

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

KYLE COUNTS, DAMANY BROWNE, and
DENNIS MAYER, individually and on behalf
of all others similarly situated,

Case No.: 1:23-cv-00236

Plaintiffs,

v.

ARKK FOOD COMPANY, a
Michigan corporation, WAHLBURGERS I,
LLC, a Massachusetts limited liability
company, and PATRIOT PICKLE, INC., a
New Jersey corporation,

Defendants.

SETTLEMENT AGREEMENT

Subject to the approval of the Court and pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Class Action Settlement Agreement and Release, including the attached Exhibits (“Settlement Agreement”), is entered into between Plaintiffs Kyle Counts (“Counts”), Damany Browne (“Browne”) and Dennis Mayer (“Mayer”) (collectively, the “Plaintiffs”), on behalf of themselves and those similarly situated, (hereinafter the “Settlement Class Members”), and Defendants Arkk Food Company (“Arkk”), Wahlburgers I, LLC (“Wahlburgers I”), and Patriot Pickle, Inc. (“Patriot”) (collectively “Defendants”). Plaintiffs and Defendants are collectively referred to as “the Parties.”

I. RECITALS

1.1 WHEREAS, on January 3, 2023, Grillo’s Pickles, Inc. filed an action in the United States District Court for the District of New Jersey, *Grillo’s v. Patriot Pickle Inc. et al*, Case No. 2:23-cv-00011 (D.N.J.) (the “Grillo Action”), against Defendants alleging: (1) violation of the Lanham Act 15 U.S. C. § 1125(a); and (2) common law unfair competition; based on Defendants’ Wahlburgers-branded pickles (“the Products”), being labeled: (a) “fresh”; (b) “all natural”; and (c)

“no preservatives” (collectively the “Labeling Claims”), while the Products allegedly contained sodium benzoate.

1.2 WHEREAS, on January 16, 2023, Plaintiff Counts filed a putative class action complaint in the United States District Court for the Northern District of Illinois, captioned *Counts v. Arkk Food Company et al*, Case No. 1:23-cv-00236 (the “Counts Action”), against ARKK and Wahlburgers on behalf of himself and all others similarly situated. In his complaint, Plaintiff Counts alleged claims for violations of: (1) multiple state consumer fraud acts, including New York, on behalf of a multi-state class; (2) Illinois Consumer Fraud and Deceptive Practices Act (“ICFA”) on behalf of an Illinois subclass; and (3) unjust enrichment on behalf of nationwide, Illinois, and multi-state classes based on the use of the Labeling Claims on the Products despite their allegedly containing sodium benzoate.

1.3 WHEREAS, on March 28, 2023, ARKK and Wahlburgers filed a motion to dismiss the *Counts* Action, asserting Plaintiff Count’s failure to state a claim, lack of standing to sue under state consumer fraud acts other than Illinois, and seeking to strike the nationwide and multi-state class allegations.

1.4 WHEREAS, on April 18, 2023, Plaintiff Counts filed an amended complaint against ARKK and Wahlburgers based on the Labeling Claims related to the Products, and for violations of: (1) multiple state consumer fraud acts, including New York General Business Law (“GBL”) §§ 349 and 350 and the consumer protection statutes of nine other states, on behalf of a multi-state class; (2) the ICFA on behalf of an Illinois subclass; (3) breach of express warranties of 49 states and the District of Columbia on behalf of a nationwide class; (4) breach of express warranty of ten states on behalf of the multi-state class; (5) breach of express warranty under Illinois law on behalf of the Illinois class; (6) unjust enrichment on behalf of nationwide class; and (7) unjust enrichment on behalf of the Illinois class.

1.5 WHEREAS, on June 21, 2023, Plaintiff Browne filed a putative class action complaint in the United States District Court for the Eastern District of New York, captioned *Browne v. Arkk Food Company et al*, Case No. 1:23-cv-04603 (the “Browne Action”), against

ARKK and Wahlburgers on behalf of himself and all others similarly situated. In his complaint, Plaintiff Browne alleged claims for violations of GBL §§ 349 and 350 on behalf of a New York class, based on the use of the Labeling Claims on the Products despite their allegedly containing sodium benzoate.

1.6 WHEREAS, on November 3, 2023, the Court in the *Counts* Action issued an Order granting in part and denying in part Defendants’ motion to dismiss. Specifically, the Court in the *Counts* Action dismissed the breach of express warranty claims and struck the express warranty classes.

1.7 WHEREAS, on November 17, 2023, Plaintiff Mayer filed a putative class action complaint in the Supreme Court of the State of New York, County of Erie, captioned *Mayer v. Patriot Pickle Inc. et al*, Index No. 814871/2023, against Defendants on behalf of himself and all others similarly situated. In his complaint, Plaintiff Mayer alleged claims for violations of (1) GBL §§ 349 and 350 on behalf of a New York class, (2) breach of express warranty on behalf of a New York class, and (3) unjust enrichment on behalf of a New York class based on the Labeling Claims on the Products (the “*Mayer* Action”). On December 15, 2023, Defendants removed the *Mayer* Action to the United States District Court for the Western District of New York, No. 1:23-cv-1299 (W.D.N.Y.)

1.8 WHEREAS, the Parties strongly disagree on the merits and viability of the claims set forth in the *Counts* Action, *Browne* Action, and *Mayer* Action (collectively, the “Actions”).

1.9 WHEREAS, the Parties have engaged in extensive interrogatory and document discovery directed at both liability and class certification in the *Counts* Action since May 2023.

1.10 WHEREAS, Plaintiffs have not filed motions for class certification in any Action.

1.11 WHEREAS, Defendants deny all of the allegations made in the Actions and all charges of wrongdoing or liability against them arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged against them by Plaintiffs either on an individual basis, or on behalf of the putative classes. Defendants also deny that the claims asserted in the Actions meet the requirements for certification as a class action, other than for purposes of

settlement. Defendants further deny that the evidence supports a finding of liability or monetary or equitable relief to Plaintiffs, any additional putative class representative, or any member of the Settlement Class (as defined below), with respect to any of the Labeling Claims (as defined below) or other allegations made by Plaintiffs.

1.12 WHEREAS, Plaintiffs believe all claims are viable and subject to class certification.

1.13 WHEREAS, the Parties have engaged in extensive arm's length, good-faith negotiations in an effort to reach a resolution of the Labeling Claims (as defined below). Such negotiations culminated in an all-day, in-person mediation with mediator John DeGroote on January 11, 2024 in Dallas, Texas.

1.14 WHEREAS, the Parties, and their respective counsel, taking into account the risks, uncertainties, delay, and expense involved in pursuing the Labeling Claims, as well as other relevant considerations, have concluded that it is in the best interests of Plaintiffs and Defendants to compromise fully and finally settle all claims relating to the alleged sodium benzoate in the Products ("Labeling Claims").

1.15 WHEREAS, the attorneys representing Plaintiffs (hereinafter referred to as "Class Counsel") are experienced in litigating class action claims like the Labeling Claims asserted by Plaintiffs.

