima agrees to pay up to \$49,980.84 for the total Settlement Benefits to the Settlement Class in the form of checks or vouchers. The actual amount paid for Settlement Benefits shall be based on claims actually made, and shall not exceed \$49,980.84.

34. “Settlement Date” means the later of the date on which (1) the Final Order and Judgment becomes final by expiration of the time for appeal with no appeal being taken; (2) if the Final Order and Judgment is appealed, all appellate court proceedings, including intermediate appellate review and California Supreme Court review, whether by right or through discretionary means, are completed and all time periods for further appellate court proceedings have passed and the Final Order and Judgment is affirmed in full; or (3) the Parties elect to proceed with the Agreement even if the Final Order and Judgment is appealed and is not affirmed in full.

35. “Settlement Website” means a website approved by the Court as part of the Notice Plan that provides information about the Agreement to Class Members and others.

III. RELIEF TO CLASS MEMBERS AND CLAIMS PROCEDURE

This Agreement is for settlement purposes only. Neither the fact of Settlement nor any provisions contained in this Agreement or its attachments nor any action taken hereunder shall constitute, be construed, or be admissible in evidence as an admission by any of the Parties to the validity or lack thereof of any claim, allegation, or defense asserted in the Action or in any other action. If this Agreement for any reason is not fully approved by the Court or is otherwise terminated, Mishima reserves the right to assert any and all objections and defenses to Plaintiff’s claims.

In consideration of a full, complete, and final settlement of the Action, and the release of claims set forth in Section IV below, and subject to the Court’s approval, the Parties agree to the following Settlement:

A. Relief to Class

Every Authorized Claimant is entitled to receive a Settlement Benefit. A Claim shall be valid only if submitted on the Claim Form pursuant to the procedures set forth in this Agreement. Mishima agrees to pay up to \$49,980.84 in Settlement Benefits to the Settlement Class. If the sum of all Claims by Authorized Claimants equals or is less than \$49,980.84, the Settlement Benefit for each Authorized Claimant shall be calculated as described in Sections III.A.(i) and (ii) of this Agreement. If the sum of all Claims by Authorized Claimants exceeds \$49,980.84, the Settlement Benefit for each Authorized Claimant shall be calculated as described in Sections III.A.(i) and (ii) of this Agreement but adjusted and distributed on a pro rata basis based on the amount claimed. In no event shall Mishima be required to pay any money in excess of \$49,980.84 for Settlement Benefits to the Settlement Class.

(i) Class Members who provide proof of purchase of their Claim in the form of a receipt or other valid proof of purchase will receive one (\$1) dollar or one (1) Product Voucher per Qualified Purchase. Only one Authorized Claimant per Household is entitled to receive a Settlement Benefit unless otherwise agreed to by the parties.

(ii) Class Members who do not provide proof of purchase can submit an electronic declaration under penalty of perjury verifying that they made a Qualified Purchase(s) and will receive one (\$1) dollar or one (1) Product Voucher per Qualified Purchase up to a maximum of five (\$5) dollars or five (5) Product Vouchers.

(iii) To be clear, Class Members who do not provide proof of purchase are limited to a Settlement Benefit of five (\$5) dollars or five (5) Product Vouchers per each Household.

(iv) Class Members may elect to receive their Settlement Benefit either as a Product Voucher or as a monetary payment, but not a combination of the two.

(v) Only one Authorized Claimant per Household is entitled to receive a Settlement Benefit unless otherwise agreed to by the parties. If more than one Claim is received from a Household, the Settlement Administrator may contact any Claimant to request additional information and documentation to determine the validity of any Claim as described in Section III.A.(ii). However, in no event following the Settlement Administrator's investigation shall Mishima be required to pay more than two Claims from one Household.

(vi) All monetary payments discussed in Sections III.A.(i) and (ii) will be issued in the form of a check or electronic check by the Settlement Administrator. Authorized Claimants who receive a check or electronic check shall have 180 calendar days from the date of issuance to negotiate the check. Any checks not negotiated within the 180 day period shall be cancelled or expired.

(vii) All Product Vouchers discussed in Sections III.A (i) and (ii) will be issued in the form of paper or electronic vouchers by the Settlement Administrator. Authorized Claimants who receive a Product Voucher shall have 180 calendar days from the

date of issuance to redeem the Product Vouchers with Mishima. Any Product Vouchers not negotiated within the 180 day period shall expire.

(viii) Funds resulting from uncashed checks shall be provided to the California State Controller's Office's Unclaimed Property Division, so that such funds can be held in the Claimant's name in the Unclaimed Property Fund pursuant to California's Unclaimed Property Law.