1.16 WHEREAS, Class Counsel has analyzed and evaluated the merits of all Parties' contentions and this settlement as it affects all Parties and the Settlement Class Members (as defined below). Among the risks and uncertainties of the Actions is the possibility that Plaintiffs will be unable to prove liability or damages (individually or on a class wide basis) at trial on a class wide or individual basis. Plaintiffs and Class Counsel, after taking into account the foregoing, along with the risks, uncertainties and costs of further prosecution of the Actions, are satisfied that the terms and conditions of this Agreement are fair, reasonable, adequate, and equitable, and that a settlement and the prompt provision of meaningful benefits to the Settlement Class are in the best interests of the Settlement Class Members.

1.17 WHEREAS, Defendants, while continuing to deny all allegations of, and disclaiming any liability with respect to any and all Labeling Claims, have concluded that it is in their best interest to resolve the Labeling Claims on the terms stated in this Agreement, in order to avoid further expense, inconvenience, and interference with ongoing business operations, and to dispose of burdensome litigation.

1.18 WHEREAS, the undersigned Parties agree, subject to approval by the Court, that the Labeling Claims asserted by Plaintiffs shall be fully and finally compromised, settled and released on the terms and conditions set forth in this Agreement. The Parties intend that the Court conditionally certify a class for settlement and that this Agreement will encompass and end all pending, threatened, or possible litigation or claims of Plaintiffs against Defendants based on the subject matter of the Labeling Claims (as defined below).

1.19 WHEREAS, for purposes of settlement only, Plaintiff Counts will seek leave of Court to amend his complaint in the *Counts* Action to add Plaintiffs Browne and Mayer as class representatives, and to assert claims under Massachusetts law—Wahlburger I’s state of organization and primary place of business—on behalf of a nationwide class of consumers, with Plaintiffs as class representatives (“Amended Complaint for Settlement”).

1.20 WHEREAS, Plaintiffs and Defendants specifically agree that Defendants’ execution of this Agreement, and consent to the filing of the Amended Complaint for Settlement, is not, and shall not be construed as, an admission by Defendants, or deemed to be evidence: (1) of the validity of any of the claims made by Plaintiffs or of any liability to Plaintiffs, as alleged in the Actions or Amended Complaint for Settlement; (2) that Defendants violated any state or federal law in any respect; or (3) that class certification of the Labeling Claims is appropriate under Fed. R. Civ. P. 23 or any analogous state law. Nothing in this Agreement shall constitute an admission of liability or be used as evidence of liability, by or against any Party hereto.

1.17 WHEREAS, Defendants agree to personal jurisdiction and venue of the Court for purposes of Plaintiffs Browne and Mayer and the Nationwide Class alleged in the Amended Complaint solely for purposes of this settlement. If the Agreement fails to receive Court approval

or the Effective Date does not occur, then Defendants retain the right to challenge personal jurisdiction and venue of the Court over these claims.

NOW, THEREFORE, without (a) any admission or concession on the part of Plaintiffs about the likelihood of success at trial, on appeal, or in other motions practice, or (b) any admission or concession of the merit of the Labeling Claims or of liability or wrongdoing or the lack of merit of any defense whatsoever by Defendants, it is hereby stipulated and agreed by the undersigned, on behalf of Plaintiffs, the Settlement Class and Defendants, that these Actions and all Claims of the Settlement Class be settled, compromised, and finally adjudged, subject to Court approval as required by Federal Rule of Civil Procedure 23, on the terms and conditions set forth herein.

The recitals stated above are true and accurate and are hereby made a part of this Settlement Agreement.

II. DEFINITIONS

Capitalized terms in this Agreement shall be defined as follows:

2.1 “Actions” means, collectively, the lawsuits captioned *Counts, et al. v. Arkk Food Co. and Wahlburgers I, LLC*, Case No. 1:23-cv-00236-LCJ (N.D. Ill.), *Browne v. Arkk Food Company et al*, Case No. 1:23-cv-04603 (E.D.N.Y), and *Mayer v. Patriot Pickle Inc. et al.*, No. 1:23-cv-1299 (W.D.N.Y.).

2.2 “Agreement” or “Settlement Agreement” means this Settlement Agreement, including all exhibits hereto.

2.3 “Allegations” means the allegations as asserted in the Amended Complaint for Settlement (attached hereto as Exhibit A).

2.4 “Attorneys’ Fees and Costs” means such funds as may be awarded by the Court to Plaintiffs’ Counsel for their work, efforts, and expenditures in connection with their respective Actions and settlement, including fees, costs, and expenses of experts, consultants, or other individuals retained by, or who assisted Plaintiffs’ Counsel in connection with their respective Actions and settlement, as described more particularly in Section V of this Agreement.

2.5 “Claim” means a claim for Settlement Benefits submitted under Section III of this Agreement.

2.6 “Claim Administrator” or “Settlement Administrator” means, subject to Court approval, Angeion Group, unless another third-party administrator is later agreed to by the Parties in writing and approved by the Court.

2.7 “Claim Filing Deadline” means sixty (60) days after the start of the Notice Plan.

2.8 “Claim Form” means a form in substantially the same form as Exhibit B hereto to be used by Class Member to make a Claim under the Settlement.

2.9 “Claimant” means a Settlement Class Member who submits a claim for payment as described in Section 3.2 of this Agreement.

2.10 “Class Notice” means the notice to the Class to be disseminated by the Claim Administrator as forth in the Notice Plan described in the Declaration of Steven Weisbrot of Angeion Group and as anticipated to be approved in accordance with the Court’s Preliminary Approval.

2.11 “Class Period” means the period of time from April 1, 2021 through March 31, 2023.

2.12 “Class Representatives” means Plaintiffs Kyle Counts, Damany Browne, and Dennis Mayer collectively.

2.13 “Court” means the United States District Court, Northern District of Illinois.

2.14 “Defendants” means collectively Arkk Food Company, Wahlburgers I, LLC, and Patriot Pickle, Inc.

2.15 “Effective Date” means the date on which the Final Approval is final and no longer subject to any further appeal as of right, or by discretionary review.

2.16 “Final Approval” means the order and judgment entered by the Court approving this Settlement Agreement and, certifying a class for settlement purposes.

2.17 “Household” means any number of natural persons who currently or during the Class Period occupied the same dwelling unit.

2.18 “Labeling Claims” means all outstanding and putative claims, including without limitation the labeling or other claims asserted in the Amended Complaint for Settlement, arising out of or relating to the Product Labeling (as defined in Section 2.16) that were, or could have been, asserted by Plaintiffs in the Actions. However, for the avoidance of any doubt, “Labeling Claims” does not include any competitor claims brought in the *Grillo’s Pickles* Action.

2.19 “Long Form Notice” means notice to Settlement Class Members in substantially the same form as Exhibit C1.

2.20 “Mayer’s Counsel” means collectively Pomerantz LLP and The Fink Law Firm, P.C.

2.21 “Net Settlement Fund” means the Settlement fund, minus any Court-approved attorneys’ fees, costs, Service Awards, and Settlement Administration Costs.

2.22 “Notice Date” means the day on which the Claim Administrator initiates the Online Notice.

2.23 “Notice Plan” means the Parties and Claim Administrator’s plan to provide the Settlement Class with notice of Settlement.

2.24 “Online Notice” means notice to Settlement Class Members in substantially the same form as Exhibit C3.

2.25 “Opt-Out and Objection Deadline” means twenty-one (21) days prior to the initially scheduled hearing date on Final Approval.

2.26 “Parties” means Plaintiffs Kyle Counts, Damany Browne, Dennis Mayer and Defendants, collectively.

2.27 “Party” means any one of Plaintiffs or Defendants.

2.28 “Person(s)” means any natural person.

2.29 “Plaintiffs,” “Representative Plaintiffs” or “Class Representatives” means Kyle Counts, Damany Browne, and Dennis Mayer.

2.30 “Plaintiffs’ Counsel” or “Class Counsel” means collectively Reese LLP and Laukaitis Law LLC.

2.31 “Preliminary Approval” means issuance of an order, granting preliminary approval to this Agreement as within the range of possible Final Approval; approving Class Notice to the Settlement Class Members as described in Section IV below; and setting a hearing to consider Final Approval of the settlement and any objections thereto.

2.32 “Product Labeling” or “Representations” means (a) “fresh”; (b) “all natural”; and (c) “no preservatives”.

2.33 “Wahlburgers Pickles,” “Product” and/or “Products” means Wahlburgers Pickles in the following varieties: (a) Fresh Dill Spears; (2) Fresh Dill Chips; (3) Fresh Dill Chips Hot.

2.34 “Proof of Purchase” means documentation from a third-party retail source that reasonably establishes the fact of the purchase of the Product during the Class Period in the United States as determined by the Claim Administrator, subject to review of the Court.

2.35 “Released Claims” means any and all claims, demands, rights, suits, liabilities, and causes of action of every nature and description whatsoever, known or unknown, matured or unmatured, at law or in equity, existing under federal or state law, that any member of the Settlement Class has or may have against the Released Parties arising out of or related in any way to the transactions, occurrences, events, behaviors, conduct, practices, and policies alleged in, or that could have been alleged in the Actions, including but not limited to those claims asserted in the *Counts Action*, *Browne Action*, *Mayer Action*, and/or the Amended Complaint for Settlement, and in connection with the conduct of the Actions, that have been brought, could have been brought, or are currently pending in any forum in the United States. For sake of clarity Released Claims do not cover claims, if any, for bodily injury arising out of a Settlement Class Members’ use of the Products, nor do they include any competitor claims brought in the *Grillo’s Pickles Action*.

2.36 “Released Parties” means Defendants, and each and all of their respective present or former parent companies, subsidiaries, affiliates, predecessors, successors and assigns, and each and all of their respective present or former members, officers, directors, managers, employees, employers, attorneys, accountants, financial advisors, commercial bank lenders, insurers,

investment bankers, representatives, general and limited partners and partnerships, co-manufacturers, distributors, any trust of which Defendants are a settlor, trustee, or beneficiary, heirs, executors, administrators, successors, affiliates, and assigns of each of them.

2.37 “Releasing Parties” means Plaintiffs Counts, Browne, and Mayer, and all Settlement Class Members who have not validly and timely opted out of the Settlement Class, and all their respective spouses, children, executors, representatives, guardians, wards, heirs, estates, successors, bankruptcy estates, bankruptcy trustees, predecessors, agents, and assigns, and all those who claim through them or who assert or could assert claims on their behalf.

2.38 “Service Award” means any award sought by application to and approval by the Court that is payable to the Class Representatives to compensate them for their efforts in bringing their respective Actions and achieving the benefits of this settlement on behalf of the Settlement Class.

2.39 “Settlement” means the settlement embodied in this Agreement.

2.40 “Settlement Benefit(s)” means the benefits provided to Settlement Class Members as set forth in Sections 3.4 through 3.6 of this Agreement.

2.41 “Settlement Class,” “Settlement Class Members,” “Class” or “Class Members” means all persons in the United States who purchased the Products during the Class Period for personal or household use. Excluded from this definition are the Released Parties, any government entities, persons who made a valid, timely request for exclusion, and the Hon. Lindsay C. Jenkins and John DeGroote, and any members of their immediate families.

2.42 “Settlement Fund” means the aggregate value of Two Million Dollars and No Cents (\$2,000,000.00) that may be distributed through the Cash Fund to Settlement Class Members who submit valid and timely Claim Forms, pursuant to Section 3.42. The Settlement Fund will first be used to pay for Class Notice and administration costs or other costs pursuant to the terms of Section 3.15(a) of this Agreement, and all attorney fees and service awards, prior to any distribution from the payments to Class Members.

2.43 “Settlement Website” means an internet website created and maintained by the Claim Administrator, the URL of which shall be specified in the Notice Plan.

2.44 “Termination Date” means the date that the Agreement is terminated as set forth in Section 8.3.

2.45 “Valid Claim” means a claim submitted in compliance with Section III of this Agreement and determined to be valid by the Claim Administrator, and as further described in that Section.

III. SETTLEMENT BENEFITS AND CLAIMS ADMINISTRATION

3.1 Subject to the rights and limitations set forth in this Agreement, every Settlement Class Member shall have the right to submit a Claim for Settlement Benefits. A Claim shall be a Valid Claim only if submitted on the Claim Form pursuant to, and in compliance with, the procedures set forth in this Section III. Submission of a Claim, regardless of whether it is determined to be a Valid Claim, shall confer no rights or obligations on any Party, any Settlement Class Member, or any other Person, except as expressly provided herein.

3.2 At the election of the Settlement Class Member, Claim Forms may be submitted in paper via regular U.S. mail or online at the Settlement Website. Claim Forms must be postmarked or submitted online no later than the Claim Filing Deadline. Claim Forms received or submitted online after that date will not be Valid Claims. For Claim Forms that are submitted online, the Class Member shall have the opportunity to upload Proof of Purchase image files (e.g., .jpg, .tiff, .pdf); to preview and confirm information entered in the Claim Form prior to submitting the claim; and to print a page immediately after the Claim Form has been submitted showing the information entered, the names of image files uploaded, and the date and time the Claim Form was received.

3.3 On the Claim Form, the Settlement Class Member, or a Person with authority to sign and bind the Settlement Class Member, must provide and certify the truth and accuracy of the following information under the penalty of perjury by signing the Claim Form physically, or by e-signature, to be considered a Valid Claim:

- (a) The Settlement Class Member's name and mailing address;
- (b) The Settlement Class Member's email address (unless the Settlement Class Member submits a claim form by mail, in which case an email address is optional, or the Settlement Class Member attests that he or she does not have an e-mail address);
- (c) That the Settlement Class Member made the purchase or purchases directly at a retail establishment or online;
- (d) That the claimed purchases were not made for purposes of resale, commercial use or for any other purpose;
- (e) That no refund has been received for the claimed purchases; and
- (f) For each claimed purchase that is not supported by Proof of Purchase, the number of Product(s) purchased.