(ix) In addition to funding up to \$49,980.84 for the Settlement Benefits to Authorized Claimants, Mishima will also be responsible for Plaintiff's reasonable attorneys' fees and costs up to \$48,000 and a Class Representative's incentive award up to \$5,000, subject to Court approval, along with administrative expenses and costs related to Notice including the costs of the Settlement Administrator (as described in Section XI). Mishima shall have no other financial obligations under this Agreement.

B. Claims Procedure

(i) Claims by Class Members shall be submitted through the Settlement Website and shall be made in a form substantially similar to Exhibit C within 120 days after the Court enters the Preliminary Approval Order. Class Members who are unable to submit a Claim Form through the Settlement Website may request a paper Claim Form by contacting the Settlement Administrator.

(ii) The Settlement Benefit issued to Authorized Claimants identified in Sections III.A shall be made within sixty (60) days after the Settlement Date. Within ten (10) days of the Settlement Date, Mishima fund, by wire transfer, an amount equal to the monetary payments claimed by the Settlement Class (*see* Sections III.A.(vi)) and the costs of the Settlement Administrator (as discussed in Sections IX). Within ten (10) days of the Settlement Date, Mishima will further provide any Product Vouchers claimed by the Settlement Class (*see* Sections III.A.(vii)).

(iii) The Settlement Administrator shall be responsible for processing Claim

Forms submitted by Claimants and administering the Settlement Website, opt-out and objection process, and issuing the Settlement Benefit to Authorized Claimants described herein. Class Counsel shall monitor the administration of the Settlement, including without limitation any issues or problems in the processing of Claims or other procedures described herein.

(iv) The Settlement Administrator shall review all Claim Forms for completeness, validity, accuracy, and timeliness, and may contact any Claimant to request additional information and documentation to determine the validity of any Claim. Should the Settlement Administrator propose to reject any Claim, the reason for rejection shall be provided to Class Counsel.

(v) Mishima shall have the right to audit all submitted Claim Forms for completeness, validity, accuracy, and timeliness.

(vi) Should Plaintiff dispute the rejection of any Claim, Plaintiff and Mishima will meet and confer in good faith to attempt to resolve the dispute. Any unresolved disputes between Plaintiff and Mishima regarding Claims Administration or the reimbursement of a Claim shall be resolved by the Court.

C. Injunctive Relief

As a direct result of this Litigation, Mishima agrees that its advertising and labeling practices, as of the date of this Agreement and continuing forward, will not violate Federal or California Law, including regarding the product's statement of identity. Specifically, Mishima agrees not to label products as containing wasabi, unless that product indeed contains wasabi, or wasabi derived favoring, in the product.

IV. RELEASING PARTIES AND CLAIMS RELEASED

A. Class Members' Release of Claims

Upon the date of the initial distribution of the Settlement Benefits to the Settlement

Class, Plaintiff and Class Members (except any person who has filed a proper and timely request for exclusion from the Settlement Class) shall be deemed to release and forever discharge Mishima from any and all of the Settled Claims.

B. Plaintiff's Release of Claims

Upon entry of the Final Order and Judgment, Plaintiff shall be deemed to release and forever discharge Mishima from any and all of the Released Claims.

C. Waiver of California Civil Code Section 1542

Plaintiff understands and acknowledges that he waives all rights against Mishima under California Civil Code Section 1542, which reads as follows:

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.

By executing this Agreement, Plaintiff expressly acknowledges: (a) he is represented by Class Counsel; (b) he has read and fully understands the provisions of California Civil Code Section 1542; and (c) he has been specifically advised by Class Counsel of the consequences of the above waiver.

V. PRELIMINARY APPROVAL

Class Counsel shall apply to the Court through a Preliminary Approval Motion seeking a Preliminary Approval Order that addresses the following: (1) preliminary approval of the Settlement as set forth in this Agreement as fair, reasonable, adequate, and in the best interests of the Settlement Class; (2) approval of the Notice Plan; (3) a schedule for a hearing by the Court after the Notice period has expired to approve the Agreement and to consider Class Counsel's applications for attorneys' fees and expenses and an incentive award; (4) a stay of all proceedings in the Action until such time as the Court renders a final decision regarding

approval of the Agreement; and (5) confirm the appointment of Sommers Schwartz PC as Class Counsel. Mishima shall be permitted, but not required, to file a statement of non-opposition to the Motion for Preliminary Approval.

VI. NOTICE PLAN

A. Activation of Notice Plan

The Notice Plan and the schedule for the Fairness Hearing shall be approved by the Court in the Preliminary Approval Order. The Settlement Administrator will enact the Notice Plan no later than 30 days after the Court enters the Preliminary Approval Order.

B. Notice

The Form of Notice of the Settlement will be substantially similar to that in Exhibit A. The notice shall be maintained until 120 days after the Court enters the Preliminary Approval Order. The Settlement Website shall be maintained from the order granting Preliminary Approval to 120 days after the Court enters the Final Approval Order and Judgment. The Final Approval Order and Judgment shall be posted to the Settlement Website thereby providing notice of final judgment to the Class.

C. Publication Notice Plan

Notice shall be provided as follows: Publication Notice to Class Members shall be made through publication by posting and maintaining notice on available bulletin boards in stores at which the Wasabi Green Peas Products distributed by Mishima were sold at retail. Notice shall also be provided through online and mobile media banner ads with links or references to the Settlement Website in a manner as determined by the Settlement Administrator to reach the majority of the Settlement Class. All of these forms of Notice shall be substantially similar to Exhibit B and have links or references to the Settlement Website established by the Settlement Administrator.

D. Confirmation of Notice

The Settlement Administrator shall prepare a declaration attesting to compliance with

the Notice requirements set forth above. The declaration will be provided to Class Counsel and Mishima's Counsel and filed with the Court no later than 10 days prior to the Fairness Hearing.

E. Notice Complies With Applicable Law

The Parties agree and the Preliminary Approval Order shall state that compliance with the procedures described in this section for Notice to the Settlement Class of the pendency of the Action, certification of the Settlement Class, the terms of the Agreement, and the Fairness Hearing satisfy the requirements of the California Rules of Court, the California Code of Civil Procedure, the Constitution of the State of California, the United States Constitution, and any other applicable law.

VII. REQUEST FOR EXCLUSION FROM THE CLASS

A. Requests for Exclusion

Anyone who wishes to be excluded from the Settlement Class must submit a written request for exclusion by first-class United States Mail, postage paid, to the Settlement Administrator. Any request for exclusion from the Settlement Class must be postmarked on or before the deadline specified in the Notice, which shall be no later than 120 days after the Court enters the Preliminary Approval Order, which is the Opt-Out Deadline. Anyone submitting a request for exclusion must set forth his or her full name, current address, and their expressed intent to be excluded from the Settlement. The request for exclusion must be in writing and signed by the requesting person under penalty of perjury in a form substantially similar to **Exhibit D**, which will be provided on the Settlement Website.

B. Challenges to Requests for Exclusion

The Parties shall have the right to challenge the timeliness and validity of any exclusion request. Class Counsel shall also have the right to obtain withdrawal of any exclusion request submitted in error and any exclusion request that the submitter wishes to

withdraw for purposes of participating in the Settlement. The Court shall determine whether any contested exclusion request is valid.

C. Report from Settlement Administrator

Not later than 10 days before the Fairness Hearing, the Settlement Administrator will prepare and deliver to Mishima's Counsel, who shall file with the Court and serve on Class Counsel, a report stating: (1) the total number of persons who have submitted timely and valid requests for exclusion from the Settlement Class and the names of such persons; and (2) the total number of persons who have submitted timely valid claims, and the aggregate value of those claims. Any person who has submitted a timely and valid Request for Exclusion will not be entitled to receive any relief under this Agreement.

D. Response to Settlement Inquiries

It shall be the responsibility of Class Counsel to establish procedures for receiving and responding to all inquiries from Class Members with respect to this Agreement. Mishima and Mishima's Counsel may but are not required to respond to such inquiries.

VIII. OBJECTIONS TO SETTLEMENT

A. Procedures for Objections

Any Class Member may object to the fairness, reasonableness, or adequacy of the Agreement. A person who validly requests exclusion from the class may not file an objection. Any Class Member who wishes to object to any aspect of the Agreement must submit a written statement by first-class United States Mail, postage paid, to the Settlement Administrator that describes the Class Member's objection in specific terms and the reasons for any such objection, including any evidence and legal authority the Class Member wishes to bring to the Court's attention and any evidence the Class Member wishes to introduce in support of his or her objection, as well as the Class Member's name, email and postal addresses, and telephone number, and information demonstrating that the Class Member is

entitled to be included as a Member of the Class.

The Settlement Administrator shall promptly deliver any objections to Class Counsel, and not later than 10 days before the Fairness Hearing, Class Counsel shall file with the Court and serve on Mishima's Counsel, all objections received.

B. Timing

All objections to the Settlement must be submitted within 120 days after the Court enters the Preliminary Approval Order (the "Objection Deadline").

C. Appearance at Fairness Hearing

Any Class Member may appear at the Fairness Hearing, in person or through counsel, to show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable, or to object to any petition or application for attorneys' fees, Class Representative's incentive fees, or reimbursement of litigation costs and expenses. Class Members do not have to file a written objection to be heard at the Fairness Hearing.

IX. FINAL APPROVAL

A. Request for Final Approval

The Parties shall request that the Court, on the date set forth in the Preliminary Approval Order, or on such other date as the Court may set, conduct a Fairness Hearing to determine (a) whether to grant final approval to this Agreement; (b) consider any timely objections to this Settlement and the Parties' responses to such objections; and (c) rule on any petition or request for attorneys' fees, recovery of costs and expenses, and Class Representative's incentive fee.