3.4 Subject to the total dollar value cap in Settlement Benefits as provided in Section 3.6, each Settlement Class Member who submits one (1) Valid Claim per household, as determined by the Claim Administrator, shall receive a Settlement Benefit as follows:

- (a) A Settlement Class Member who submits a Valid Claim, with a Proof of Purchase, shall receive a full, cash refund for each Product purchased by the Settlement Class Member, without limit, for which a Proof of Purchase is submitted.
- (b) A Settlement Class Member who submits a Valid Claim, without a Proof of Purchase, shall receive a cash payment of \$2.00 for each Product purchased by the Settlement Class Member, up to a maximum of six (6) Products.
- (c) Claims with Proof of Purchase and without Proof of Purchase shall be cumulative. For example, a Class Member may make a valid claim for 15 products with Proof of Purchase, and 3 products without Proof of Purchase.
- (d) The total cash payment due to the Settlement Class Member shall be provided electronically or in a single check payable to the Settlement Class Member, as elected by the Settlement Class Member.

3.5 Each Household is limited to and may only submit a single Claim Form.

3.6 The total dollar value of Valid Claims submitted will be capped at the amount of Settlement Funds remaining after the costs of notice, service awards, and attorney fees have been subtracted.

3.7 Settlement fund.

(a) Defendants shall establish a Settlement Fund with a cash value of Two Million Dollars and No Cents (\$2,000,000.00).

(b) Initial Deposit. Within ten (10) calendar days after the entry of the Preliminary Approval Order, Defendants shall transfer to to a Settlement fund escrow bank account established by the Settlement Administrator and approved by the Parties Two Million Dollars and No Cents (\$2,000,000.00).

(c) The Settlement Fund at all times will be deemed a “qualified settlement fund” within the meaning of United States Treasury Reg. § 1.468B-1. All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by the Settlement Fund or otherwise, including any taxes or tax detriments that may be imposed upon Defendants with respect to income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for the purpose of federal or state income taxes or otherwise (collectively “Taxes”), will be paid out of the Settlement Fund. Defendants and their counsel, and Plaintiffs and Class Counsel, will have no liability or responsibility for any of the Taxes. The Settlement Fund will indemnify and hold harmless Defendants and their counsel, and Plaintiffs and Class Counsel, for all Taxes (including, without limitation, Taxes payable by reason of any such indemnification).

(d) In no circumstances shall Defendants’ total contribution to the Settlement Fund exceed Two Million Dollars and No Cents (\$2,000,000.00) in the aggregate. Under this Settlement Agreement, the Parties agree that Defendants’ contribution to the Settlement Fund will encompass the full extent of the Released Parties’ monetary payment in full consideration for the Releases and covenants not to sue set forth in Section VII of this Agreement. These payments,

pursuant to the terms and conditions of this Agreement, and any other non-monetary obligations of and considerations due from Defendants set forth in this Agreement, will be in full satisfaction of all Released Claims.

(e) Defendants are not obligated (and will not be obligated) to compute, estimate, or pay any taxes on behalf of Plaintiffs, Class Counsel, any Settlement Class Member, or the Settlement Administrator, or otherwise administer or support the implementation of the Settlement except as set forth herein.

(f) In the event the Effective Date does not occur, all amounts paid into the Settlement Fund, less amounts incurred for claims administration and notice up to the date it is determined that the Effective Date will not occur, shall be returned to Defendants. In no other event shall the amounts paid into the Settlement Fund revert to Defendants.

3.8 Excess or Insufficient Funds in the Settlement Fund.

(a) The Settlement Administrator shall determine each authorized Claimant's payment based upon each Claimant's Claim Form and the total number of valid Claims in accordance with this Section.

(b) Excess Funds. If, after calculating the payment amount for all valid Claims, value remains in the Settlement Fund, such remaining funds shall increase eligible Settlement Class Members' claimed relief for cash on a *pro rata* basis.

(c) Insufficient Funds. If the total amount of the timely, valid, and approved Claims for cash awards exceeds the value of the Settlement Fund, such claims will be reduced on a *pro rata* basis.

(d) *Cy Pres*. It is the Parties' intent to distribute the entirety of the Settlement Fund to Settlement Class Members pursuant to Sections 3.8 (a)-(c). If, after distributing the funds from the Settlement Fund in accordance with Sections 3.8 (a)-(c), including the payment of notice and administration costs, any cash remains in the Settlement Fund from uncashed checks, the remaining funds will be distributed to the Center for Science and the Public Interest ("CSPI") as a

cy pres award. Under no circumstances shall any cash remaining in the Settlement Fund revert or otherwise be returned to Defendants.

3.9 The Claim Administrator shall be solely responsible for, among other things, providing notice as set forth in the Notice Plan, processing Claim Forms, administering the Settlement Website, administering the exclusion process, administering the Settlement Benefit claims process described herein (including receiving and maintaining on behalf of the Court and the Parties any Settlement Class Member correspondence regarding requests for exclusion from the Settlement Class), and such other duties as may be reasonably necessary to administer the terms of this Agreement. The Claim Administrator shall not approve duplicate or multiple claims for the same purchase but shall deem valid only one claimant for each purchase. The Claim Administrator will use adequate and customary procedures and standards to prevent the payment of fraudulent claims and to pay only Valid Claims. The Claim Administrator and Parties shall have the right to audit claims, and the Claim Administrator may request additional information from Claimants. If any fraud is detected or reasonably suspected, the Claim Administrator can require further information from the Settlement Class Member or deny claims, subject to the supervision of the Parties and ultimate oversight by the Court.

3.10 The determination of validity of claims shall occur within a reasonable time. The Claim Administrator shall have discretion to reasonably approve or deny each claim. Plaintiffs' Counsel and Defendants shall have the right to audit claims and to challenge the Claim Administrator's decision by motion to the Court. Plaintiffs' Counsel's or Defendants' choice not to audit the validity of any one or more Claim Forms shall not constitute or be construed as a waiver or relinquishment of any audit or other rights as to any other Claim Forms, individually or as a group, and similarly, shall not be construed as a waiver or relinquishment by such Party as to any of its audit and other rights under this Agreement. No Person shall have any claim against Plaintiffs, Defendants, Plaintiffs' Counsel, Defendants' counsel, or the Claim Administrator based on any determination of a Valid Claim, distributions or awards made in accordance with this

Agreement and the Exhibits hereto. Neither Plaintiffs, nor Defendants, nor their respective counsel, shall have any liability whatsoever for any act or omission of the Claim Administrator.

3.11 Within twenty (20) days after the Claim Filing Deadline, the Claim Administrator shall notify by email all Settlement Class Members whose claims are denied of the reason(s) for the denial, using the email address or physical address (if any) provided by the Settlement Class Member on the Claim Form. If no email address or physical address is provided by the Settlement Class Member on the Claim Form, the Administrator shall not have an obligation to provide the Settlement Class Member any notification of the denial of the claim or the reasons for denial.