B. Final Approval Order and Judgment

At the Fairness Hearing, the Parties shall ask the Court to give final approval to this Agreement. If the Court grants final approval to this Agreement, the Parties shall ask the Court to enter a Final Approval Order and Judgment, which approves this Settlement and

authorizes entry of a final judgment.

X. EXCLUSIVE REMEDY; JURISDICTION OF COURT

A. Exclusive Remedy

This Agreement shall provide the sole and exclusive remedy for any and all claims asserted in the Action and any and all claims that could be brought by Class Members with respect to any of the facts alleged in the Action or set forth in Section I above. Upon entry of the Final Order and Judgment, each Class Member shall be barred from initiating, asserting, or prosecuting against Mishima any of the Settled Claims. In the event any Class Member attempts to prosecute an action in contravention of the Final Order and Judgment in this Agreement, counsel for any of the Parties may forward this Agreement and the Final Order and Judgment to such Class Member and advise the Class Member of the release provided in this Agreement. If so requested by Mishima or Mishima's Counsel, Class Counsel shall provide such notice.

B. Continuing Jurisdiction of Court

The Court shall retain exclusive and continuing jurisdiction over the Action and over all Parties to interpret and enforce the terms, conditions, and obligations of this Agreement.

XI. ATTORNEYS' FEES AND COSTS, INCENTIVE FEE; ADMINISTRATIVE EXPENSES

A. Payment of Notice and Administration Costs

All costs of providing Notice under the terms of this Agreement and all costs of administering this Settlement, including all fees of the Settlement Administrator, shall be paid by Mishima, with the following exception. Simpluris has provided the Parties a quote for its class administration services in the total amount of \$27,500.00 (the "Quote"). Mishima shall not be required to pay any more than \$30,250.00 for class administration. In the event actual

costs of administration exceed \$27,500.00 plus ten percent (10%) of that amount, or \$30,250.00 total, Plaintiff's counsel shall be responsible for paying the remaining costs of class administration.

B. Attorneys' Fees Award and Costs

Class Counsel may apply to the Court for an award of reasonable attorneys' fees and costs in a petition or application to be filed with the Court prior to the Fairness Hearing that seeks an award of attorneys' fees consistent with California law, but not more than \$48,000, which includes the reimbursement of costs. Attorneys' fees and costs shall be paid separate and apart from the Settlement Benefit to Authorized Claimants. If the Court approves the Settlement of this Action and an award of attorneys' fees and costs to Class Counsel, Mishima agrees to pay up to \$48,000 to Class Counsel, by wire transfer within sixty (60) days after both of the following: (1) the Settlement Date; and (2) Class Counsel provides Mishima with its completed Form W9 and wiring information. No interest shall be paid on any portion of the attorneys' fees and costs award.

C. Incentive Fees

The Class Representative, through Class Counsel acting on his behalf, may seek an incentive award in an amount not to exceed \$5,000. If the Court approves the Settlement of this Action and an incentive award to the Class Representative, Mishima agrees to pay up to \$5,000 to the Class Representative, by check within 30 days after both of the following: (1) the Settlement Date; and (2) Class Representative provides Mishima with his completed Form W9. No interest shall be paid on any portion of the incentive award.

D. Ruling on Attorneys' Fees and Costs and Incentive Fee Shall Not Impact Settlement

The Parties agree that the rulings by the Court regarding the amount of attorneys' fees and costs and any incentive award, and any claim or dispute relating thereto, should be considered by the Court separately from the remaining matters to be considered at the Fairness Hearing as provided for in this Agreement. Any order or proceedings related to the

amount of attorneys' fees or costs or incentive award, including any appeals from or modifications to or reversals of any orders related thereto, shall not operate to modify, reverse, terminate, or cancel the Agreement or affect the release provided for in this Agreement or any other provision of this Agreement.

XII. TERMINATION OF THE SETTLEMENT AGREEMENT

A. Dependent on Entry of Final Order and Judgment

The performance of this Agreement is expressly contingent upon entry of the Final Order and Judgment. If the Court declines to issue the Final Order and Judgment, this Agreement will be terminated. If the Final Order and Judgment is vacated, modified, or reversed, in whole or in part, the Agreement will be deemed terminated unless the Parties acknowledge in writing their intent to proceed with the Agreement as modified.

B. Effect of Termination

If this Agreement is terminated, it will have no force or effect whatsoever, and shall be deemed null and void, and will not be admissible as evidence for any purpose in any pending or future litigation in any jurisdiction.

XIII. PUBLICITY

Prior to Preliminary Approval of the Settlement, Class Representative and Class Counsel agree not to initiate any publicity or make public comments regarding this Agreement or the negotiations leading to this Agreement without the prior consent of Mishima. Subsequent to the Court granting Preliminary Approval of the Settlement, Class Counsel may publish, or cause to be published, only that information which is disclosed in the Notice. Class Representative and Class Counsel further agree not to make any public statements disparaging of Mishima. This provision does not serve to limit Class Counsel from disclosing their participation in this Settlement for purposes of class certification in other

cases.

XIV. MISCELLANEOUS PROVISIONS

A. Stay of Action

The Parties agree the Action shall be stayed pending approval of the Settlement.

B. Entire Agreement

This Agreement, including all attached exhibits, constitutes the entire agreement among the Parties with regard to the subject matter of this Agreement and shall supersede any and all previous agreements and understandings between the Parties.

C. Modification Must Be in Writing

This Agreement may not be changed, modified, or amended, except in writing signed by Class Representative, Class Counsel, and Mishima or Mishima's Counsel, subject to Court approval if required by law.

D. Arm's Length Negotiations; Mutual Drafting

This Agreement has been negotiated at arm's length by Class Counsel and Mishima's Counsel. In the event of any dispute arising out of this Agreement or any proceeding to enforce any of its terms, neither Party shall be deemed to be the drafter of the Agreement or any of its particular provision or provisions, and no part of this Agreement shall be construed against either Party on the basis of that Party's identity as the drafter of any part of this Agreement.

E. Authority to Settle

Each Party represents and warrants that it enters into this Agreement of his or its own free will. Each Party is relying solely on its own judgment and knowledge and is not relying on any statement or representation made by the other Party or the other Party's agents or attorneys, except that Class Counsel has relied upon information provided by Mishima in informal discovery responses in the Action. The signatories to this Agreement represent that they are duly authorized to execute it.

F. No Assignment or Transfer

Each Party represents and warrants that she or it has not directly or indirectly assigned, transferred, or purported to assign or transfer any portion of any liability, claim, demand, cause of action, or rights that are the subject of the Action and this Agreement.

G. Condition Precedent

This Agreement is conditioned on Mishima providing Class Counsel with competent evidence that the total amount of retail sales of Wasabi Green Peas between April 6, 2016 and June 30, 2021 was \$49,980.84. Should Mishima fail to provide such evidence within thirty (30) days of the execution of this Agreement, Class Representative has the option to terminate the Agreement.

H. Binding Effect

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, executors, successors, and assigns.

I. Cooperation

The Parties agree to cooperate fully and to take additional action that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

J. Headings

The headings of the sections in this Agreement are included for convenience only and shall not be deemed to constitute part of this Agreement or to impact its construction.

K. California Law Controls

This Agreement will be construed in accordance with the laws of the State of California.

L. Partial Invalidity

With the sole exception of Section IV (Release of Claim), if any provision of this Agreement is found to be void, all the remaining provisions of this Agreement shall remain in full force and effect.

M. Notice

Any notice, instruction, court filing, or other document given to any Party or their counsel under or relating to this Agreement shall be in writing and delivered personally or sent by registered or certified mail with postage prepaid, overnight delivery service, or by email to the respective representatives identified below or to other recipients as the Court may specify. As of the date of this Agreement, these respective representatives are as follows:

For the Class:

Trenton R. Kashima
Sommers Schwartz P.C.
402 West Broadway, Suite 1760
San Diego, CA 92101

For Mishima:

Derrick K. Takeuchi
Derrick K. Takeuchi Law Firm
21250 Hawthorne Blvd., Suite 500,
Torrance, CA 90503

N. Counterparts

This Agreement may be executed by the Parties and their counsel in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument constitute one and the same instrument.

IN WITNESS WHEREOF, this Agreement has been duly executed by and on behalf of the Parties as follows:

Plaintiff and Proposed Class Representative

Dated: October __, 2021

By: _____
Alexander Leon

Mishima Foods U.S.A., Inc.

Dated: October __, 2021

By: _____
Name: Hideki Morimoto
Title: President

APPROVED AS TO FORM:

Sommers Schwartz P.C.

Dated: October __, 2021

By: _____
Trenton R. Kashima
Counsel for Plaintiff and Proposed Class Representative
Alexander Leon And Proposed Class Counsel

Derrick K. Takeuchi Law Firm

Dated: October __, 2021

By: _____
Derrick K. Takeuchi
Attorney for Defendant Mishima Foods U.S.A., Inc.

EXHIBIT A

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

Alexander Leon v. Mishima Foods USA, Inc., Los Angeles Superior Court, Case No.

20STCV38201

A court authorized this notice. This is not a solicitation from a lawyer.

If you purchased Mishima’s Wasabi Green Peas Product in California between April 6, 2016 and [Date], you may be entitled to reimbursement from a class action settlement.