3.12 Valid Claims shall be paid electronically or by check to the Settlement Class Member and mailed to the address provided on the Claim Form, as updated in the National Change of Address Database, sixty (60) days after Final Approval. In the event of an appeal from Final Approval that challenges only the award of Attorneys' Fees and Costs and/or the Service Award and does not challenge any other aspect of the settlement and does not raise an issue that could result in the reversal of Final Approval or modification of other terms of the settlement, then all Valid Claims shall still be paid within sixty (60) days after Final Approval, unless otherwise ordered by the Court. If the appeal challenges any other aspect of the Settlement, Valid Claims shall be paid sixty (60) days after the Effective Date.

3.13 All settlement payments shall be subject to a ninety (90) days void period, after which the payments shall no longer be negotiable. If a settlement payment is not negotiated, the Settlement Class Member shall not be entitled to any further payment under this Agreement. If the check is returned as undeliverable, the Claim Administrator shall send an email to the claimant, if one was provided with the claim, to attempt to obtain a better address, and if obtained, shall mail the check to the new address, but shall have no other obligation to skip-trace or obtain an updated address. The return or failure to cash checks shall have no effect on a Settlement Class Member's release of claims, obligations, representations, or warranties as provided herein, which shall remain in full effect.

3.14 No deductions for taxes will be taken from any Settlement Benefit at the time of distribution. Settlement Class Members are responsible for paying all taxes due on such Settlement Benefits. All Settlement Benefit payments shall be deemed to be paid solely in the year in which such payments are actually issued. Counsel and the Parties do not purport to provide legal advice on tax matters to each other or Settlement Class Members. To the extent this Agreement, or any of its exhibits or related materials, is interpreted to contain or constitute advice regarding any U.S. Federal or any state tax issue, such advice is not intended or written to be used, and cannot be used, by any Person for the purpose of avoiding penalties under the Internal Revenue Code or any state's tax laws.

3.15 All fees and expenses incurred by the Claim Administrator in administering claims and performing the other tasks set forth in Section III shall be paid from the Settlement Fund. The Claim Administrator has represented to the Parties that its fees for administering this Settlement are estimated to be approximately \$240,000 and in any event shall not exceed three hundred thousand and 00/100 dollars (\$300,000).

IV. NOTICE

4.1 The Claim Administrator will facilitate the notice process by assisting the Parties, including by providing notice of this settlement to the appropriate federal and state officials in the United States, as provided by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 ("CAFA Notice"). The Claim Administrator shall serve notice of the Agreement that meets the requirements of 28 U.S.C. § 1715, on the appropriate federal and state officials no later than ten (10) days after Plaintiff files the Motion for Preliminary Approval. The Claim Administrator will file a certification with the Court stating the date or dates on which the CAFA Notice was sent. Defendants will provide Class Counsel with any substantive responses received in response to any CAFA Notice.

4.2 Prior to the Notice Date, the Claim Administrator shall establish the Settlement Website, which shall contain the Long Form Notice in a downloadable PDF format; answers to frequently asked questions; a Contact Information page that includes the address for the Claim

Administrator and addresses and telephone numbers for Plaintiffs' Counsel and Defendants' Counsel; the Agreement; the signed order of Preliminary Approval; a downloadable and online version of the Claim Form; a downloadable and online version of the form by which Settlement Class Members may exclude themselves from the Settlement Class; and (when they become available) the motion for final approval and Plaintiffs' application(s) for Attorneys' Fees, Costs and Service Award, and any Order on Final Approval.

4.3 The Claim Administrator will terminate the Settlement Website two-hundred and forty (240) days after either (1) the Effective Date, or (2) the date on which the settlement is terminated or otherwise not approved by a court.

4.4 Notice to the Class shall be provided on websites and/or social media platforms chosen by the Claim Administrator and accessible to desktop and mobile users, so that overall notice of the Settlement is reasonably calculated to apprise the Settlement Class Members of the Settlement. Such notice shall begin no later than thirty (30) days after Preliminary Approval. No later than fifteen (15) days prior to the hearing on Final Approval, the Claim Administrator shall submit a declaration to the Court under penalty of perjury explaining how the media were chosen and attesting to the number of impressions delivered.

4.5 The Claim Administrator shall establish and maintain a toll-free telephone helpline, available 24 hours per day, where callers may obtain information about the Settlement.

4.6 Class Counsel and Defendants shall supervise the Claim Administrator in the performance of the notice functions set forth in this Section IV.

4.7 At least fifteen (15) days prior to the final approval hearing referenced in Section VI of this Agreement, the Claim Administrator shall certify to the Court that it has complied with the notice requirements set forth herein.

V. ATTORNEYS' FEES, EXPENSES AND CLASS REPRESENTATIVE PAYMENT

5.1 Attorneys' Fees, Costs, and Expenses. No later than thirty-five (35) days prior to the Opt-Out/Objection Deadline, Class Counsel shall apply to the Court for an award of its Attorneys' Fees in a total amount not to exceed 37.5% of the Settlement fund or \$750,000.00.

Class Counsel shall also separately apply for the reimbursement of costs and expenses. From any fee award, Class Counsel shall pay to Mayer's Counsel \$75,000. Class Counsel submits to the jurisdiction of this Court for the enforcement of this provision of the Agreement and for enforcement of all other provisions of this Agreement.

5.2 Class Representative Payment. No later than thirty-five (35) days prior to the Opt-Out/Objection Deadline, Plaintiffs shall apply to the Court for a Service Award in an amount not to exceed \$5,000 each (for a total of \$15,000), subject to approval by the Court, as compensation for (a) the work they performed to represent the class, and (b) the general release set forth in Section 7.1.

5.3 Defendants agree not to oppose Plaintiffs' Counsel's application for Attorneys' Fees and Costs or Plaintiffs' application for Service Awards, made in accordance with the provisions of Sections 5.1 and 5.2.

5.4 In no event shall Defendants be obligated to pay to Plaintiffs' Counsel an amount larger than the amounts specified in Section 5.1.

5.5 Any payment of a Service Award as set forth in Section 5.2 shall be, in addition to any amount claimed by Plaintiffs subject to Section III above, the total obligation of Defendants to pay money to Plaintiffs, in connection with the Actions and this settlement.

5.6 In the event the Court approves the Settlement Agreement, but declines to award fees and costs in the amount requested by Plaintiffs' Counsel, the Settlement will nevertheless be binding on the Parties. Plaintiffs' Counsel and Plaintiffs agree that the denial, downward modification, failure to grant the request for Attorneys' Fees and Costs or a Service Award, or the reversal or modification on appeal of any such awards, shall not constitute grounds for modification or termination of the settlement.

5.7 All Attorneys' Fees and Costs, as well as the Services Awards, shall be paid from the Settlement Fund.

5.8 To be clear, Class Counsel's fees shall be based only on the Settlement fund, and shall in no way be based on nor tied to any non-monetary relief or business practice changes.

5.8 The Attorneys' Fees and Costs awarded to Plaintiffs' Counsel shall be paid to Plaintiffs' Counsel within five (5) business days after the Effective Date.

5.9 Within five (5) business days after the Effective Date, any Court-approved Service Award shall be wired by the Claims Administrator to Plaintiffs' Counsel to be paid to Plaintiffs.

VI. CLASS SETTLEMENT PROCEDURES

6.1 Class Certification. The Parties agree that, for settlement purposes only, the *Counts* Action shall be certified as a class action pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(3) with Representative Plaintiffs as the Class Representatives and Plaintiffs' counsel as Class Counsel.

6.2 In the event the Settlement Agreement is terminated for any reason, the certification of the Class shall be vacated, and the Actions shall proceed as if the Class had not been certified, and the parties will be restored to their respective places in the Actions as of the November 21, 2023 order from the Court in the *Counts* Action, the December 21, 2023 order from the Court in the *Browne* Action, and the March 13, 2024 order from the Court in the *Mayer* Action, staying the respective cases. Defendants' conditional consent herein to certification of the Class shall not be used against Defendants by any Party or non-party for any purpose in the Actions or any other litigation, lawsuit, or proceeding of any kind whatsoever.

6.3 Settlement Approval. Contemporaneously with the filing of this Settlement Agreement, Plaintiffs shall move for an order granting Preliminary Approval to this Agreement as within the range of possible Final Approval; approving Class Notice to the Settlement Class Members as described in Section IV above; and setting a hearing to consider Final Approval of the settlement and any objections thereto. Defendants shall have no obligation to make separate filings in support of the motion but may do so at its election after the motion has been filed. Defendants shall appear at the hearing to confirm their agreement with the terms of the settlement as provided herein. The Parties agree to the form and substance of the Proposed Order of Preliminary Approval, attached hereto as Exhibit D.

6.4 Amended Complaint for Settlement. Solely for purposes of implementing this Agreement and effectuating the proposed Settlement, the Parties agree and stipulate that:

(a) Plaintiffs shall seek leave of Court to file the Amended Complaint for Settlement, without material changes to the version attached hereto as Exhibit A, and Defendants shall consent to such amendment pursuant to Fed. R. Civ. P. 15(a)(2). The motion for leave to file the Amended Complaint for Settlement shall be filed concurrently with the motion for preliminary approval of the Settlement so that the Amended Complaint for Settlement may become operative upon the Court's preliminary approval of the Settlement.

(b) If for any reason Final Approval of the Settlement does not occur, the Amended Complaint shall be stricken from the record and the operative complaint in the *Counts* Action shall be the complaint in effect in the *Counts* Action as of November 21, 2023, in the *Browne* Action as of December 21, 2023, and in the *Mayer* Action as of January 12, 2024.

6.5 Final Approval Order and Judgment. No later than thirty-five (35) days prior to the Opt-Out/Objection deadline, Class Counsel shall file their motion for payment of Class Counsel's fees and costs and payment of service awards to the Class Representatives. No later than thirty (30) days prior to the hearing on Final Approval, or otherwise in accordance with the court's schedule for the Final Approval Hearing, Plaintiffs shall file their Motion for Final Approval of the Settlement. Plaintiffs shall move for the entry of an order of Final Approval, granting Final Approval of this Settlement and holding this Agreement to be final, fair, reasonable, adequate, and binding on all Settlement Class Members who have not excluded themselves as provided below, and ordering that the settlement relief be provided as set forth in this Agreement, ordering the releases as set forth in Section VII, below, and entering judgment in this case. Defendants shall have no obligation to make separate filings in support of the motion. Defendants shall appear at the hearing to confirm their agreement with the terms of the Settlement as provided herein.

6.6 Exclusions and Objections. The Notice shall advise prospective Settlement Class Members of their rights to forego the benefits of this Settlement and pursue an individual claim;

to object to this Settlement individually or through counsel; and, if they object, to appear at the final approval hearing.

6.7 If any Settlement Class Member wishes to object to the settlement, the Settlement Class Member must submit a written objection to the Claim Administrator. The Parties may respond to any objection to the Settlement with appropriate arguments and evidence.

6.8 If any Settlement Class Member wishes to be excluded from (in other words, opt out of) this Settlement, the Settlement Class Member may do so by completing the exclusion form at the Settlement Website; downloading and submitting to the Claim Administrator a completed exclusion form; or submitting a valid request to exclude themselves, as described in the Notice, to the Claim Administrator. Requests to exclude themselves must be delivered (not just postmarked) by the Opt-Out and Objection Deadline or they shall not be valid. A Settlement Class Member who elects to exclude themselves from this Settlement shall not be permitted to object to this Settlement or to intervene. Any Settlement Class Member who does not submit a timely request for exclusion shall be bound by all subsequent proceedings, orders, and the Final Approval in the *Counts* Action relating to this Settlement Agreement, even if he or she has pending, or subsequently initiates, litigation, arbitration, or any other proceeding against Defendants' relating to the Released Claims.

6.9 The proposed Preliminary Approval order and Long Form Notice will provide that any Settlement Class Member wishing to object or exclude themselves who fails to properly or timely file or serve any of the requested information and/or documents will be precluded from doing so.

6.10 Immediately upon receipt of any objection, the Claim Administrator shall forward the objection and all supporting documentation to counsel for the Parties. At least fifteen (15) days prior to the hearing on Final Approval, Plaintiffs' Counsel shall file all such objections and supporting documentation with the Court along with any response to the objection made by the Parties.

6.11 At least fifteen (15) days prior to the hearing on Final Approval, the Claim Administrator shall prepare a list of the names of the Persons who, pursuant to the Long Form Notice, have excluded themselves from the Settlement Class in a valid and timely manner, and Plaintiffs' Counsel shall file that list with the Court.

6.12 A Settlement Class Member who objects to the settlement may also submit a Claim Form on or before the Claim Filing Deadline, which shall be processed in the same way as all other Claim Forms. A Settlement Class Member shall not be entitled to an extension to the Claim Filing Deadline merely because the Settlement Class Member has also submitted an objection.

6.13 If a Settlement Class Member submits both an objection and an exclusion request, the exclusion shall take precedence and be considered valid and binding, and the objection shall be deemed to have been sent by mistake and rejected.

6.14 Effect if Settlement Not Approved or Agreement is Terminated. This Agreement was entered into only for purposes of settlement. In the event that Preliminary or Final Approval of this settlement and this Agreement does not occur for any reason, other than a modification of the attorney's fees that Class Counsel will seek under Section 5.1, or if Final Approval is reversed on appeal, other than a reduction of the amount of attorney's fees awarded to Class Counsel, then no term or condition of this Agreement, or any draft thereof, or discussion, negotiation, documentation, or other part or aspect of the Parties' settlement discussions shall have any effect, nor shall any such matter be admissible in evidence for any purpose in the Actions, or in any other proceeding, and the parties will be restored to their respective places in the Actions as of the November 21, 2023 order from the Court in the *Counts* Action, the December 21, 2023 order from the Court in the *Browne* Action, and the March 13, 2024 order from the Court in the *Mayer* Action, staying the respective cases.

VII. RELEASES

7.1 Upon the Effective Date and by operation of the judgment, the Releasing Parties shall have fully, finally, and forever released, relinquished, and discharged against the Released Parties all Released Claims (including, without limitation, any unknown claims), as well as any

claims arising out of, relating to, or in connection with, the defense, settlement or resolution of the Actions or the Released Claims.

7.2 No Admission of Liability. This Agreement reflects, among other things, the compromise and settlement of disputed claims among the Parties hereto, and neither this Agreement nor the releases given herein, nor any consideration therefor, nor any actions taken to carry out this Agreement are intended to be, nor may they be deemed or construed to be, an admission or concession of liability, or the validity of any claim, or defense, or of any point of fact or law (including but not limited to matters respecting class certification) on the part of any Party. Defendants expressly deny the allegations of the Actions and Amended Complaint for Settlement in the Actions including all Labeling Claims. Neither this Agreement, nor the fact of settlement, nor the settlement proceedings, nor settlement negotiations, nor any related document, shall be used as an admission of any fault or omission by the Released Parties, or be offered or received in evidence as an admission, concession, presumption, or inference of any wrongdoing by the Released Parties. The Released Parties may file the Agreement and/or the Final Approval order in any action or proceeding that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

7.3 This Agreement and all negotiations, correspondence and communications leading up to its execution will be deemed to be within the protection of Federal Rule of Evidence 408 and any analogous state or federal rules or principles.

VIII. ADDITIONAL PROVISIONS

8.1 Best Efforts. Subject to the limitations expressed herein, the Parties' counsel shall use their best efforts to cause the Court to give Preliminary Approval to this Agreement and settlement as promptly as practicable, to take all steps contemplated by this Agreement to effectuate the settlement on the stated terms and conditions, to cooperate in addressing any objections, and to obtain Final Approval of this Agreement. The Parties and Counsel shall not

encourage anyone directly or indirectly to opt out or object. If the Court requires changes to the Agreement as a prerequisite to Preliminary Approval or Final Approval, the Parties shall negotiate in good faith regarding such changes.

8.2 Changes of Time Periods. The time periods and/or dates described in this Agreement with respect to the giving of notices and hearings are subject to approval and change by the Court or by the written agreement of Plaintiffs' Counsel and Defendants' Counsel, without notice to Settlement Class Members except that the Claim Administrator shall ensure that such dates are posted on the Settlement Website.

8.3 Termination Rights. Either Party may unilaterally terminate this Settlement Agreement, declare it null and void, and have no further obligations under this Settlement Agreement, if any of the following conditions subsequent occurs:

- a. The Parties fail to obtain and maintain preliminary approval of the proposed settlement;
- b. The Court refuses to certify the Settlement Class;
- c. The Court fails to enter Final Approval consistent with the provisions in Section 6.5, other than with respect to the denial of any request for an award of attorney's fees contemplated under Section 5.1, or reduction in the amount of the award of attorney's fees sought under that section; or
- d. The Settlement Agreement is not upheld on appeal, including review by the United States Supreme Court, other than with respect to the denial of any request for an award of attorney's fees as contemplated under Section 5.1, or reduction in the amount of the award of attorney's fees sought under that section.

8.4 Time for Compliance. All time periods set forth herein shall be computed in calendar days unless otherwise specified. If the date for performance of any act required by or under this Agreement falls on a Saturday, Sunday or court holiday, that act may be performed on the next business day with the same effect as if it had been performed on the day or within the period of time specified by or under this Agreement.

8.5 Governing Law. This Agreement is intended to and shall be governed by the laws of the State of Illinois, without regard to conflicts of law principles that would require the application of the laws of another jurisdiction.

8.6 Entire Agreement. The terms and conditions set forth in this Agreement constitute the complete and exclusive statement of the agreement between the Parties hereto relating to the subject matter of this Agreement, superseding all previous negotiations and understandings, and may not be contradicted by evidence of any prior or contemporaneous agreement. The Parties further intend that this Agreement constitutes the complete and exclusive statement of its terms as between the Parties hereto, and that no extrinsic evidence whatsoever may be introduced in any agency or judicial proceeding, if any, involving this Agreement. Any amendment or modification of the Agreement must be in writing and signed by each of the Parties and their counsel.

8.7 Advice of Counsel. The determination of the terms of, and the drafting of, this Agreement have been by mutual agreement after negotiation, with consideration by and participation of all Parties hereto and their counsel.

8.8 Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the respective heirs, successors and assigns of the Parties hereto.

8.9 No Waiver. The waiver by any Party of any provision or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.

8.10 No Assignment. Plaintiffs and Plaintiffs' Counsel represent and warrant that none of Plaintiffs' Claims referred to in this Litigation or this Settlement Agreement have been assigned, encumbered, or in any manner transferred in whole or in part.

8.11 Execution in Counterparts. This Agreement shall become effective upon its execution by all of the undersigned. The Parties may execute this Agreement in counterparts and/or by fax or electronic mail, and execution of counterparts shall have the same force and effect as if all Parties had signed the same instrument. The Parties and their counsel may execute this agreement by electronic signature.

8.12 Captions. Captions and section numbers herein are inserted merely for the reader's convenience, and in no way define, limit, construe, or otherwise describe the scope or intent of the provisions of this Agreement.

8.13 Extensions of Time. 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 Agreement.

8.14 Enforcement of this Agreement. The Court shall retain jurisdiction to enforce, interpret, and implement this Agreement. All Parties hereto submit to the jurisdiction of the Court for these purposes.

8.15 Severability. In the event that any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable, or void, this Settlement Agreement shall continue in full force and effect without said provision.

8.16 No Primary Drafter of Settlement Agreement. The determination of the terms of, and the drafting of, this Settlement Agreement has been by mutual understanding after negotiation, with consideration by and participation of, the Parties hereto and their counsel.

8.17 Variance in Terms. In the event of any variance between the terms of this Settlement Agreement and any of the Exhibits hereto, the terms of this Settlement Agreement shall control and supersede the Exhibit(s).

8.18 Authorization to Enter Settlement Agreement. The individual signing this Settlement Agreement on behalf of Defendants represent that he/she is fully authorized by Defendants to enter into, and to execute, this Settlement Agreement on behalf of Defendants. Plaintiffs' Counsel represent that they are fully authorized to conduct settlement negotiations with Defendants' counsel on behalf of Plaintiffs, and to enter into, and to execute, this Settlement Agreement on behalf of the Settlement Class, subject to Court approval pursuant to Federal Rule of Civil Procedure 23(e). Plaintiffs enter into and execute this Settlement Agreement on behalf of themselves, and as representatives of and on behalf of the Settlement Class, subject to Court approval pursuant to Federal Rule of Civil Procedure 23(e).

8.19 Notices. All notices to the Parties or counsel required by this Agreement, shall be made in writing and communicated by mail and fax or email to the following addresses:

If to Plaintiffs or Plaintiffs' Counsel:

Charles D. Moore, Esq.
Reese LLP
121 North Washington Ave., 4th Floor
Minneapolis, Minnesota 55401
Telephone: (212) 643-0500
Facsimile: (212) 253-4272
Email: cmoore@reesellp.com

-or-

Kevin Laukaitis, Esq.
Laukaitis Law LLC
954 Ave. Ponce De Leon Ave.,
Suite 205
San Juan, PR 00907
Email: klaukaitis@laukaitislaw.com

If to Defendants or Defendants' Counsel:

Michael G. Latiff
Jacob D. Radecki
McDonald Hopkins LLC
300 N. LaSalle St., Ste. 1400
Chicago, IL 60654
mlatiff@mcdonaldhopkins.com
jradecki@mcdonaldhopkins.com

Attorneys for Defendants Arkk Food Company and Wahlburgers I, LLC

Jennifer L. Del Medico
Terri L. Chase (admitted *pro hac vice*)
Eliot Pedrosa (admitted *pro hac vice*)
JONES DAY
250 Vesey Street
New York, NY 10281-1047
Telephone: (212) 326-3939
jdelmedico@jonesday.com
tlchase@jonesday.com
epedrosa@jonesday.com

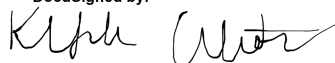
Attorneys for Defendant Patriot Pickle, Inc

8.20 Protective Orders. All orders and designations regarding the confidentiality of documents and information (“Protective Orders”) remain in effect, and all Parties and counsel remain bound to comply with the Protective Orders, including the provision to certify the destruction of “Confidential” documents.

IN WITNESS HEREOF 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 the last date it is executed by all of the undersigned.

APPROVED AND AGREED:

DATED: 4/22/2024

DocuSigned by:

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Kyle Counts
Plaintiff and Class Representative

DATED:

Damany Browne
Plaintiff and Class Representative

DATED:

Dennis Mayer
Plaintiff and Class Representative

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8.20 Protective Orders. All orders and designations regarding the confidentiality of documents and information (“Protective Orders”) remain in effect, and all Parties and counsel remain bound to comply with the Protective Orders, including the provision to certify the destruction of “Confidential” documents.


IN WITNESS HEREOF 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 the last date it is executed by all of the undersigned.

APPROVED AND AGREED:

DATED:

Kyle Counts
Plaintiff and Class Representative

DATED: 4/22/2024

DocuSigned by:

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Damany Browne
Plaintiff and Class Representative

DATED: April 22, 2024

/s/ Dennis Mayer

Dennis Mayer
Plaintiff and Class Representative

(INTENTIONALLY LEFT BLANK)

DATED: 4/22/2024

REESE LLP

DocuSigned by:

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Charles D. Moore
Class Counsel and Plaintiffs' Counsel

DATED: April 26, 2024

LAUKAITIS LAW LLC

/s/ Kevin Laukaitis

Kevin Laukaitis
Class Counsel and Plaintiffs' Counsel

DATED:

POMERANTZ LLP

Gustavo F. Bruckner
Counsel for Plaintiff Mayer

DATED:

THE FINK LAW FIRM, P.C.

Steven M. Fink
Counsel for Plaintiff Mayer

(INTENTIONALLY LEFT BLANK)

DATED:

REESE LLP

Charles D. Moore
Class Counsel and Plaintiffs' Counsel

DATED:

LAUKAITIS LAW LLC

Kevin Laukaitis
Class Counsel and Plaintiffs' Counsel

DATED: April 22, 2024

POMERANTZ LLP



Gustavo F. Bruckner
Counsel for Plaintiff Mayer

DATED:

THE FINK LAW FIRM, P.C.

Steven M. Fink
Counsel for Plaintiff Mayer

(INTENTIONALLY LEFT BLANK)

DATED:

REESE LLP

Charles D. Moore
Class Counsel and Plaintiffs' Counsel

DATED:

LAUKAITIS LAW LLC

Kevin Laukaitis
Class Counsel and Plaintiffs' Counsel

DATED:

POMERANTZ LLP

Gustavo F. Bruckner
Counsel for Plaintiff Mayer

DATED: 4/22/2024

THE FINK LAW FIRM, P.C.

DocuSigned by:

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Steven M. Fink
Counsel for Plaintiff Mayer

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APPROVED AND AGREED (CONTINUED):

DATED: 4/23/2024

ARKK FOOD COMPANY

By:


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Name: _____
Vice President
Its: _____

DATED:

WAHLBURGERS I, LLC

By: _____
Name: _____
Its: _____

DATED:

PATRIOT PICKLE, INC.

By: _____
Name: _____
Its: _____

DATED:

MCDONALD HOPKINS LLC

Jacob D. Radecki (ARDC No. 6321345)
Defendant's Counsel

(INTENTIONALLY LEFT BLANK)

APPROVED AND AGREED (CONTINUED):

DATED:

ARKK FOOD COMPANY

By: _____

Name: _____

Its: _____

DATED: 4/23/2024

WAHLBURGERS I, LLC

Alan McKenna

By: _____

Name: _____

DocuSigned by:
Alan McKenna
8E39D98FDE7F486...

Chief Fin. Ofcr & Chief Legal Ofcr

Its: _____

DATED:

PATRIOT PICKLE, INC.

By: _____

Name: _____

Its: _____

DATED:

MCDONALD HOPKINS LLC

Jacob D. Radecki (ARDC No. 6321345)
Defendant's Counsel

(INTENTIONALLY LEFT BLANK)

APPROVED AND AGREED (CONTINUED):

DATED:

ARKK FOOD COMPANY

By: _____

Name: _____

Its: _____

DATED:

WAHLBURGERS I, LLC

By: _____

Name: _____

Its: _____

DATED:

PATRIOT PICKLE, INC.

By:  _____
Bill McEntee (Apr 24, 2024 18:20 CDT)

Name: Bill mcentee

Its: President

DATED:

MCDONALD HOPKINS LLC

Jacob D. Radecki (ARDC No. 6321345)
Defendant's Counsel

(INTENTIONALLY LEFT BLANK)

APPROVED AND AGREED (CONTINUED):

DATED:

ARKK FOOD COMPANY

By: _____

Name: _____

Its: _____

DATED:

WAHLBURGERS I, LLC

By: _____

Name: _____

Its: _____

DATED:

PATRIOT PICKLE, INC.

By: _____

Name: _____

Its: _____

DATED: April 24, 2024

MCDONALD HOPKINS LLC

s /Jacob D. Radecki

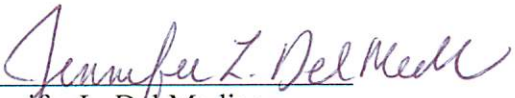
Jacob D. Radecki (ARDC No. 6321345)

Defendant's Counsel

(INTENTIONALLY LEFT BLANK)

DATED: 4/24/24

JONES DAY


Jennifer L. Del Medico
Counsel for Defendant Patriot Pickle