Your Legal Rights and Options in this Settlement	
Submit a claim form by [date]	This is the only way for Class Members to receive reimbursement.
Opt out by [date]	Get no payment. This is the only option that allows you to be part of any future lawsuit with respect to the legal claims in this case.
Object by [date]	Write to the Court if you don’t like the settlement and tell the Court why you think it shouldn’t be approved.
Provide notice by [date] of your intention to appear at the [date] Fairness Hearing	You can ask to speak in Court about the fairness of the Settlement.
Do nothing	Do not receive a payment. Give up your legal rights to sue Mishima about the claims in this case.

BASIC INFORMATION

WHY IS THERE A NOTICE?

This Notice advises you of a proposed class action settlement. The settlement comes from a lawsuit in which plaintiff Alexander Leon alleges that during the relevant time periods, Mishima Foods U.S.A., Inc.’s Wasabi Green Peas Product were labeled as containing “Wasabi” even though they do not.

The purpose of this notice is to inform you of the proposed settlement, and of a hearing to consider whether the settlement should be approved. The hearing will be held on [date], before

the Honorable Carolyn B. Kuhl, Department 12, Los Angeles Superior Court, Spring Street Courthouse, 312 North Spring Street, Los Angeles, CA 90012. This notice explains the lawsuit, how to participate in the settlement; how to object to the settlement if you wish; how to exclude yourself; and how to get more information. (Capitalized terms not defined in this notice have the meanings assigned to them in the Settlement Agreement, which is available at [URL].)

WHAT IS THIS ABOUT AND WHY IS THERE A SETTLEMENT?

On October 5, 2020, a complaint was filed against Mishima Foods U.S.A., Inc. (“Mishima” or “Defendant”) in the Superior Court of California, County of Los Angeles, Case No. 20STCV38201. The Complaint alleges causes of action based on violations of the Unfair Competition Law (Bus. & Prof. Code, §§ 17200-17209), the False Advertising Law (Bus. & Prof. Code, §§ 17500-17509), and the Consumers Legal Remedies Act (Civ. Code, §§ 1750-1784).

After reviewing the evidence produced in informal discovery and considering the risks of further litigation with an impending trial date, Plaintiff and their counsel have concluded that it is in the best interests of the Settlement Class to enter into this settlement. Mishima, while continuing to deny all allegations of wrongdoing and disclaiming any liability with respect to any and all claims, considers it in its best interests to resolve Plaintiff’s individual and class allegations on the terms stated in the Settlement Agreement, in order to avoid further expense, inconvenience, interference with its ongoing business operations, and burdensome litigation.

WHY IS THIS A CLASS ACTION?

In a class action, one or more people, called class representatives, sue on behalf of people who have similar claims. All these people are a class or class members. One court resolves the issues for all class members, except for those who exclude themselves.

HOW DO I KNOW IF I AM PART OF THE SETTLEMENT

The Court has certified a class (the “Settlement Class”) consisting of: All persons who purchased, between April 6, 2016 and the date of Preliminary Approval, Mishima’s Wasabi Green Peas Product in California.

If you qualify for the Settlement Class, you will be considered a member of the Settlement Class (“Settlement Class Member”), unless you request to be excluded.

Excluded from the Settlement Class are officers, directors, and employees of Mishima and its subsidiaries, as well as judicial officers and employees of the Court.

THE SETTLEMENT BENEFITS

WHAT DOES THE SETTLEMENT PROVIDE?

Mishima has agreed to pay up to \$49,980.84 in Settlement Benefits to the Settlement Class. Plaintiff will also seek incentive award in an amount not to exceed \$5,000 for his services. Class Counsel will apply to the Court for an award of reasonable attorneys’ fees and litigation costs consistent with California law, but not more than \$48,000. Mishima has agreed to pay Plaintiff’s incentive awards and Class Counsel’s reasonable attorneys’ fees and costs separately from the Settlement Benefits, along with the costs related to notifying the Class about this lawsuit and settlement and administering the settlement, subject to a cap.

SETTLEMENT BENEFIT AND CLAIMS PROCESS

Class Members who made eligible purchases have the right to submit a Claim and receive a Settlement Benefit – reimbursement in the form of a check or a Product Voucher. A Claim will be valid only if submitted on a Claim Form. Claim Forms may be submitted electronically through the Settlement Website at [URL]. Class Members who are unable to submit a Claim Form through the Settlement Website may request a paper Claim Form by contacting the Settlement Administrator.

A. Class Members who submit a valid claim, and who provide proof of purchase in the form of a receipt or other evidence will receive one (\$1) dollar or one (1) Product Voucher per Qualified Purchase. Only one Authorized Claimant per Household is entitled to receive a Settlement Benefit unless otherwise agreed to by the parties.

B. Class Members who do not provide proof of purchase can submit an electronic declaration under penalty of perjury verifying: they made a Qualified Purchase(s) and will receive one (\$1) dollar or one (1) Product Voucher per Qualified Purchase up to a maximum of five (\$5) dollars or five (5) Product Vouchers.

Class Members may elect to receive their Settlement Benefit either as a Product Voucher or as a monetary payment, but not a combination of the two. Product Vouchers can be used to receive Mishima Wasabi Green Pea or Furikake products redeemable by Mishima.

Only one Authorized Claimant per Household is entitled to receive a Settlement Benefit unless otherwise agreed to by the parties. If more than one Claim is received from a Household, the Settlement Administrator may contact Claimants to request additional information and documentation to determine the validity of any Claim as described in Section III.B of the Settlement Agreement.

All monetary payment will be issued in the form of a check or electronic check. Settlement Benefits shall be issued within 60 days after the Settlement Date. Authorized Claimants shall have 180 calendar days from the date of issuance to negotiate the check or redeem the Product Vouchers. Any checks or Product Vouchers not negotiated or redeemed within the 180-day period shall be cancelled or expired.

EXCLUDING YOURSELF FROM THE SETTLEMENT

HOW DO I GET OUT OF THE SETTLEMENT?

You have the right not to be part of the lawsuit by excluding yourself or “opting out” of the Class. If you wish to exclude yourself, you must submit a written request for exclusion by first-class United States Mail, postage paid, to the Claims Administrator, [address] or emailed to the Claims Administrator, [address]. A request for exclusion from the Class must set forth your full name and current address, must be postmarked on or before [date], must be in writing, and must be signed under penalty of perjury. If you exclude yourself, you will not receive reimbursement or benefits from the Settlement. You must exclude yourself to continue your own lawsuit for monetary relief.

OBJECTING TO THE SETTLEMENT

HOW DO I TELL THE COURT IF I DO NOT LIKE THE SETTLEMENT?

You have the right to object to the fairness, reasonableness, or adequacy of the Settlement Agreement. If there is something about the settlement that you do not like, you may file an objection and may appear at the Fairness Hearing with an attorney at your own cost. Even if you object, you may return the Claim Form to receive a Settlement Benefit. In other words, even if you object, you will still be in the Settlement Class and will receive a Settlement Benefit if the settlement is approved and you timely submit your Claim Form. If you want to object, you must submit a written statement by first-class United States Mail, postage paid, to the Claims Administrator, [address] or emailed to the Claims Administrator, [address]. Your written statement must describe your objection in specific terms and the reasons for any such objection, including any evidence and legal authority the you wish to bring to the Court's attention and any evidence you wish to introduce in support of your objection, as well as your name, email and postal addresses, and telephone number, and information demonstrating that you are entitled to be included as a Member of the Class.

All written objections to the Class Settlement must be submitted by [date] or will not be considered. If you have timely objected, you may also appear at the Fairness Hearing, in person or through counsel, to show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable, or to object to any petition or application for attorneys' fees, representative class plaintiff incentive fees, or reimbursement of litigation costs and expenses. Although, you do not have to file a written objection to appear and be heard at the Fairness Hearing. You have a right to voice any objections to the Class Settlement during the Fairness Hearing without first filing a written objection.

THE FAIRNESS HEARING

WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?

The Court has scheduled a Fairness Hearing on [date], before the Honorable Carolyn B. Kuhl, Department 12, Los Angeles Superior Court, Spring Street Courthouse, 312 North Spring Street, Los Angeles, CA 90012. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court may also decide how much to pay the attorneys for the Class. After the hearing, the Court will decide whether to grant final approval of the settlement. You may appear remotely, by audio or video, by visiting <https://my.lacourt.org/laccwelcome>.

GETTING MORE INFORMATION

HOW DO I GET MORE INFORMATION?

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the Settlement Agreement and other related documents, which are available at [URL]. Other papers filed in this lawsuit are available at the office of the Clerk of

the Superior Court, during its regular business hours.

**PLEASE DO NOT CONTACT THE COURT OR MISHIMA FOR ADDITIONAL
INFORMATION OR ADVICE.**

If you have additional questions, please contact your own attorney, or if you would like more information, you may contact:
Settlement Administrator

[address]

or

Class Counsel:

Trenton R. Kashima
Sommers Schwartz P.C.
402 West Broadway, Suite 1760
San Diego, CA 92101

EXHIBIT B

PUBLICATION NOTICE

Alexander Leon v. Mishima Foods USA, Inc., Los Angeles Superior Court, Case No. 20STCV38201

If you purchased Mishima’s Wasabi Green Peas Product in California during certain time frames, you may be entitled to reimbursement from a class action settlement.

A proposed settlement has been reached in a lawsuit claiming that certain products were labeled as containing “Wasabi” even though they do not. Mishima denies all claims and liability but has agreed to settle to avoid further expense, inconvenience, interference with its ongoing business operations, and burdensome litigation.

Who are Class Members?

You are a class member if you purchased, between April 6, 2016 and the [date of Preliminary Approval], Mishima’s Wasabi Green Peas Product in California.

What does the settlement provide?

Mishima has agreed to pay up to \$49,980.84 in Settlement Benefits to the Settlement Class. Class Members who made eligible purchases have the right to submit a Claim and receive a Settlement Benefit. To receive a Settlement Benefit, you MUST complete a Claim Form, found online at [URL], by [date]. To file a claim, choose one of the following options:

Option 1: Class Members who provide proof of purchase in the form of a receipt or other evidence will receive one (\$1) dollar or one (1) Product Voucher per Qualified Purchase. Only one Authorized Claimant per Household is entitled to receive a Settlement Benefit unless otherwise agreed to by the parties.

Option 2: Class Members who do not provide proof of purchase can submit an electronic declaration under penalty of perjury verifying: they made a Qualified Purchase(s) and will receive one (\$1) dollar or one (1) Product Voucher per Qualified Purchase up to a maximum of five (\$5) dollars or five (5) Product Vouchers:

Only one Authorized Claimant per Household is entitled to receive a Settlement Benefit unless otherwise agreed to by the parties.

The proposed Settlement Agreement is subject to Court approval. On [date], 2021, at [time], in Department 12, Los Angeles Superior Court, Spring Street Courthouse, 312 North Spring Street, Los Angeles, CA 90012, a hearing will be held on whether the proposed settlement should be approved as fair, reasonable, and adequate. You may appear remotely, by audio or video, by visiting <https://my.lacourt.org/laccwelcome>.

This is only a summary. For complete details, including the Claim Form, detailed court documents, and other information, visit [URL] or call toll-free 1-619-762-2126.

EXHIBIT C

CLAIM FORM

You must submit online at [\[URL\]](#)

CLASS MEMBER INFORMATION

First Name Last Name

Address

City, State Zip _____

Email Address _____

You must complete ALL fields below for your claim to be considered.

All Claim Forms must be submitted online by [date].

CLAIM OPTIONS

You may chose Option 1 or Option 2, but not both. You must also indicated\ your preferred method of reimbursement.

Only one Authorized Claimant per Household is entitled to receive a Settlement Benefit unless otherwise agreed to by the parties. "Household" means all persons residing at the same physical address. This credit shall be issued in the form of a check or Product Voucher that will expire 180 days after issuance.

OPTION 1: VALID PROOF OF PURCHASE ATTACHED. Complete the Claim Form and confirm under penalty of perjury to receive a settlement benefit. Class Members who provide proof of purchase of their Claim in the form of a receipt or other valid proof of purchase will receive one (\$1) dollar or one (1) Product Voucher per Qualified Purchase. Purchases must have been made between April 6, 2016 and [date of Preliminary Approval].

Proof of purchase must be submitted with this claim form.

What is the total number of products purchased with Proof of Purchase? _____

OPTION 2: NO VALID PROOF OF PURCHASE. Complete the Claim Form and confirm under penalty of perjury to receive a settlement benefit. Class Members who do not provide proof of purchase can submit an electronic declaration under penalty of perjury verifying: they made a Qualified Purchase(s) and will receive one (\$1) dollar or one (1) Product Voucher per Qualified Purchase up to a maximum of five (\$5) dollars or five (5) Product Vouchers. Purchases must have been made between April 6, 2016 and [date of Preliminary Approval].

What is the total number of products purchased without Proof of Purchase? _____

METHOD OF REIMBURSEMENT:

PAPER CHECK

E-CHECK

PRODUCT VOUCHER

All Settlement Benefits will be issued once the Settlement is approved by the Court.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE INFORMATION ON THIS CLAIM FORM IS TRUE AND CORRECT.

SIGNATURE:

DATE: / /

**ALL CLAIM FORMS MUST BE SUBMITTED ONLINE BY [DATE].
QUESTIONS? VISIT [URL] OR CALL 1-800-XXX-XXXX.**

EXHIBIT D

REQUEST FOR EXCLUSION

(Read the Full Legal Notice Carefully Before Filling Out This Form.)

The Undersigned does NOT wish to remain a member of the Settlement Class in *Alexander Leon v. Mishima Foods USA, Inc.*, Case No. 20STCV38201, pending in the Superior Court of California, Los Angeles County. I understand that by making this request, I will not receive a Settlement Benefit or reimbursement from this Settlement.

Date:

Print Name:

Mailing Address:

City

State

Zip Code

Telephone: () -

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE INFORMATION ON THIS CLAIM FORM IS TRUE AND CORRECT.

Signature: _____

If you want to exclude yourself from the settlement, you must fill in and return this Form postmarked no later than **[date]** to: