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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

In re: ALEXIA FOODS, INC.
LITIGATION

Case No. 11-cv-06119-PJH

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT, PROVISIONAL
CERTIFICATION OF NATIONWIDE
SETTLEMENT CLASS AND APPROVAL
OF PROCEDURE FOR AND FORM OF
NOTICE; MEMORANDUM OF LAW IN
SUPPORT; DECLARATION OF MARK
PIFKO FILED HEREWITH**

Hearing Information

Date: July 10, 2013

Time: 9:00 a.m.

Courtroom: Courtroom 3, 3rd Floor

Judge: Hon. Phyllis J. Hamilton

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on Wednesday, July 10, 2013 at 9:00 a.m. before the Honorable Phyllis J. Hamilton, United States District Court Judge for the Northern District of California, 1301 Clay Street, Oakland, CA 94612, plaintiffs by and through the undersigned counsel of record, will move, pursuant to Fed. R. Civ. P. 23(e), for entry of the [Proposed] Order Preliminarily Approving Class Action Settlement and Provisionally Certifying the Nationwide Settlement Class; and Approving Procedure For and Form of Notice ("Preliminary Approval Order").

This motion is based on: (1) this Notice of Motion, Motion and Memorandum in support thereof, (2) the Declaration of Mark Pifko in Support of Motion for Preliminary Approval of Class Action Settlement and Provisional Class Certification (the "Pifko Decl.," filed herewith), (3) the Stipulation of Settlement between Plaintiff Class and Defendant, (4) the papers and pleadings on file, and (5) the papers filed by Defendant in support of this motion, and the arguments of counsel at the hearing on the Motion.

Dated: June 4, 2013

Respectfully submitted,

BARON & BUDD, P.C.

By: /s/ Mark Pifko

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MEMORANDUM OF LAW**I. INTRODUCTION**

Plaintiffs Leandro Vicuña (“Vicuña”), Pere Kyle (“Kyle”), and David Eckstein (“Eckstein,” collectively, “Plaintiffs”), and Co-Lead Class Counsel for the Proposed Class, Baron & Budd, P.C. and Faruqi & Faruqi, LLP, (collectively “Class Counsel”), respectfully submit this memorandum in support of Plaintiffs’ Motion for Preliminary Approval of Class Settlement (the “Motion”).

This case is a putative class action suit brought by Plaintiffs on behalf of themselves and all others similarly situated against Defendant ConAgra Foods, Inc. (“ConAgra” or “Defendant”) for allegedly misleading consumers by labeling certain frozen potato products (the “Alexia Products”) “natural” or “all natural,” when in fact, those products contained disodium dihydrogen pyrophosphate (“DDP”). Specifically, Plaintiffs allege that the DDP in the Alexia Products is neither present in potatoes in nature, nor is it a natural. Plaintiffs allege that DDP is a synthetic chemical compound used to prevent discoloration in potatoes. DDP is registered with the Chemical Abstracts Service, under CAS Registry Number 7758-16-9. Plaintiffs allege that Alexia’s “All Natural” claim is central to the company’s marketing.

The Stipulation of Settlement (“Settlement” or “Settlement Agreement”) and its exhibits are attached to the Declaration of Mark Pifko (“Pifko Decl.”), filed herewith. As more specifically set forth in the parties’ Settlement Agreement, and as described in more detail below, the parties to this Action have reached a settlement that provides a real and substantial benefit to consumers. First and foremost, under the terms of the Settlement, ConAgra has contractually agreed to cease using DDP in connection with the sale of the Alexia Products. The removal of DDP from the Alexia Products insures that the products live up to their “All Natural” claims. Additionally, without any admission of liability, ConAgra has agreed to provide meaningful monetary relief to Class Members by disbursing up to \$3,200,000.00, consisting of a Cash Settlement Fund (defined in detail below) in an amount up to two million five hundred thousand dollars (\$2,500,000) as well as a Voucher Settlement Fund (defined in detail below) in the amount of seven hundred thousand dollars (\$700,000).

1 As in any class action, the Settlement is subject initially to preliminary approval and then to
2 final approval by the Court after notice to the class and a hearing. Accordingly, Plaintiffs now
3 request this Court to enter an order in the form of the [Proposed] Order Granting Preliminary
4 Approval of Class Action Settlement and Provisional Class Certification (the “Order”), which is
5 attached to the Settlement Agreement as Exhibit E. That Order will:

- 6 (1) grant preliminary approval of the Settlement;
- 7 (2) conditionally certify the Class on a nationwide basis, appointing Plaintiffs Vicuna,
8 Kyle, and Eckstein as class representatives (“Class Representatives”) for the
9 Settlement Class, and appointing Roland Tellis and Mark Pifko of Baron & Budd,
10 P.C., and Nadeem Faruqi of Faruqi & Faruqi, LLP, as counsel for the Settlement
11 Class pursuant to Fed. R. Civ. P. 23(g);
- 12 (3) establish procedures for giving notice to members of the Settlement Class;
- 13 (4) approve forms of notice to Settlement Class Members;
- 14 (5) mandate procedures and deadlines for exclusion requests class and objections; and
- 15 (6) set a date, time and place for a final approval hearing.

16 Class certification for purposes of settlement is appropriate under Federal Rules of Civil
17 Procedure 23(a) and (b)(3), as fully discussed below.

18 The Settlement is fair and reasonable and falls within the range of possible approval.
19 Indeed, Class Counsel achieved a substantial benefit for the Class. The likelihood that a greater
20 result could be achieved at trial is remote. To address labeling issues going forward, the Settlement
21 achieves *complete* relief in the form of a contractual commitment by ConAgra to reformulate the
22 ingredients in the Alexia Products. As a result, the consumer will no longer be exposed to
23 allegedly false messaging about the “all natural” status of the Alexia Products. And, the Cash
24 Settlement Fund and Voucher Settlement Fund provide a tangible and significant monetary benefit
25 to the Class in lieu of the continued risk of litigation.

26 The Settlement is the product of extended arms-length negotiations commencing with a
27 mediation at JAMS conducted by the Honorable Ronald M. Sabraw (Ret.), and followed with
28 many months of telephonic conferences and e-mail exchanges between experienced attorneys

familiar with the legal and factual issues of this case and all Class Members are treated fairly under the terms of the Settlement. Plaintiffs, by and through their respective counsel, have conducted an extensive investigation into the facts and law relating to this matter. The investigation has included consulting industry personnel, extensive consultation with experts, numerous interviews of witnesses and putative members of the class, as well as legal research as to the sufficiency of the claims. Plaintiffs and their counsel hereby acknowledge that in the course of their investigation they received, examined, and analyzed information, documents, and materials that they deem necessary and appropriate to enable them to enter into the Settlement Agreement on a fully informed basis. It is an outstanding result for parties and Settlement Class Members. The Court should enter the proposed order granting preliminary approval.

II. PROCEDURAL BACKGROUND

On December 5, 2011, Plaintiffs Vicuña and Kyle commenced an action entitled *Vicuña v. Alexia Foods, Inc.* (United States District Court, Northern District of California, Case No. 11-cv-06119) (the “Vicuña Action”), as a proposed class action, asserting claims under California Civil Code § 1750 *et seq.* (Consumers Legal Remedies Act or “CLRA”), under California Business and Professions Code § 17200 *et seq.* (Unfair Competition Law or “UCL”), under California Business and Professions Code § 17500 *et seq.* (False Advertising Law or “FAL”), for Breach of Express Warranty, Negligent Misrepresentation, and for Unjust Enrichment.

On February 29, 2012, Plaintiff Eckstein commenced an action entitled *Eckstein v. Alexia Foods, Inc.* (United States District Court, Eastern District of New York, Case No. 12-cv-00976-CBA-RML) (the “Eckstein Action”), as a proposed class action, asserting claims under the Magnuson-Moss Warranty Act (15 U.S.C. § 2301 *et seq.*), under the New York Deceptive Trade Practice Act, and for Breach of Express Warranty, Negligence, and Unjust Enrichment. On March 26, 2012, pursuant to a joint motion of the parties, the United States District Court for the Eastern District of New York transferred the *Eckstein* Action to the Northern District of California.

On May 9, 2012, the Court ordered that the Eckstein Action be consolidated with the Vicuña Action, and be entitled *In re Alexia Foods, Inc. Litigation*, Case No. 11-cv-06119, and additionally ordered that Faruqi & Faruqi, LLP and Baron & Budd, P.C. be appointed Co-Lead

1 Counsel for plaintiffs and the proposed class. (The resulting consolidated action hereinafter is
2 referred to as the “Action”).

3 On May 9, 2012, Plaintiffs filed a Consolidated Class Action Complaint (the “Consolidated
4 Complaint”), asserting claims set forth in the previously filed complaints, including under the
5 CLRA, the UCL and the FAL, New York Deceptive Trade Practice Act, and for Breach of Express
6 Warranty, Negligent Misrepresentation, and Unjust Enrichment. ConAgra answered the
7 Consolidated Complaint on May 29, 2012, denying liability.

8 ConAgra is the proper party defendant in the Action, and ConAgra has been substituted as
9 Defendant in the Action, and is party to this Settlement Agreement.

10 After the filing of the respective actions, Plaintiffs by and through their respective counsel,
11 conducted a thorough examination and investigation of the facts and law relating to the matters in
12 this Action, including, but not limited to, engaging in discovery, review and analysis of certain
13 documents and data produced by ConAgra, and analysis of an assessment of disodium dihydrogen
14 pyrophosphate and the Alexia Products, which was conducted by a Professor of Food Science and
15 Technology at the direction of Class Counsel. Class Counsel also evaluated the merits of all
16 Parties’ contentions and evaluated this Settlement, as it affects all Parties, including Settlement
17 Class Members. Plaintiffs and Class Counsel, after taking into account the foregoing, along with
18 the risks and costs of further litigation, are satisfied that the terms and conditions of this Settlement
19 are fair, reasonable and adequate, and that this Settlement is in the best interest of the Settlement
20 Class Members. As a result of this extensive investigation and the extensive negotiations, the
21 parties reached the proposed Settlement, and the Settlement Agreement was fully executed by the
22 Parties in May 2013 and by their counsel in June 2013.

23 ConAgra, while denying all allegations of wrongdoing and disclaiming all liability with
24 respect to all claims, considers it desirable to resolve the Action on the terms stated herein in order
25 to avoid further expense, inconvenience and burden and, therefore, has determined that this
26 Settlement on the terms set forth herein is in ConAgra’s best interests.

III. THE STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

Approval of class action settlements involves a two-step process. First, the Court must make a preliminary determination whether the proposed settlement appears to be fair and is “within the range of possible approval.” *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1100 (9th Cir. 2008); *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007); *Alaniz v. Cal. Processors, Inc.* 73 F.R.D. 269, 273 (N.D. Cal. 1976), *cert. denied sub nom. Beaver v. Alaniz*, 439 U.S. 837 (1978). If so, notice can be sent to class members and the Court can schedule a final approval hearing where a more in-depth review of the settlement terms will take place. *See Manual for Complex Litigation* § 30.41 at 236-38 (3d ed.) (hereinafter “*Manual*”). The purpose of a preliminary approval hearing is to ascertain whether there is any reason to notify the putative class members of the proposed settlement and to proceed with a fairness hearing. *See In re Tableware Antitrust Litig.*, 484 F. Supp. 2d at 1079. Notice of a settlement should be disseminated where “the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval.” *Id.* (quoting *Newberg on Class Actions* § 11.25 (1992)). Preliminary approval does not require an answer to the ultimate question of whether the proposed settlement is fair and adequate, for that determination occurs only after notice of the settlement has been given to the members of the settlement class. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996).

Nevertheless, a review of the standards applied in determining whether a settlement should be given *final* approval is helpful to the determination of preliminary approval. One such standard is the strong judicial policy of encouraging compromises, particularly in class actions. *See In re Syncor*, 516 F.3d at 1101 (citing *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615 (9th Cir. 1982, *cert. denied*, 459 U.S. 1217 (1983)); *Manual* §23.11 at 166:

Beginning with the first [pretrial] conference, and from time to time throughout the litigation, the court should encourage the settlement process. The judge should raise the issue of settlement at the first opportunity, inquiring whether any discussions have taken place or might be scheduled. As the case progresses, and the judge and counsel become better informed,

1 the judge should continue to urge the parties to consider and reconsider their
positions on settlement in light of current and anticipated developments.

2 While the district court has discretion regarding the approval of a proposed settlement, it
3 should give “proper deference to the private consensual decision of the parties.” *Hanlon v.*
4 *Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998). In fact, when a settlement is negotiated at
5 arm’s-length by experienced counsel, there is a presumption that it is fair and reasonable. *See In re*
6 *Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Ultimately, however, the court’s role is
7 to ensure that the settlement is fundamentally fair, reasonable and adequate. *See In re Syncor*, 516
8 F.3d at 1100.

9 Beyond the public policy favoring settlements, the principal consideration in evaluating the
10 fairness and adequacy of a proposed settlement is the likelihood of recovery balanced against the
11 benefits of settlement. “[B]asic to this process in every instance, of course, is the need to compare
12 the terms of the compromise with the likely rewards of litigation.” *Protective Comm. for Indep.*
13 *Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968). That said, “the
14 court’s intrusion upon what is otherwise a private consensual agreement negotiated between the
15 parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the
16 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
17 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”
18 *Officers for Justice*, 688 F.2d at 625.

19 Factors to be considered by the court in evaluating a proposed settlement may include,
20 among others, some or all of the following: the experience and views of counsel; the risks,
21 complexity, expense and likely duration of continued litigation; the strengths of plaintiff’s case; the
22 amount offered in settlement; and the stage of proceedings. *See id.*

23 In evaluating preliminarily the adequacy of a proposed settlement, particular attention
24 should be paid to the process of settlement negotiations. Here, the negotiations were conducted by
25 experienced class action counsel. Thus, counsel’s assessment and judgment are entitled to a
26 presumption of reasonableness, and the court is entitled to rely heavily upon their opinion. *Boyd v.*
27 *Bechtel Corp.*, 485 F. Supp. 610, 622-23 (N.D. Cal. 1979).

1 In sum, a compromise must be viewed in the circumstances in which it was achieved. In
2 the final analysis, that decision is committed to the sound discretion of the court.

3 **IV. TERMS OF THE PROPOSED SETTLEMENT**

4 The Parties reached agreement on the terms of the proposed settlement through a vigorous
5 debate of legal and factual theories by counsel and extensive arm's-length negotiations. The
6 proposed Settlement Class consists of all residents of the United States of America who, at any
7 time between December 6, 2007, and the Preliminary Approval Date, purchased any of the Alexia
8 Products (i.e. "Sauté Reds," "Mashed Potatoes Yukon Gold Potatoes & Sea Salt," "Mashed
9 Potatoes Red Potatoes with Garlic & Parmesan," "Waffle Fries," "Harvest Sauté," "Italian Sauté,"
10 "Sauté Sweets," and "Potato Bites"). Excluded from this definition are: ConAgra; all of
11 ConAgra's past and present respective parents, subsidiaries, divisions, affiliates, persons and
12 entities directly or indirectly under its or their control in the past or in the present; ConAgra's
13 respective assignors, predecessors, successors and assigns; and the past or present partners,
14 shareholders, managers, members, directors, officers, employees, agents, attorneys, insurers,
15 accountants and representatives of any and all of the foregoing; and any government entities.
16 Settlement Class Members who exclude themselves from the Settlement, pursuant to the
17 procedures set forth in Section V of the Settlement Agreement, shall no longer thereafter be
18 Settlement Class Members and shall not be bound by the Settlement Agreement and shall not be
19 eligible to make a claim for any benefit under the terms of the Settlement Agreement.

20 **A. Benefit to Settlement Class Members from the Settlement Fund**

21 Under the Settlement, ConAgra has agreed to reformulate the ingredients in the Alexia
22 Products as follows: "For as long as ConAgra chooses to sell the Alexia Products, ConAgra will
23 use citric acid or other naturally-sourced compound in the Alexia Products, rather than disodium
24 dihydrogen pyrophosphate. If the Food and Drug Administration determines in the future that
25 products containing disodium dihydrogen pyrophosphate can be labeled 'natural,' ConAgra
26 reserves the right to use disodium dihydrogen pyrophosphate in the Alexia Products." See
27 Settlement Agreement ¶ 2.11.
28

1 Additionally, the Settlement Agreement provides for monetary relief to the proposed
 2 Settlement Class by, among other things, requiring ConAgra to disburse up to \$3,200,000.00,
 3 consisting of a Cash Settlement Fund in an amount up to two million five hundred thousand dollars
 4 (\$2,500,000) as well as a Voucher Settlement Fund in the amount of seven hundred thousand
 5 dollars (\$700,000). *See* Settlement Agreement ¶¶ 1.25(a)-(b); 2.1(a)-(b); 2.2.

6 As part of the monetary relief, each Settlement Class Member shall be entitled to choose
 7 one of the following Settlement benefits: (1) a cash payment of \$3.50 for each Alexia Product
 8 purchased, up to a maximum of 10 products and \$35.00 in cash; (2) two food vouchers, up to a
 9 maximum savings of \$3.75 per voucher per product, for each Alexia Product purchased, up to a
 10 maximum of 10 products and \$75.00 in food vouchers; or (3) a combination of cash and vouchers
 11 for up to 10 products total. *See* Settlement Agreement ¶ 2.4.

12 For a Claimant making a claim for the purchase of *five or fewer* Alexia Products, Claimant
 13 must include information in the claim form—completed online or in hard copy mailed to the
 14 Settlement Administrator—confirming, under penalty of perjury, as follows: (i) the specific Alexia
 15 Product(s) purchased; and (ii) that the purchase was made within the Class Period. For a Claimant
 16 making a claim for the purchase of *six or more* Alexia Products, Claimant must submit a receipt or
 17 receipts showing each Alexia-Product purchase on which the claim is based, or other similar
 18 documentation that reflects an eligible purchase (e.g. retailer card statement or product packaging).
 19 *See* Settlement Agreement ¶ 2.5.

20 Within 120 days following the completion of distribution of cash and food vouchers to
 21 Claimants, any remaining cash value in the Cash Settlement Fund will be combined with any
 22 remaining food voucher value in the Voucher Settlement Fund (which shall together comprise the
 23 “Combined Residual Fund”). ConAgra shall thereafter distribute to consumers food vouchers for
 24 Alexia-Branded Products, valued at \$3.75 each, with a cumulative retail savings value equal to the
 25 value of the Combined Residual Fund less an amount equal to the Residual Voucher Distribution
 26 Costs. *See* Settlement Agreement ¶ 2.9.

27 The vouchers will be distributed in an amount sufficient to insure that the number of \$3.75
 28 vouchers actually redeemed by Class Members over a two year period will result in a cumulative

1 retail savings equal to the value of the Combined Residual Fund. If, despite the Parties' efforts, a
 2 residual voucher redemption rate of 100% has not been achieved at the end of a two year period
 3 (measured from the initial date on which residual food vouchers are distributed and ending on the
 4 final expiration date of any such residual food voucher so distributed), then ConAgra shall
 5 distribute to Feeding America (National Office, 36 East Wacker Drive, Chicago, IL 60601) free
 6 Alexia-Branded Products, with a value equaling any remaining but undistributed value in the
 7 Combined Residual Fund. Alexia-Branded Products distributed to Feeding America shall, for
 8 purposes of such distribution, be valued based on the latest 13-week average base price per pound
 9 of Alexia frozen potatoes as defined by IRI, Inc. In connection with such charitable distribution,
 10 ConAgra shall request that Feeding America direct as much as possible of the donated food to
 11 programs that comprise and/or are affiliated with Feeding America's Nutrition and Feeding
 12 initiative, which seeks to promote better nutrition and increased access to healthful foods for those
 13 who struggle with hunger. *See* Settlement Agreement ¶ 2.10.

14 **B. Release And Discharge Of Claims**

15 The Settlement Agreement provides for a specific release of claims or causes of action
 16 based on or related to the Alexia Products as described and/or alleged in the Consolidated
 17 Complaint in this Action. The release will forever terminate this litigation involving ConAgra and
 18 the Plaintiffs in this Action, once the Settlement becomes effective as defined in the Settlement
 19 Agreement. *See* Settlement Agreement ¶ 6.1.

20 **C. Payment Of Attorneys' Fees And Expenses**

21 Subject to Court approval, ConAgra will pay Class Counsel Court-approved fees and
 22 expenses up to a maximum of \$800,000. The attorneys' fees were negotiated separately and apart
 23 from the other terms of the agreement. The payment by ConAgra of Class Counsel's fees and
 24 expenses, to the extent approved and ordered by the Court, will be from the Cash Settlement Fund.
 25 *See* Settlement Agreement ¶ 3.1.

26 **D. Compensation For The Class Representatives**

27 In addition to the individual relief discussed above, ConAgra has also agreed to pay
 28 incentive awards to the Class Representatives, Leandro Vicuña, Pere Kyle, and David Eckstein, not

1 to exceed \$5,000 per Representative Plaintiff. The payment by ConAgra of Class Representatives’
 2 incentive awards, to the extent approved and ordered by the Court, will be from the Cash
 3 Settlement Fund. *See* Settlement Agreement ¶ 3.2.

4 **E. Payment Of Notice And Administrative Fees**

5 ConAgra shall pay from the Cash Settlement Fund to the administrator handling the
 6 administration of the Settlement the reasonable costs and expenses of providing notice to the Class
 7 in accordance with the Settlement Agreement.¹ *See* Settlement Agreement ¶ 4.5.

8
 9 **V. THIS COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT,
 10 PROVISIONALLY CERTIFY THE CLASS AND ENTER THE PRELIMINARY
 11 APPROVAL ORDER**

12 **A. The Settlement Should Be Preliminarily Approved Because It
 13 Satisfies Accepted Criteria**

14 It is well established that the law favors the compromise and settlement of class action
 15 suits: “[S]trong judicial policy favors settlements . . .” *Churchill Vill., L.L.C. v. GE*, 361 F.3d 566
 16 (9th Cir. 2004) (original ellipsis omitted). This is particularly true where “class action litigation is
 17 concerned.” *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992).

18 The approval of a proposed settlement of a class action is a matter of discretion for the trial
 19 court. *In re Veritas Software Corp. Sec. Litig.*, No. 05-17393, 2007 U.S. App. LEXIS 17623, at
 20 *25 (9th Cir. July 25, 2007) (“[T]he district court has substantial discretion in approving the details
 21 of a class action settlement”). Courts, however, must give “proper deference to the private
 22 consensual decision of the parties,” since “the court’s intrusion upon what is otherwise a private
 23 consensual agreement negotiated between the parties to a lawsuit must be limited to the extent
 24 necessary to reach a reasoned judgment that the agreement is not the product of fraud or
 25 overreaching by, or collusion between, the negotiating parties, and the settlement, taken as a whole,
 26 is fair, reasonable and adequate to all concerned.” *Hanlon*, 150 F.3d at 1027. *Accord*, Fed. R. Civ.
 27 P. 23(e)(2) (settlement must be “fair, reasonable, and adequate”).

28 ¹ Notice costs also include notification of the Attorney General of the United States and the
 attorney general of each state where Class members reside in accordance with the Class Action
 Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1715(b).

1 To grant preliminary approval of this class action Settlement, the Court need only find that
2 the Settlement falls within the range of possible approval. *See, e.g., Livingston v. Toyota Motor*
3 *Sales USA*, No. C-94-1377-MHP, 1995 U.S. Dist. LEXIS 21757, at *24 (N.D. Cal. June 1, 1995)
4 (“[t]he proposed settlement must fall within the range of possible approval”); *see also* 4 Alba
5 Conte and Herbert Newberg, *Newberg on Class Actions* § 11.25 (4th ed. 2002). The *Manual for*
6 *Complex Litigation*, § 21.632 (4th ed. 2004) characterizes the preliminary approval stage as an
7 “initial evaluation” of the fairness of the proposed settlement made by the court on the basis of
8 written submissions and informal presentation from the settling parties.

9 Here, as discussed above, the Settlement should be preliminarily approved because it
10 clearly falls “within the range of possible approval.” *Alaniz*, 73 F.R.D. at 273. It is non-
11 collusive, fair, and reasonable. The likelihood that a greater result could be achieved at trial is
12 remote. The Settlement achieves *complete* injunctive relief in the form of an reformulation of
13 ingredients in the Alexia Products. Additionally, the Settlement will provide a significant
14 monetary benefit to Settlement Class Members by providing them with \$3.50 in cash for each
15 Alexia Product purchased during the Settlement Class Period or food vouchers entitling the
16 redeeming Settlement Class Member up to a maximum savings of \$7.50 per voucher per Alexia
17 Product purchased.

18 At the same time, the Settlement eliminates the substantial risk and delay of litigation.
19 Although Plaintiffs believe their claims have merit, they recognize that they face significant legal,
20 factual, and procedural obstacles to recovery. Although ConAgra denies any wrongdoing and
21 denies any liability to the Plaintiffs or any members of the Class, and though Plaintiffs and Class
22 Counsel had confidence in the claims, a favorable outcome is not assured. By settling, Plaintiffs
23 and the Settlement Class avoid these risks, as well as the delays and risks of a lengthy trial and
24 appellate process. The Settlement will provide Settlement Class Members with monetary benefits
25 that are immediate, certain and substantial, and avoid the obstacles that might have prevented them
26 from obtaining relief.

27 In light of the relief obtained, the magnitude and risks of the litigation and the legal
28 standards set forth above, the Court should allow notice of the settlement to be sent to the

Settlement Class so that class members can express their views on it. The Court should conclude that the Settlement's terms are "within the range of possible approval." *Id.*

B. The Proposed Settlement Class Should Be Certified

The Settlement Class consists of all residents of the United States of America who, at any time between December 6, 2007, and the Preliminary Approval Date, purchased any of the referenced Alexia Products (i.e. "Sauté Reds," "Mashed Potatoes Yukon Gold Potatoes & Sea Salt," "Mashed Potatoes Red Potatoes with Garlic & Parmesan," "Waffle Fries," "Harvest Sauté," "Italian Sauté," "Sauté Sweets," and "Potato Bites"). This Court has not yet certified this case as a class action. For settlement purposes only, the parties and their counsel request that the Court provisionally certify the Settlement Class.

The Ninth Circuit has recognized that certifying a settlement class to resolve consumer lawsuits is a common occurrence. *Hanlon*, 150 F.3d at 1019. When presented with a proposed settlement, a court must first determine whether the proposed settlement class satisfies the requirements for class certification under Rule 23. In assessing those class certification requirements, a court may properly consider that there will be no trial. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997) ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial."). For the reasons below, this Class meets the requirements of Rule 23(a) and (b).

1. The Settlement Class Satisfies Rule 23(a)

a. Numerosity

Rule 23(a)(1) requires that "the class is so numerous that joinder of all members is impracticable." *See* Fed. R. Civ. P. 23(a)(1). "As a general matter, courts have found that numerosity is satisfied when class size exceeds 40 members, but not satisfied when membership dips below 21." *See Slaven v. BP Am., Inc.*, 190 F.R.D. 649, 654 (C.D. Cal. 2000). Here, the proposed Settlement Class is comprised of thousands of consumers who purchased the Alexia Products – a number that obviously satisfies the numerosity requirement. Accordingly, the proposed settlement Class is so numerous that joinder of their claims is impracticable.

b. Commonality

Rule 23(a)(2) requires the existence of “questions of law or fact common to the class.” *See* Fed. R. Civ. P. 23(a)(2). Commonality is established if plaintiff and class members’ claims “depend on a common contention,” “capable of class-wide resolution . . . meaning that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011). Because the commonality requirement may be satisfied by a single common issue, it is easily met. 1 Herbert Newberg & Alba Conte, *Newberg on Class Actions* § 3.10 at 3-50 (1992).

There are ample issues of both law and fact here that are common to the members of the class. Indeed, all of the Settlement Class Members’ claims arise from a common nucleus of facts and are based on the same legal theories. The Plaintiffs allege that Defendant misled consumers by labeling certain frozen potato products “natural” or “all natural,” when in fact those products contained the ingredient disodium dihydrogen pyrophosphate to retain the color of the potatoes, which ingredient Plaintiffs’ allegations preclude those products from properly being labeled as “natural” or “all natural.” Here, all of the Settlement Class Members purchased the Alexia Products. Commonality is satisfied here, for settlement purposes, by the existence of these common factual issues. *See Arnold v. United Artists Theatre Circuit, Inc.* 158 F.R.D. 439, 448 (N.D. Cal. 1994) (commonality requirement met by “the alleged existence of common discriminatory practices”).

Second, Plaintiffs’ claims are brought under legal theories common to the class as a whole. Alleging a common legal theory is alone enough to establish commonality. *See Morgan v. Laborers Pension Trust Fund*, 81 F.R.D. 669, 676 (N.D. Cal. 1979) (commonality met based on whether operation of the eligibility structure of Trust Fund’s pension plan violated ERISA). Here, all of the legal theories and causes of action asserted by Plaintiffs are common to all Settlement Class Members. Especially since there are virtually no issues of law which affect only individual members of the class, common issues of law clearly predominate over individual ones. Thus, considering the nature of the issues and facts that bind each class member together, commonality is satisfied.

c. Typicality

Rule 23(a)(3) requires that the claims of the representative plaintiff be “typical of the claims . . . of the class.” *See* Fed. R. Civ. P. 23(a)(3). “Under the rule’s permissive standards, representative claims are ‘typical’ if they are reasonably co-extensive with those of absent class members; they need not be substantially identical.” *See Hanlon*, 150 F.3d at 1020. In short, to meet the typicality requirement, the representative plaintiff simply must demonstrate that the members of the settlement class have the same or similar grievances. *Gen. Tel. Co. of the Sw.v. Falcon*, 457 U.S. 147, 161 (1982).

In the instant action, Plaintiffs’ claims are typical of those of the Settlement Class. Like those of the Settlement Class, their claims arise out of the allegations that ConAgra misled consumers by labeling certain frozen potato products “natural” or “all natural,” when in fact those products contained the ingredient disodium dihydrogen pyrophosphate, which Plaintiffs alleged precludes those products from properly being labeled as “natural” or “all natural.” Each Plaintiff purchased an Alexia Product. Plaintiffs have precisely the same claims as the Settlement Class, and must satisfy the same elements of each of their claims, as must other Settlement Class Members. Supported by the same legal theories, Plaintiffs and all Settlement Class Members share claims based on the same alleged course of conduct. Plaintiffs and all Settlement Class Members have been injured in the same manner by this conduct. Therefore, Plaintiffs satisfy the typicality requirement.

d. Adequacy

The final requirement of Rule 23(a) is set forth in subsection (a)(4) which requires that the representative parties “fairly and adequately protect the interests of the class.” *See* Fed. R. Civ. P. 23(a)(4). A plaintiff will adequately represent the class where: (1) plaintiffs and their counsel do not have conflicts of interests with other class members; and (2) where plaintiffs and their counsel prosecute the action vigorously on behalf of the class. *See Staton v. Boeing Co.*, 327 F.3d 938, 958 (9th Cir. 2003). Moreover, adequacy is presumed where a fair settlement was negotiated at arm’s-length. 2 *Newberg on Class Actions*, *supra*, §11.28, at 11-59.

Class Counsel have vigorously and competently pursued the Settlement Class Members' claims. The arm's-length settlement negotiations that took place demonstrate that Class Counsel adequately represent the Settlement Class. Moreover, Plaintiffs and Class Counsel have no conflicts of interests with the Settlement Class. Rather, Plaintiffs, like each absent Settlement Class Member, have a strong interest in proving ConAgra's common course of conduct, establishing its unlawfulness and obtaining redress. In pursuing this litigation, Class Counsel, as well as the Plaintiffs, have advanced and will continue to advance and fully protect the common interests of all members of the Class. Class Counsel have extensive experience and expertise in prosecuting complex class actions. Class Counsel are active practitioners who are highly experienced in class action, product liability, and consumer fraud litigation. *See* Pifko Decl. Exhs. 2 and 3 for Class Counsel's firm resumes. Faruqi & Faruqi, LLP and Baron & Budd, P.C. were appointed Co-Lead Class Counsel for the proposed Class on May 9, 2012. Accordingly, Rule 23(a)(4) is satisfied.

2. The Settlement Class Satisfies Rule 23(b)(3)

In addition to meeting the prerequisites of Rule 23(a), Plaintiffs must also meet one of the three requirements of Rule 23(b) to certify the proposed class. *See Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1186 (9th Cir. 2001). Under Rule 23(b)(3), a class action may be maintained if "the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." *See* Fed. R. Civ. P. 23(b)(3). Certification under Rule 23(b)(3) is appropriate and encouraged "whenever the actual interests of the parties can be served best by settling their differences in a single action." *Hanlon*, 150 F.3d at 1022.

a. Common Questions Of Law And Fact Predominate

The proposed Settlement Class is well-suited for certification under Rule 23(b)(3) because questions common to the Settlement Class Members predominate over questions affecting only individual Settlement Class Members. Predominance exists "[w]hen common questions present a significant aspect of the case and they can be resolved for all members of the class in a single

1 adjudication.” *Hanlon*, 150 F.3d at 1022. As the United States Supreme Court has explained, when
2 addressing the propriety of Settlement Class certification, courts take into account the fact that a
3 trial will be unnecessary and that manageability, therefore, is not an issue. *Amchem*, 521 U.S. at
4 620.

5 In this case, common questions of law and fact exist and predominate over any individual
6 questions, including, *inter alia*: (1) whether ConAgra’s marketing and sale of the Alexia Products
7 was illegal; (2) whether ConAgra engaged in unlawful, unfair, misleading, or deceptive business
8 acts or practices; (3) whether ConAgra engaged in consumer fraud, deceptive trade practices, or
9 other unlawful acts; (4) whether ConAgra’s conduct was willful or reckless; and (5) whether
10 Plaintiffs and Settlement Class Members are entitled to an damages, restitution, injunctive and/or
11 monetary relief, and if so, the amount and nature of such relief. These issues can be resolved for
12 all members of the proposed Settlement Class in a single adjudication. As such, the answers to
13 these common questions that resulted from ConAgra’s alleged conduct are the primary focus and
14 central issues of this class action and thus predominate over any individual issues that may exist.

15 *b. A Class Action Is The Superior Mechanism For*
16 *Adjudicating This Dispute*

17 The class mechanism is superior to other available means for the fair and efficient
18 adjudication of the claims of the Settlement Class Members. Each individual Settlement Class
19 Member may lack the resources to undergo the burden and expense of individual prosecution of the
20 complex and extensive litigation necessary to establish ConAgra’s liability. Individualized
21 litigation increases the delay and expense to all parties and multiplies the burden on the judicial
22 system presented by the complex legal and factual issues of this case. Individualized litigation also
23 presents the potential for inconsistent or contradictory judgments. In contrast, the class action
24 device presents far fewer management difficulties and provides the benefits of single adjudication,
25 economy of scale, and comprehensive supervision by a single court on the issue of ConAgra’s
26 liability. Class treatment of the liability issues will ensure that all claims and claimants are before
27 this Court for consistent adjudication of the liability issues.
28

Moreover, since this action will now settle, the Court need not consider issues of manageability relating to trial. *See Amchem*, 521 U.S. at 620 (“Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, *see* Fed. R. Civ. P. 23 (b)(3)(D), for the proposal is that there be no trial.”). Accordingly, common questions predominate and a class action is the superior method of adjudicating this controversy.

C. The Proposed Notice Program Constitutes Adequate Notice And Should Be Approved

Once preliminary approval of a class action settlement is granted, notice must be directed to class members. For class actions certified under Rule 23(b)(3), including settlement classes like this one, “the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). In addition, Rule 23(e)(1) applies to any class settlement and requires the Court to “direct notice in a reasonable manner to all class members who would be bound by a proposal.” Fed. R. Civ. P. 23(e)(1)

When a court is presented with a class, the class certification notice and notice of settlement may be combined in the same notice. *Manual* §21.633 at 321-22 (“For economy, the notice under Rule 23(c)(2) and the Rule 23(e) notice are sometimes combined.”). This notice allows the settlement class members to decide whether to opt out of or participate in the class and/or to object to the settlement and argue against final approval by the court. *Id.*

The proposed forms of notice, attached as Exhibits B and C to the Settlement Agreement, satisfy the above criteria. The notices accurately inform Settlement Class Members of the salient terms of the Settlement Agreement, the Settlement Class to be certified, the final approval hearing and the rights of all parties, including the rights to file objections and to opt out of the class.

The Parties in this case have created and agreed to perform the following forms of notice, which will satisfy both the substantive and manner of distribution requirements of Rule 23 and Due Process. The language of the proposed notices and accompanying claim form is plain and easy to understand, providing neutral and objective information about the nature of the Settlement.

Individual Settlement Class Members cannot be identified through reasonable effort due to the nature of the consumer product at issue. Therefore, Class Notice shall be provided as set forth in the Media Plan, attached to the Settlement Agreement as Exhibit D. The Settlement Administrator will cause the summary notice to be published once in People Magazine, once in USA Weekend, and once in Parade. Additionally, notice of the Settlement will be provided on the Facebook.com and 24/7 Network websites. This plan will deliver an estimated 75.03% reach against “Frozen Vegetable Users.”

This proposed method of giving notice (similar if not identical to the method used in countless other class actions) is appropriate because it provides a fair opportunity for members of the Settlement Class to obtain full disclosure of the conditions of the Settlement Agreement and to make an informed decision regarding the proposed Settlement. Thus, the notices and the procedures embodied in the notices amply satisfy the requirements of due process. The actual costs and expenses of the Settlement Administrator, which have been estimated by the Settlement Administrator to be \$715,000 and will not exceed \$800,000, will be paid from the Cash Settlement Fund in accordance with the Settlement Agreement.

VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary approval to the Settlement Agreement, provisionally certify the Settlement Class, approve the proposed notice plan and enter the Preliminary Approval Order in the form submitted herewith.

Dated: June 4, 2013

Respectfully Submitted,

BARON & BUDD, P.C.

By: /s/ Mark Pifko
Mark Pifko

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*Plaintiffs' Co-Lead Interim Class Counsel and Co-
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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

In re: ALEXIA FOODS, INC.
LITIGATION

Case No. 11-cv-06119-PJH

**DECLARATION OF MARK PIFKO IN
SUPPORT OF PLAINTIFFS' NOTICE OF
MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT, PROVISIONAL
CERTIFICATION OF NATIONWIDE
SETTLEMENT CLASS, AND APPROVAL
OF PROCEDURE FOR AND FORM OF
NOTICE**

Hearing Information

Date: July 10, 2013
Time: 9:00 a.m.
Courtroom: Courtroom 3, 3rd Floor
Judge: Hon. Phyllis J. Hamilton

1 I, Mark Pifko, hereby declare as follows:

2 1. I am an attorney with the law firm of Baron & Budd, P.C., Co-Lead Interim Class
3 Counsel, Co-Counsel for Class Representatives, and proposed Class Counsel in this action. I make
4 this declaration in support of Plaintiffs' Motion for Preliminary Approval of Class Action
5 Settlement. I have personal knowledge of the facts set forth in this Declaration and, if called as a
6 witness, could and would competently testify thereto under oath.

7 2. The proposed Settlement of claims against Defendant ConAgra Foods, Inc.
8 ("ConAgra") provides that ConAgra disburse up to \$3,200,000.00, consisting of a Cash Settlement
9 Fund in an amount up to two million five hundred thousand dollars (\$2,500,000) as well as a
10 Voucher Settlement Fund in the amount of seven hundred thousand dollars (\$700,000).
11 Additionally, ConAgra has agreed as follows: "For as long as ConAgra chooses to sell the Alexia
12 Products, ConAgra will use citric acid or other naturally-sourced compound in the Alexia Products,
13 rather than disodium dihydrogen pyrophosphate. If the Food and Drug Administration determines
14 in the future that products containing disodium dihydrogen pyrophosphate can be labeled "natural,"
15 ConAgra reserves the right to use disodium dihydrogen pyrophosphate in the Alexia Products."

16 3. Attached hereto as **Exhibit 1** is a true and correct copy of the parties' Stipulation of
17 Settlement and annexed exhibits.

18 4. On December 5, 2011, Plaintiffs Vicuña and Kyle commenced an action entitled
19 *Vicuña v. Alexia Foods, Inc.* (United States District Court, Northern District of California, Case
20 No. 11-cv-06119) (the "Vicuña Action"), as a proposed class action, asserting claims under
21 California Civil Code § 1750 *et seq.* (Consumers Legal Remedies Act or "CLRA"), under
22 California Business and Professions Code § 17200 *et seq.* (Unfair Competition Law or "UCL"),
23 under California Business and Professions Code § 17500 *et seq.* (False Advertising Law or
24 "FAL"), for Breach of Express Warranty, Negligent Misrepresentation, and for Unjust Enrichment.

25 5. On February 29, 2012, Plaintiff Eckstein commenced an action entitled *Eckstein v.*
26 *Alexia Foods, Inc.* (United States District Court, Eastern District of New York, Case No. 12-cv-
27 00976-CBA-RML) (the "Eckstein Action"), as a proposed class action, asserting claims under the

1 Magnuson-Moss Warranty Act (15 U.S.C. § 2301 *et seq.*), under the New York Deceptive Trade
 2 Practice Act, and for Breach of Express Warranty, Negligence, and Unjust Enrichment. On March
 3 26, 2012, pursuant to a joint motion of the parties, the United States District Court for the Eastern
 4 District of New York transferred the *Eckstein* Action to the Northern District of California.

5 6. On May 9, 2012, the Court ordered that the Eckstein Action be consolidated with
 6 the Vicuña Action, and be entitled *In re Alexia Foods, Inc. Litigation*, Case No. 11-cv-06119. (The
 7 resulting consolidated action hereinafter is referred to as the “Action”). On May 9, 2012, Plaintiffs
 8 filed a Consolidated Class Action Complaint (the “Consolidated Complaint”), asserting claims set
 9 forth in the previously filed complaints, including under the CLRA, the UCL and the FAL, New
 10 York Deceptive Trade Practice Act, and for Breach of Express Warranty, Negligent
 11 Misrepresentation, and Unjust Enrichment. ConAgra answered the Consolidated Complaint on
 12 May 29, 2012, denying liability.

13 7. ConAgra is the proper party defendant in the Action, and ConAgra has been
 14 substituted as Defendant in the Action, and is party to this Settlement Agreement.

15 8. Plaintiffs in the Action allege, *inter alia*, that Defendant misled consumers by
 16 labeling certain frozen potato products “natural” or “all natural,” when in fact those products
 17 contained the ingredient disodium dihydrogen pyrophosphate to retain the color of the potatoes,
 18 which ingredient Representative Plaintiffs allege precludes those products from properly being
 19 labeled as “natural” or “all natural.”

20 9. Plaintiffs, by and through their respective counsel, conducted a thorough
 21 examination and investigation of the facts and law relating to the matters in this Action, including,
 22 but not limited to, engaging in discovery, review and analysis of certain documents and data
 23 produced by ConAgra, and analysis of an assessment of disodium dihydrogen pyrophosphate and
 24 the Alexia Products, which was conducted by a Professor of Food Science and Technology at the
 25 direction of Class Counsel. Plaintiffs and their counsel in the course of their investigation
 26 received, examined, and analyzed information, documents, and materials that they deem necessary
 27 and appropriate to enable them to enter into the Stipulation of Settlement on a fully informed basis.

1 10. As a result of this extensive investigation and the extensive negotiations, the parties
2 reached the proposed Settlement and the Stipulation of Settlement. The material terms of the
3 proposed Settlement Agreement were only realized after many months of negotiations,
4 commencing with a mediation at JAMS conducted by the Honorable Ronald M. Sabraw (Ret.), and
5 continuing with numerous telephonic conferences and e-mail exchanges between counsel for the
6 parties.

7 11. After reaching agreement on the substantive terms of the settlement for the
8 Settlement Class Members' relief, the parties then reached agreement on appropriate counsel fees.

9 12. The Stipulation of Settlement was fully executed in May 2013.

10 13. The parties propose that notice be effectuated as set forth in the Media Plan, which
11 includes publication in People Magazine, USA Weekend, and Parade. Additionally, notice of the
12 Settlement will be provided on the Facebook.com and 24/7 Network websites. The actual costs
13 and expenses of the Settlement Administrator, which have been estimated by the Settlement
14 Administrator to be \$715,000 and will not exceed \$800,000, will be paid from the Cash Settlement
15 Fund in accordance with the Settlement Agreement.

16 14. Baron & Budd, P.C. and Faruqi & Faruqi, LLP regularly engage in major complex
17 litigation, and have extensive experience in consumer class action lawsuits that are similar in size,
18 scope, and complexity to the present case. Prior to and throughout the duration of this litigation,
19 Baron & Budd, P.C. and Faruqi & Faruqi, LLP have diligently investigated and prosecuted this
20 matter, dedicating substantial resources to the investigation of the claims at issue in this action, and
21 have successfully negotiated the settlement of this matter to the benefit of the proposed class.
22 Although Plaintiffs are confident in the strength of their claims and believe that they would
23 ultimately prevail at trial, they also recognize that litigation is inherently risky.

24 15. Attached hereto as **Exhibit 2** is a true and correct copy of the firm resume of Baron
25 & Budd, P.C.

26 16. Attached hereto as **Exhibit 3** is a true and correct copy of the firm resume of Faruqi
27 & Faruqi, LLP.

1 17. Based on my experience, and taking into consideration the risks of continued
2 litigation, including appeals, versus the certain and substantial relief afforded by the Settlement, it
3 is my opinion that the Settlement is fair, adequate, and reasonable, in the best interest of the Class,
4 and merits preliminary approval by this Court

5
6 I declare under penalty of perjury under the laws of the United States of America that the foregoing
7 is true and correct. Executed on June 4, 2013 at Encino, California.

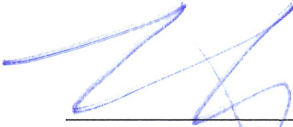
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11 _____
12 Mark Pifko
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Exhibit 1

1 Robert B. Hawk (Bar No. 118054)
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11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13 **OAKLAND DIVISION**

14
15 In re: ALEXIA FOODS, INC.
16 LITIGATION

Case No. 11-cv-06119-PJH

STIPULATION OF SETTLEMENT

The Honorable Phyllis J. Hamilton

1 This Stipulation of Settlement (the "Settlement Agreement") is made by and among
 2 Representative Plaintiffs (defined below), on behalf of themselves and the Settlement Class
 3 (defined below), on the one hand, and ConAgra Foods, Inc. ("ConAgra" or "Defendant"), on the
 4 other hand, subject to and conditioned upon Court approval of the terms and conditions hereof.

5 RECITALS

6 A. On December 5, 2011, Plaintiffs Leandro Vicuña and Pere Kyle commenced an
 7 action entitled *Vicuna, et al. v. Alexia Foods, Inc.* (United States District Court, Northern District
 8 of California, Case No. 11-cv-06119) (the "*Vicuna* Action"), as a proposed class action, asserting
 9 claims under California Civil Code § 1750 *et seq.* (Consumers Legal Remedies Act or "CLRA"),
 10 under California Business and Professions Code § 17200 *et seq.* (Unfair Competition Law or
 11 "UCL"), under California Business and Professions Code § 17500 *et seq.* (False Advertising Law
 12 or "FAL"), for Breach of Express Warranty, Negligent Misrepresentation, and for Unjust
 13 Enrichment.

14 B. On February 29, 2012, Plaintiff David Eckstein commenced an action entitled
 15 *Eckstein v. Alexia Foods, Inc.* (United States District Court, Eastern District of New York, Case
 16 No. 12-cv-00976-CBA-RML) (the "*Eckstein* Action"), as a proposed class action, asserting
 17 claims under the Magnuson-Moss Warranty Act (15 U.S.C. § 2301 *et seq.*), under the New York
 18 Deceptive Trade Practice Act, and for Breach of Express Warranty, Negligence, and Unjust
 19 Enrichment. On March 26, 2012, pursuant to a joint motion of the parties, the United States
 20 District Court for the Eastern District of New York transferred the *Eckstein* Action to the Court
 21 (defined below).

22 C. On May 9, 2012, the Court ordered that the *Eckstein* Action be consolidated with
 23 the *Vicuna* Action, and be entitled *In re Alexia Foods, Inc. Litigation*, Case No. 11-cv-06119.
 24 (The resulting consolidated action hereinafter is referred to as the "Action"). On May 9, 2012,
 25 Representative Plaintiffs filed a Consolidated Class Action Complaint (the "Consolidated
 26 Complaint"), asserting claims set forth in the previously filed complaints, including under the
 27 CLRA, the UCL and the FAL, New York Deceptive Trade Practice Act, and for Breach of

1 Express Warranty, Negligent Misrepresentation, and Unjust Enrichment. ConAgra answered the
2 Consolidated Complaint on May 29, 2012, denying liability.

3 D. ConAgra is the proper party defendant in the Action, and ConAgra has been
4 substituted as Defendant in the Action, and is party to this Settlement Agreement.

5 E. Representative Plaintiffs in the Action allege, *inter alia*, that Defendant misled
6 consumers by labeling certain frozen potato products “natural” or “all natural,” when in fact those
7 products contained the ingredient disodium dihydrogen pyrophosphate to retain the color of the
8 potatoes, which ingredient Representative Plaintiffs allege precludes those products from properly
9 being labeled as “natural” or “all natural.”

10 F. ConAgra denies the material allegations made in the Action, and denies any and
11 all liability with respect to all facts and claims alleged therein, and further denies that any of the
12 Settlement Class Members or anyone has suffered any harm or damage or is entitled to any
13 monetary or equitable relief whatsoever in connection with the Action.

14 G. Plaintiffs’ Counsel (defined below) states that they conducted a thorough
15 examination and investigation of the facts and law relating to the matters in this Action,
16 including, but not limited to, engaging in discovery, review and analysis of ConAgra’s documents
17 and data, and analysis of an assessment of disodium dihydrogen pyrophosphate and the Alexia
18 Products (defined below), which was conducted by a Professor of Food Science and Technology
19 at the direction of Plaintiffs’ Counsel. Plaintiffs’ Counsel also evaluated the merits of all Parties’
20 (defined below) contentions and evaluated this Settlement, as it affects all Parties, including
21 Settlement Class Members. Representative Plaintiffs and Plaintiffs’ Counsel, after taking into
22 account the foregoing, along with the risks and costs of further litigation, are satisfied that the
23 terms and conditions of this Settlement are fair, reasonable and adequate, and that this Settlement
24 is in the best interest of the Settlement Class Members.

25 H. ConAgra, while continuing to deny all allegations of wrongdoing and disclaiming
26 all liability with respect to all claims, considers it desirable to resolve the Action on the terms
27 stated herein in order to avoid further expense, inconvenience and burden and, therefore, has
28 determined that this Settlement on the terms set forth herein is in ConAgra’s best interests.

1 I. ConAgra and Representative Plaintiffs, on behalf of themselves and the other
2 members of the Settlement Class, negotiated and reached this Stipulation after extensive review
3 of the underlying facts, extensive consultation with experts and industry personnel, exchanges of
4 information, and months of arm's length, good faith negotiations, including a day-long mediation
5 session conducted with the assistance of The Honorable Ronald Sabraw (Ret.) of JAMS in San
6 Francisco, California. As a result, this Settlement Agreement has been reached, subject to the
7 Court approval process set forth herein.

8 J. This Stipulation provides for relief to the proposed Settlement Class by, among
9 other things, requiring ConAgra to disburse up to three million two hundred thousand dollars
10 (\$3,200,000), consisting of a Cash Settlement Fund (defined below) in an amount up to two
11 million five hundred thousand dollars (\$2,500,000) as well as a Voucher Settlement Fund
12 (defined below) in the amount of seven hundred thousand dollars (\$700,000). Additionally,
13 ConAgra has agreed as follows: "For as long as ConAgra chooses to sell the Alexia Products,
14 ConAgra will use citric acid or other naturally-sourced compound in the Alexia Products, rather
15 than disodium dihydrogen pyrophosphate. If the Food and Drug Administration determines in the
16 future that products containing disodium dihydrogen pyrophosphate can be labeled 'natural,'
17 ConAgra reserves the right to use disodium dihydrogen pyrophosphate in the Alexia Products."

18 K. This Settlement Agreement reflects a compromise between the Parties and shall in
19 no event be construed as or be deemed an admission or concession by any Party of the truth of
20 any allegation or the validity of any purported claim or defense asserted in any of the pleadings in
21 the Action, or of any fault on the part of ConAgra, and all such allegations expressly are denied.

22 In consideration of the covenants and agreements set forth herein, and of the releases and
23 dismissals of claims as described below, and other good and valuable consideration, the receipt
24 and sufficiency of which hereby is acknowledged by each of the Parties, each of the
25 Representative Plaintiffs, on behalf of themselves and the Settlement Class Members, and
26 ConAgra agrees to the Settlement described herein, subject to Court approval, under the
27 following terms and conditions:
28

I. DEFINITIONS

As used in this Stipulation and the annexed exhibits (which are an integral part of this Stipulation and are incorporated in their entirety by reference), the following terms and phrases have the following meanings, unless a section or subsection of this Stipulation or its exhibits provides otherwise. Unless otherwise indicated, defined terms include the plural as well as the singular.

1.1 “Alexia Products” means the Alexia-branded frozen potato products at issue in the Action: “Sauté Reds,” “Mashed Potatoes Yukon Gold Potatoes & Sea Salt,” “Mashed Potatoes Red Potatoes with Garlic & Parmesan,” “Waffle Fries,” “Harvest Sauté,” “Italian Sauté,” “Sauté Sweets,” and “Potato Bites.”

1.2 “Alexia-Branded Product” shall mean any food product carrying the Alexia brand.

1.3 “Cash Settlement Fund” has the meaning set forth at paragraph 1.25(a) below.

1.4 “Cash Claim” has the meaning set forth at paragraph 2.4(a) below.

1.5 “Claim Form” means the document to be submitted by Settlement Class Members seeking cash or food vouchers pursuant to this Settlement Agreement. The Claim Form will be available online at the Settlement Website and will be substantially the same as Exhibit A.

1.6 “Claimant” means a Settlement Class Member who submits a claim for cash payment or food vouchers as described in Section II of this Settlement Agreement.

1.7 “Class Notice” means the Court-approved “Notice of Class Action Settlement” to be published and communicated per the attached Media Plan, Exhibit B.

1.8 “Combined Residual Fund” has the meaning set forth at paragraph 2.9 below.

1.9 “Court” means the United States District Court, Northern District of California.

1.10 “Defendant’s Counsel” means the law firm Hogan Lovells US LLP.

1.11 “Fee and Expense Award” means the amount awarded to Plaintiffs’ Counsel by the Court for attorneys’ fees, costs and expenses, up to eight hundred thousand dollars (\$800,000).

1.12 “Final Settlement Approval Date” means the date which is sixty-three (63) days after service of notice of entry of the Settlement Order and Judgment on the Parties and all

1 objectors to the Settlement Agreement, if any, without any appeal being taken, or if an appeal or
2 request for review has been taken, the date on which the Settlement Order and Judgment has been
3 affirmed by the court of last resort to which an appeal or request for review has been taken and
4 such affirmance is no longer subject to further appeal or review, or the date of denial of review
5 after exhaustion of all appellate remedies.

6 1.13 "Incentive Awards" means any award sought by application to and approved by
7 the Court that is payable to the Representative Plaintiffs from the Cash Settlement Fund.

8 1.14 "Media Plan" means the Settlement Administrator's plan to disseminate Class
9 Notice to Settlement Class Members, as described at Exhibit D.

10 1.15 "Notice and Other Administrative Costs" means all costs and expenses actually
11 incurred by the Settlement Administrator in the publication of Class Notice and the notification
12 duties imposed by 28 U.S.C. § 1715, establishment of the Settlement Website and the processing,
13 handling, reviewing, and paying of all cash and food voucher claims made by Claimants, which
14 costs and expenses have been estimated by the Settlement Administrator to be \$715,000 and will
15 not exceed the amount of \$800,000.

16 1.16 "Parties" means Leandro Vicuña, Pere Kyle, David Eckstein, and ConAgra.

17 1.17 "Plaintiffs' Counsel" means the law firms Baron & Budd, P.C. and Faruqi &
18 Faruqi, LLP.

19 1.18 "Preliminary Approval" means that the Court has entered an order substantially in
20 the form as Exhibit E, preliminarily approving the terms and conditions of this Settlement
21 Agreement, including the manner of providing notice to Settlement Class Members.

22 1.19 "Preliminary Approval Date" means the date on which the Court enters an order
23 granting Preliminary Approval.

24 1.20 "Released Persons" means ConAgra; all of ConAgra's past and present respective
25 parents, subsidiaries, divisions, affiliates, persons and entities directly or indirectly under its or
26 their control in the past or in the present; ConAgra's respective assignors, predecessors,
27 successors and assigns; and the past or present partners, shareholders, managers, members,
28

1 directors, officers, employees, agents, attorneys, insurers, accountants and representatives of any
2 and all of the foregoing.

3 1.21 "Representative Plaintiffs" means Plaintiffs Leandro Vicuña, Pere Kyle, and David
4 Eckstein.

5 1.22 "Settlement Administrator" means Rust Consulting and its successors and assigns.

6 1.23 "Settlement Class Members" or "Settlement Class" means:

7 All residents of the United States of America who, at any time between December
8 6, 2007, and [Preliminary Approval Date], purchased any of the Alexia Products
9 (i.e. "Sauté Reds," "Mashed Potatoes Yukon Gold Potatoes & Sea Salt," "Mashed
10 Potatoes Red Potatoes with Garlic & Parmesan," "Waffle Fries," "Harvest Sauté,"
11 "Italian Sauté," "Sauté Sweets," and "Potato Bites"). Excluded from this
12 definition are the Released Persons and any government entities. Settlement Class
Members who exclude themselves from the Settlement, pursuant to the procedures
set forth in Section V below, shall no longer thereafter be Settlement Class
Members and shall not be bound by this Settlement Agreement and shall not be
eligible to make a claim for any benefit under the terms of this Settlement
Agreement.

13 1.24 "Settlement Class Period" means the period of time from and including December
14 6, 2007 up to and including the Preliminary Approval Date.

15 1.25 "Settlement Fund" means the total cash and food voucher commitment of
16 ConAgra for purposes of this Settlement, as described in Section II of this Settlement Agreement,
17 which is comprised of two distinct parts – the "Cash Settlement Fund" and the "Voucher
18 Settlement Fund," as defined below:

19 a. The "Cash Settlement Fund" means a commitment by ConAgra of up to
20 two million five hundred thousand dollars (\$2,500,000), subject to reduction and disposition
21 pursuant to paragraphs 2.4, 2.9, 3.1 and 3.2, below.

22 b. The "Voucher Settlement Fund" means a commitment by ConAgra of up to
23 seven hundred thousand dollars (\$700,000) in food voucher value, subject to reduction and
24 disposition pursuant to paragraphs 2.4 and 2.9 below.

25 1.26 "Settlement Order and Judgment" means an order and judgment issued and entered
26 by the Court approving this Settlement Agreement as binding upon the Parties and the Settlement
27 Class Members and dismissing the Action with prejudice, and setting the amount for an award of
28 attorneys' fees, costs and expenses, not to exceed eight hundred thousand dollars (\$800,000), to

1 Plaintiffs' Counsel by the Court. The Settlement Order and Judgment shall constitute a judgment
 2 within the meaning and for purposes of Rule 54 of the Federal Rules of Civil Procedure. The
 3 Parties jointly shall request the Court to enter the proposed Settlement Order and Judgment
 4 substantially in the form attached hereto and made a part hereof as Exhibit F.

5 1.27 "Settlement Website" means a website operated and maintained by the Settlement
 6 Administrator solely for purposes of making available to the Settlement Class Members the
 7 documents, information and online claims submission process referenced in Section IV hereof.

8 1.28 "Stipulation," "Agreement," or "Settlement Agreement" shall mean this
 9 Stipulation of Settlement, including the exhibits referenced herein.

10 1.29 "Short Form Notice" means the Court-approved form of notice for publication to
 11 Settlement Class Members, pursuant to the Media Plan, in substantially the same form as Exhibit
 12 C.

13 1.30 "Voucher Claim" has the meaning set forth at paragraph 2.4(b) below.

14 1.31 "Residual Voucher Distribution Costs" has the meaning set forth at paragraph
 15 2.9(b) below.

16 1.32 "Voucher Settlement Fund" has the meaning set forth at paragraph 1.25(b), above.

17 II. SETTLEMENT CONSIDERATION

18 2.1 Benefit to Settlement Class Members from the Settlement Fund. The Settlement
 19 Fund will be used to provide benefits to or on behalf of the Settlement Class as follows:

20 a. ConAgra will pay up to \$2,500,000 in cash from the Cash Settlement Fund
 21 for payment of the following: (i) valid claims for cash benefits submitted by Settlement Class
 22 Members pursuant to paragraph 2.4 below; (ii) the Notice and Other Administrative Costs actually
 23 incurred by the Settlement Administrator, which have been estimated to be \$715,000 and will not
 24 exceed \$800,000, as described in paragraph 4.5 below; (iii) the Fee and Expense Award (not to
 25 exceed \$800,000), as described in paragraph 3.1 below, and (iv) Incentive Awards to
 26 Representative Plaintiffs, not to exceed \$15,000 in total, as described in paragraph 3.2 below.

27 b. ConAgra will provide \$700,000 in food voucher value from the Voucher
 28 Settlement Fund to satisfy the claims of those Settlement Class Members who claim vouchers for

1 Alexia-Branded Products pursuant to paragraph 2.4(b), below.

2 2.2 Total Financial Commitment. ConAgra's total financial commitment under this
3 Settlement Agreement, including but not limited to paragraphs 2.1(a) and 2.1(b), shall not exceed a
4 total of \$3,200,000, consisting of a maximum cash contribution of \$2,500,000 and a maximum in
5 food voucher value of \$700,000.

6 2.3 Schedule of Payments into Cash Settlement Fund. ConAgra shall make payments
7 into the Cash Settlement Fund in accordance with the following schedule:

8 a. *Notice and Other Administrative Costs.* Amounts equal to the cost of
9 Notice and Other Administrative Costs, to be paid within thirty (30) days of when such amounts
10 are invoiced to ConAgra and become due and owing.

11 b. *Fee and Expense Award.* An amount equal to the Fee and Expense Award,
12 as ordered by the Court, to be paid directly to class counsel (by wire transfer or check) as set forth
13 below in paragraph 3.1.

14 c. *Incentive Awards.* An amount equal to Representative Plaintiffs' Incentive
15 Awards, as ordered by the Court, to be paid as set forth below in paragraph 3.

16 d. *Payment of Valid Cash Claims.* An amount equal to the lesser of (i) the
17 total value of valid Cash Claims submitted by Settlement Class Members, or (ii) \$2,500,000 less
18 the total Notice and Other Administrative Costs (as actually incurred by the Settlement
19 Administrator), the Fee and Expense Award in the amount determined by the Court, and
20 Incentive Awards in the amounts determined by the Court, to be paid to the Settlement
21 Administrator (for distribution to Settlement Class Members who submitted valid claims pursuant
22 to Paragraphs 2.4-2.7 below) within fifteen (15) business days of the Final Settlement Approval
23 Date. If, pursuant to the foregoing, the amount of cash available for the Cash Settlement Fund is
24 insufficient to pay all valid Settlement Class Member Cash Claims, individual payment amounts
25 for Cash Claims shall be adjusted on a pro-rata basis as described in paragraph 2.7 below.

26 2.4 Claims Process. Each Settlement Class Member shall be entitled to submit a claim
27 for, at the Settlement Class Member's election, either cash payment or vouchers for Alexia-
28 Branded Products or a combination of both cash and vouchers subject to limitations, as described

1 below.

2 a. Cash Payment – Each Settlement Class Member may file a claim that will,
3 if valid, entitle him or her to \$3.50 in cash for each Alexia Product purchased during the
4 Settlement Class Period. A Settlement Class Member's claim for cash payment pursuant to this
5 paragraph 2.4(a) shall be considered a "Cash Claim." Cash Claims will be paid, after the Claim
6 Period Close Date (as defined in paragraph 2.6) and after the Final Settlement Approval Date,
7 from the Cash Settlement Fund. Cash Claims shall be limited as set forth in paragraph (c) below.

8 b. Voucher Payment – As an alternative to and in lieu of a Cash Claim under
9 paragraph 2.4(a), a Settlement Class Member may elect to claim, for each purchase of an Alexia
10 Product during the Settlement Class Period, two food vouchers. A Settlement Class Member's
11 claim for food vouchers pursuant to this paragraph 2.4(b) shall be considered a "Voucher Claim."
12 Each food voucher will entitle the redeeming Settlement Class Member to one Alexia-Branded
13 Product, up to a maximum savings of \$3.75 per voucher per product. Voucher Claims shall be
14 limited as set forth in paragraph (c) below. Voucher redemption will be administered in
15 accordance with procedures used to redeem grocery coupons, and vouchers may be denominated
16 as "coupons" when distributed to Settlement Class Members and redeemed by retailers. Voucher
17 Claims will be fulfilled after the Claim Period Close Date (as defined in paragraph 2.6) and will
18 be paid from the Voucher Settlement Fund. The sum of \$3.75 shall be deducted from the
19 Voucher Settlement Fund for each valid food voucher claim submitted and paid. Vouchers shall
20 be valid no less than ninety days (90) days from their issue date. The value of any unredeemed
21 coupons will be added to the Combined Residual Fund, as defined in paragraph 2.9.

22 c. The claim of each Settlement Class Member and his or her household shall
23 be limited to a maximum of ten (10) Alexia Product purchases. The maximum cash that may be
24 paid to any one Claimant household shall be \$35.00. The maximum number of food vouchers
25 that may be provided to any one Claimant household shall be twenty (20) for a total maximum
26 food voucher value of \$75.00. For the avoidance of doubt, a Claimant who submitted a valid
27 claim for the maximum of ten Alexia Product purchases during the Settlement Class Period and
28 wished to receive cash payment for five Alexia Product purchases in cash and five in food

1 vouchers would receive ten vouchers and \$17.50 in cash.

2 2.5 Proof of Claim. A maximum of one claim, submitted on a single Claim Form,
3 may be submitted by each Settlement Class Member and his or her household. Proof of claim for
4 cash and food vouchers must be submitted as follows:

5 a. For a Claimant making a claim for the purchase of five or fewer Alexia
6 Products, Claimant must either (a) include information in the claim form—completed online or in
7 hard copy mailed to the Settlement Administrator—confirming under penalty of perjury (i) the
8 specific Alexia product(s) purchased, and (ii) that the purchase was made within the Class Period;
9 or (b) provide a receipt or receipts showing each Alexia-product purchase on which the claim is
10 based, or other similar documentation that reflects an eligible purchase (e.g. retailer card
11 statement or product packaging). .

12 b. For a Claimant making a claim for the purchase of six or more Alexia
13 Products, Claimant must submit a receipt or receipts showing each Alexia-product purchase on
14 which the claim is based, or other similar documentation that reflects an eligible purchase (e.g.
15 retailer card statement or product packaging).

16 2.6 Review of Claims. The Settlement Administrator shall be responsible for
17 reviewing all claims to determine their validity. The Settlement Administrator shall reject any
18 claim that does not comply in any material respect with the instructions on the Claim Form or the
19 terms of paragraph 2.4, above, or is submitted after the close of the claim period set by the Court
20 (“Claim Period Close Date”).

21 2.7 Pro-Rata Reduction of Benefits. If the dollar value of valid Settlement Class
22 Member claims, determined in accordance with paragraphs 2.4 and 2.5 above, exceeds the
23 respective amounts available in either the Cash Settlement Fund or the Voucher Settlement Fund
24 available to satisfy those claims, awards to Settlement Class Members from the Cash Settlement
25 Fund and/or the Voucher Settlement Fund, as the case may be, shall be reduced as follows:

26 a. Cash Benefit – If, as of the Final Settlement Approval Date, the cash
27 amount available for the Cash Settlement Fund to satisfy valid Cash Claims is less than the total
28 cash value of valid Cash Claims, cash payments will be reduced on a pro-rata basis, such that the

1 total available cash will satisfy all Cash Claims.

2 b. Food Voucher Benefits – If, as of the Final Settlement Approval Date, the
3 \$700,000 in food voucher value available in the Voucher Settlement Fund is insufficient to satisfy
4 the number of valid Voucher Claims received, the maximum Settlement Class Member savings of
5 \$3.75 per food voucher will be reduced on a pro-rata basis, such that the total available voucher
6 value will satisfy all Voucher Claims.

7 2.8 Cash Benefit—Uncleared Checks. Those Settlement Class Members whose cash
8 benefit checks are not cleared within one hundred eighty (180) days after issuance shall be
9 ineligible to receive a cash settlement benefit and ConAgra shall have no further obligation to
10 make any payment pursuant to this Settlement Agreement or otherwise to such Settlement Class
11 Members. All unpaid funds from uncleared checks shall revert to ConAgra.

12 2.9 Distribution of Unclaimed Settlement Class Benefits After Payment of Valid
13 Claims. Within (120) days following the completion of distribution of cash and food vouchers to
14 Claimants, as set forth at paragraph 2.4 above, any remaining cash value in the Cash Settlement
15 Fund will be combined with any remaining food voucher value in the Voucher Settlement Fund
16 (which shall together comprise the “Combined Residual Fund”). ConAgra shall thereafter
17 distribute to consumers food vouchers for Alexia-Branded Products, with a cumulative savings
18 retail value equal to the value of the Combined Residual Fund less an amount equal to the
19 Residual Voucher Distribution Costs (as defined in paragraph 2.9(b) below), as described below:

20 a. Residual food voucher distribution from the Combined Residual Fund and
21 redemption of such residual food vouchers will be administered by ConAgra in accordance with
22 procedures used to distribute and redeem grocery coupons, and vouchers may be denominated as
23 “coupons” when distributed to consumers and redeemed by retailers.

24 b. ConAgra’s actual costs of distributing Alexia-Branded Product residual
25 vouchers to consumers pursuant to this paragraph (“Residual Voucher Distribution Costs”) shall
26 be reimbursed to ConAgra from the Combined Residual Fund, up to a maximum of four percent
27 (4%) of the value of the Combined Residual Fund.

28 c. Distribution of the Combined Residual Fund in the form of Alexia-Branded

1 Product residual vouchers shall take place over a maximum two year period (measured from the
 2 initial date on which such residual food vouchers are distributed and ending on the final
 3 expiration date of any such residual food voucher so distributed), in a manner reasonably
 4 calculated to achieve a total redemption rate of 95% to 100% of the Combined Residual Fund
 5 value.

6 d. ConAgra shall have no obligation under this Settlement Agreement to
 7 make cash payments to the Cash Settlement Fund after payment of all valid Cash Claims, Notice
 8 and Other Administrative Costs, Incentive Awards, and the Fee and Expense Award. For the
 9 avoidance of doubt, as an example, if valid Cash Claims, Notice and Other Administrative Costs,
 10 Incentive Awards and the Fee and Expense Award total \$2,300,000, ConAgra's cash payments
 11 for this Settlement would total \$2,300,000, and a corresponding \$200,000 of food voucher value
 12 would be added to the Combined Residual Fund.

13 2.10 Cy Pres Disposition of Remainder of Combined Residual Fund. If a residual
 14 voucher redemption rate of 100% has not been achieved at the end of the two year period
 15 referenced in paragraph 2.9(c) above, then ConAgra shall distribute to Feeding America (National
 16 Office, 36 East Wacker Drive, Chicago, IL 60601) free Alexia-Branded Products, with a value
 17 equaling any remaining but undistributed value in the Combined Residual Fund. Alexia-Branded
 18 Products distributed to Feeding America shall, for purposes of such distribution, be valued based
 19 on the latest 13-week average base price per pound of Alexia frozen potatoes as defined by IRI,
 20 Inc. In connection with such charitable distribution, ConAgra shall request that Feeding America
 21 direct the donated food, as much as possible, to programs that comprise and/or are affiliated with
 22 Feeding America's Nutrition and Feeding initiative, which seeks to promote better nutrition and
 23 increased access to healthful foods for those who struggle with hunger. Such distribution, if any,
 24 shall be made within ninety (90) days following the expiration of the two-year period for
 25 redemption of consumer food vouchers. Such distribution shall be in addition to any other
 26 charitable distributions made by ConAgra.

27 2.11 Other Settlement Relief. For as long as ConAgra chooses to sell the Alexia
 28 Products, ConAgra will use citric acid or another naturally-sourced compound in the Alexia

1 Products, rather than disodium dihydrogen pyrophosphate. If the Food and Drug Administration
 2 determines in the future that products containing disodium dihydrogen pyrophosphate can be
 3 labeled "natural," ConAgra reserves the right to use disodium dihydrogen pyrophosphate in the
 4 Alexia Products.

5 **III. PLAINTIFFS' COUNSEL ATTORNEYS' FEES AND EXPENSES**
 6 **AND CLASS REPRESENTATIVE INCENTIVE AWARDS**

7 3.1 Attorneys' Fees, Costs and Expenses. Plaintiffs' Counsel will petition the Court
 8 for an award of attorneys' fees pursuant to California Civil Procedure Code Section 1021.5.
 9 Plaintiffs' Counsel agree that they will not seek more than a cumulative total of \$800,000 in fees
 10 and costs. To the extent approved and ordered by the Court, ConAgra will pay from the Cast
 11 Settlement Fund a Fee and Expense Award in an amount not to exceed eight hundred thousand
 12 dollars (\$800,000). The Fee and Expense Award shall be the total obligation of ConAgra to pay
 13 Plaintiffs' Counsel for attorneys' fees, costs and/or expenses of any kind (including, but not
 14 limited to, travel, filing fees, court reporter and videographer expenses, expert fees and costs, and
 15 document review and production costs). ConAgra shall pay the Fee and Expense Award by wire
 16 transfer or check to Plaintiffs' Counsel within ten (10) business days after the later of the Final
 17 Settlement Approval Date and the delivery to ConAgra of all payment routing information and
 18 tax I.D. numbers for Plaintiffs' Counsel. Plaintiffs' Counsel shall be responsible for allocating
 19 and shall allocate all attorneys' fees, costs and expenses that are awarded by the Court and paid
 20 by ConAgra amongst and between Plaintiffs' Counsel, and ConAgra shall have no responsibility,
 21 role or liability in connection with such allocation.

22 3.2 Incentive Awards. To the extent approved and ordered by the Court, ConAgra will
 23 pay from the Cast Settlement Fund Incentive Awards to the three Representative Plaintiffs not to
 24 exceed five thousand dollars (\$5,000) per Representative Plaintiff. ConAgra shall pay such
 25 award by wire transfer or check to Plaintiffs' Counsel within ten (10) business days after the later
 26 of the Final Settlement Approval Date and the delivery to ConAgra of all payment routing
 27 information and tax I.D. numbers for Representative Plaintiffs.
 28

IV. NOTICE TO CLASS AND ADMINISTRATION OF SETTLEMENT

4.1 Class Notice. The Class Notice shall conform to all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clauses), and any other applicable law, and shall otherwise be in the manner and form agreed upon by the Parties and approved by the Court.

4.2 General Notice Terms. The Class Notice shall:

- a. inform Settlement Class Members that, if they do not exclude themselves from the Class, they may be eligible to receive the relief under the proposed settlement;
- b. contain a short, plain statement of the background of the Action, the Class certification and the proposed settlement;
- c. describe the proposed settlement relief outlined in this Stipulation;
- d. explain the impact of the proposed settlement on any existing litigation, arbitration or other proceeding; and
- e. state that any relief to Settlement Class Members is contingent on the Court's final approval of the proposed settlement.

4.3 Notice of Exclusion and Objection Rights. The Class Notice shall inform Settlement Class Members of their rights to exclude themselves from the Settlement Class or object to the proposed settlement, as described in paragraph 5.3 below.

4.4 Time and Manner of Notice. Class Notice shall be provided as set forth in the Media Plan, attached hereto as Exhibit D; Media delivery of Class Notice shall be completed within sixty-five (65) days after the Preliminary Approval Date.

4.5. Responsibilities of Settlement Administrator. The Parties will retain one or more Settlement Administrators (including subcontractors) to help implement the terms of the proposed Settlement Agreement. The Settlement Administrator(s) shall be responsible for administrative tasks, including, without limitation, (a) arranging, as set forth in the Media Plan, for distribution of Class Notice (in the form set forth in Exhibit B) and Claim Forms (in the form set forth in Exhibit A) to Settlement Class Members, (b) making any mailings to Settlement Class Members required under the terms of this Stipulation, (c) answering written inquiries from Settlement Class Members and/or forwarding such inquiries to Plaintiffs' Counsel or their designee, (d) receiving and maintaining on

1 behalf of the Court and the Parties any Settlement Class Member correspondence regarding requests
 2 for exclusion to the settlement, (e) establishing the Settlement Website that posts notices, Claim Forms
 3 and other related documents, (f) receiving and processing claims and distributing payments to
 4 Settlement Class Members, and (g) otherwise assisting with implementation and administration of
 5 the Settlement Agreement terms. The actual costs and expenses of the Settlement Administrator,
 6 which have been estimated by the Settlement Administrator to be \$715,000 and will not exceed
 7 \$800,000, will be paid from the Cash Settlement Fund.

8 4.7 Performance Standards of Settlement Administrator. The contract with the
 9 Settlement Administrator shall obligate the Settlement Administrator to abide by the following
 10 performance standards:

11 a. The Settlement Administrator shall accurately and neutrally describe, and shall
 12 train and instruct its employees and agents to accurately and objectively describe, the provisions of this
 13 Stipulation in communications with Settlement Class Members;

14 b. The Settlement Administrator shall provide prompt, accurate and objective
 15 responses to inquiries from Plaintiffs' Counsel or their designee, Defendant and/or Defendant's
 16 Counsel, and shall periodically report on claims, objectors, etc.

17 V. CLASS SETTLEMENT PROCEDURES

18 5.1 Settlement Approval. As soon as practical after the signing of this Settlement
 19 Agreement, Representative Plaintiffs shall move for a Conditional Class Certification and
 20 Preliminary Approval Order, substantially in the form as that attached hereto as Exhibit E,
 21 conditionally certifying the Settlement Class, preliminarily approving the terms and conditions of
 22 this Settlement Agreement as fair, reasonable and adequate and in the best interests of the
 23 Settlement Class Members, approving notice to the Settlement Class Members as described in
 24 Section IV above, and setting a hearing to consider final approval of the Settlement and any
 25 objections thereto. Representative Plaintiffs shall provide a draft of all papers supporting said
 26 Conditional Class Certification and Preliminary Approval Motion to Defendant's Counsel for
 27 review at least ten (10) calendar days before the Motion is filed or due to be filed.
 28

1 5.2 Settlement Order and Judgment. At or before the final approval hearing,
 2 Representative Plaintiffs shall move for entry of a Settlement Order and Judgment, substantially
 3 in the form as that attached hereto and made a part hereof as Exhibit F, granting final approval of
 4 this Settlement and holding this Settlement Agreement to be fair, reasonable and adequate and in
 5 the best interests of the Settlement Class Members, and binding (as of the Final Settlement
 6 Approval Date) on all Settlement Class Members who have not excluded themselves as provided
 7 below, and ordering that the Settlement relief be provided as set forth in this Settlement
 8 Agreement, ordering the releases as set forth in Section VI below to be effective on the Final
 9 Settlement Approval Date, and entering judgment in the Action.

10 5.3 Exclusions and Objections. The Class Notice shall advise all Settlement Class
 11 Members of their right: (a) to be excluded from the Settlement, and (b) to object to the
 12 Settlement. If, within such time as is ordered by the Court and contained in the Class Notice, any
 13 Settlement Class Member wishes to be excluded from the Settlement, he, she or it must do so by
 14 timely mailing a valid opt-out notice, as described in the Class Notice. Any Settlement Class
 15 Member who timely elects to opt out of the Settlement shall not be permitted to object to the
 16 Settlement. Persons falling within the definition of the Settlement Class who validly and timely
 17 request exclusion from the Settlement effected by this Settlement Agreement, pursuant to the
 18 procedures set forth in this paragraph, shall not be Settlement Class Members, shall not be bound
 19 by this Settlement Agreement and shall not be eligible to make a claim for any benefit under the
 20 terms of this Settlement Agreement.

21 At least seven (7) calendar days prior to the final approval hearing, Plaintiffs' Counsel
 22 shall prepare or cause the Settlement Administrator to prepare a list of the persons who have
 23 excluded themselves in a valid and timely manner from the Settlement Class (the "Opt-Outs"),
 24 and Plaintiffs' Counsel shall file that list with the Court. If, within such time as is ordered by the
 25 Court and contained in the Class Notice, any Settlement Class Member wishes to object to the
 26 Settlement and/or to be heard, he, she or it must, on or before the deadlines established by the
 27 Court, submit to the Settlement Administrator a written notice of objection and/or request to be
 28 heard. Such communication shall state the name and address of the Settlement Class Member,

1 shall include information sufficient to demonstrate membership in the Settlement Class, and state
2 the grounds for of each objection asserted.

3 5.4 Stay of the Action. The Parties shall request that the Court, in connection with
4 Preliminary Approval, issue an immediate stay of the Action.

5 5.5 Effect if Settlement Not Approved. This Settlement Agreement was entered into
6 only for purposes of settlement, subject to and without waiver of the Parties' respective rights. In
7 the event that the Court fails to enter the order granting Preliminary Approval or fails to grant
8 final approval, or in the event the Final Settlement Approval Date does not occur, Plaintiffs'
9 Counsel and Defendant's Counsel shall endeavor, consistent with the Settlement Agreement, to
10 cure any defect identified by the Court; provided, however, that ConAgra shall not be obligated to
11 accept such cure if it increases the cost or burden of the Settlement Agreement to ConAgra or any
12 of the other Released Persons or reduces or otherwise affects the scope of the releases provided
13 by this Settlement Agreement. In the event that the Settlement Agreement is terminated for any
14 reason, Final Approval does not occur for any reason, or the Final Settlement Approval Date does
15 not occur, then no term or condition of the Settlement Agreement, or any draft thereof, or any
16 discussion, negotiation, documentation, or other part or aspect of the Parties' settlement
17 discussions shall have any effect, nor shall any such matter be admissible in evidence for any
18 purpose in the Action, or in any other proceeding, the Parties' shall be restored to their respective
19 positions immediately preceding execution of this Settlement Agreement. The Parties agree that
20 all drafts, discussions, negotiations, documentation or other information prepared in relation to
21 the Settlement Agreement and the Parties' settlement discussions shall be treated as strictly
22 confidential and may not be disclosed to any person other than the Parties' counsel, and only for
23 purposes of the Action. ConAgra' rights with respect to class certification expressly are reserved
24 and preserved.

25 5.6 Termination. The Settlement Agreement shall have no effect, and any Party may
26 by written notice to the other Parties withdraw from and decline to proceed with the Settlement
27 for any reason at any time, unless and until this Settlement Agreement is fully executed by all
28 Parties.

VI. RELEASES

6.1 Release by Settlement Class Members. Effective as of the Final Settlement Approval Date, each and all of the Settlement Class Members (except any such person who has filed a proper and timely request for exclusion) shall release and forever discharge, and shall be forever barred from asserting, instituting or maintaining against any or all of the Released Persons, any and all claims, demands, actions, causes of action, lawsuits, arbitrations, damages or liabilities of any nature whatsoever, whether legal, equitable or otherwise, arising or accruing at any time on or before the Preliminary Approval Date, based on or arising from the use of the terms "Natural" or "All Natural" on the labels or in the advertising or promotion of the Alexia Products for all times before the Preliminary Approval Date, which have been asserted or which could reasonably have been asserted in the Action (collectively, the "Claims"). With respect to the Claims released pursuant to this paragraph, each Settlement Class Member shall be deemed to have waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of California Civil Code section 1542 (and equivalent, comparable or analogous provisions of the laws of the United States of America or any state or territory thereof, or of the common law or civil law). Section 1542 provides that:

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

Each and every term of this paragraph shall inure to the benefit of each and all of the Released Persons, and each and all of their respective successors and personal representatives, which persons and entities are intended to be beneficiaries of this paragraph.

6.2 Effectuation of Settlement. None of the above releases include releases of claims or otherwise affects rights to enforce the terms of the Settlement Agreement.

6.3 No Admission of Liability. This Settlement Agreement reflects, among other things, the compromise and settlement of disputed claims among the Parties, and neither this Settlement Agreement nor the releases given herein, nor any consideration therefor, nor any

actions taken to carry out this Settlement 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, defense, or of any point of fact or law on the part of any Party. ConAgra denies the material allegations of each of the complaints filed in this Action. Neither this Settlement Agreement, nor the fact of settlement, nor the settlement proceedings, nor the settlement negotiations, nor any related document, shall be used as an admission of any fault or omission by any or all of the Released Persons, or be offered or received in evidence as an admission, concession, presumption or inference of any wrongdoing by any or all of the Released Persons in any proceeding, other than such proceedings as may be necessary to consummate, interpret or enforce this Settlement Agreement.

VII. CERTIFICATION OF SETTLEMENT CLASS

7.1 The Parties agree, for settlement purposes only, that this Action shall be certified and proceed as a class action under Federal Rule of Civil Procedure 23(b)(3), with a class consisting of all Settlement Class Members, and with the named Plaintiffs as Representative Plaintiffs and Plaintiffs' Counsel as counsel for the Settlement Class Members.

7.2 Any certification of a conditional, preliminary or final settlement class pursuant to the terms of this Settlement shall not constitute, and shall not be construed as, an admission on the part of ConAgra that this Action, or any other proposed or certified class action, is appropriate for trial class treatment pursuant to Federal Rule of Civil Procedure or any similar state or federal class action statute or rule. This Settlement Agreement shall be without prejudice to the rights of ConAgra to: (a) move to dismiss or stay this Action on any applicable basis; (b) oppose final certification in this Action should this Settlement Agreement not be approved or implemented for any reason; or (c) oppose certification in any other proposed or certified class action. Neither the fact of this settlement nor this Settlement Agreement shall be used in connection with efforts in any proceeding to seek certification of any claims asserted against ConAgra.

VIII. MISCELLANEOUS PROVISIONS

8.1 Reasonable Efforts. Subject to the other terms and conditions of this Settlement Agreement, the Parties and their respective counsel shall use reasonable efforts to cause the Court

1 to give Preliminary Approval to this Settlement Agreement as promptly as practical, to take all
2 steps contemplated by this Settlement Agreement that are necessary to effectuate the Settlement
3 on the stated terms and conditions, and to obtain Final Approval of this Settlement Agreement
4 and achieve a Final Settlement Approval Date.

5 8.2 Change of Time Periods. The time periods and/or dates described in this
6 Settlement Agreement with respect to the giving of notices and hearings are subject to approval
7 and change by the Court or by the written agreement of Plaintiffs' Counsel and Defendant's
8 Counsel, without notice to Settlement Class Members. The Parties reserve the right, by
9 agreement and subject to the Court's approval, to grant any reasonable extension of time that
10 might be needed to carry out any of the provisions of this Settlement Agreement.

11 8.3 Time for Compliance. If the date for performance of any act required by or under
12 this Settlement Agreement falls on a Saturday, Sunday or court holiday, that act may be
13 performed on the next business day with the same effect as if it had been performed on the day or
14 within the period of time specified by or under this Settlement Agreement.

15 8.4 Governing Law. This Settlement Agreement is intended to and shall be governed
16 by the laws of the State of California without giving effect to principles of conflicts of laws.

17 8.5 Entire Agreement. The terms and conditions set forth in this Settlement
18 Agreement constitute the complete and exclusive statement of the agreement between the Parties
19 relating to the subject matter of this Settlement Agreement, superseding all previous negotiations
20 and understandings, and may not be contradicted by evidence of any prior or contemporaneous
21 agreement. The Parties further intend that this Settlement Agreement constitutes the complete
22 and exclusive statement of its terms as between the Parties, and that no extrinsic evidence
23 whatsoever may be introduced in any agency or judicial proceeding, if any, involving this
24 Settlement Agreement. Any modification of the Settlement Agreement must be in writing signed
25 by Plaintiffs' Counsel and ConAgra.

26 8.6 Advice of Counsel. The determination of the terms and the drafting of this
27 Settlement Agreement have been by mutual agreement after negotiation, with consideration by
28 and participation of all Parties and their counsel. The presumption found in California Civil Code

1 section 1654 (and equivalent, comparable or analogous provisions of the laws of the United States
2 of America or any state or territory thereof, or of the common law or civil law) that uncertainties
3 in a contract are interpreted against the party causing an uncertainty to exist hereby is waived by
4 all Parties.

5 8.7 Binding Agreement. This Settlement Agreement shall be binding upon and inure
6 to the benefit of the respective heirs, successors and assigns of the Parties, the Settlement Class
7 Members and the other Released Persons

8 8.8 No Waiver. The waiver by any Party of any provision or breach of this Settlement
9 Agreement shall not be deemed a waiver of any other provision or breach of this Settlement
10 Agreement.

11 8.9 Execution in Counterparts. This Settlement Agreement shall become effective
12 upon its execution by all of the undersigned. The Parties may execute this Settlement Agreement
13 in counterparts, and execution of counterparts shall have the same force and effect as if all Parties
14 had signed the same instrument. The Parties further agree that signatures provided by .pdf or
15 other electronic transmission shall have the same force and effect as original signatures.

16 8.10 Publicity. Except for the notice provisions set forth in the Order of Preliminary
17 Approval and except as required by ConAgra in accordance with applicable law, rule or
18 regulation (e.g. securities laws, rules or regulations), the parties agree that they will not issue any
19 press release or statement (including on the Internet), or otherwise initiate media coverage or
20 campaign online, concerning this Action. Nothing in this Paragraph shall prevent the Parties
21 from responding to inquiries initiated by the media, but in doing so shall restrict his or her
22 statements to a factual description of the terms of Settlement and shall not make assertions or
23 statements regarding the Settlement or the Parties insofar as the substance of such statements is
24 not, as of the execution of this Settlement Agreement, already set forth in the pleadings and
25 briefing on file in the Action. Additionally, the Parties' counsel may post factual information
26 about the Settlement on their law firms' website. Any Party wishing to make such a disclosure
27 shall first obtain the written authorization of the opposing Party to the proposed factual statement.

8.11 Enforcement of this Settlement Agreement. The Court shall retain jurisdiction, and shall have exclusive jurisdiction, to enforce, interpret and implement this Settlement Agreement, including any alleged violation of paragraph 8.10 above, and the terms of any order entered pursuant to this Settlement Agreement.

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

If to Representative Plaintiffs, Settlement Class Members or Plaintiffs' Counsel:

Roland Tellis
Mark Pifko
Baron & Budd, P.C.
15910 Ventura Boulevard, Suite 1600
Encino, CA 91436
Telephone: (818) 839-2333
Facsimile: (818) 986-9698
rtellis@baronbudd.com
mpifko@baronbudd.com

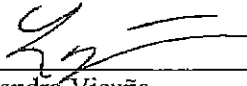
If to ConAgra or Defendant's Counsel:

Robert B. Hawk
Hogan Lovells US LLP
525 University Avenue, 4th Floor
Palo Alto, CA 94301
Telephone: (650) 463-4000
robert.hawk@hoganlovells.com

IN WITNESS HEREOF the undersigned, being duly authorized and intending to be legally bound hereby, have caused this Settlement Agreement to be executed on the dates shown below and agree that it shall take effect on the date it is executed by all of the undersigned.

APPROVED AND AGREED:

DATED: May 28, 2013


Leandro Vicuña

DATED: _____, 2013

Pere Kyle

8.11 Enforcement of this Settlement Agreement. The Court shall retain jurisdiction, and shall have exclusive jurisdiction, to enforce, interpret and implement this Settlement Agreement, including any alleged violation of paragraph 8.10 above, and the terms of any order entered pursuant to this Settlement Agreement.

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

If to Representative Plaintiffs, Settlement Class Members or Plaintiffs' Counsel:

Roland Tellis
Mark Pifko
Baron & Budd, P.C.
15910 Ventura Boulevard, Suite 1600
Encino, CA 91436
Telephone: (818) 839-2333
Facsimile: (818) 986-9698
rtellis@baronbudd.com
mpifko@baronbudd.com

If to ConAgra or Defendant's Counsel:

Robert B. Hawk
Hogan Lovells US LLP
525 University Avenue, 4th Floor
Palo Alto, CA 94301
Telephone: (650) 463-4000
robert.hawk@hoganlovells.com

IN WITNESS HEREOF the undersigned, being duly authorized and intending to be legally bound hereby, have caused this Settlement Agreement to be executed on the dates shown below and agree that it shall take effect on the date it is executed by all of the undersigned.

APPROVED AND AGREED:

DATED: _____, 2013

Leandro Vicuña

DATED: 05/29, 2013

Pere Kyle

1 DATED: 05/31, 2013 David Eckstein
2 David Eckstein

3 CONAGRA FOODS, Inc.

4 DATED: _____, 2013 By: _____

5 Title: _____
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1 DATED: _____, 2013

David Eckstein

3 CONAGRA FOODS, Inc.

4 DATED: 5/23, 2013

By:

5 Title:

VP. / GENERAL MANAGER

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DATED: June 4, 2013

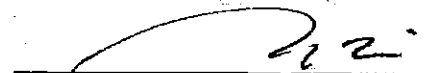
APPROVED AS TO FORM:



Robert B. Hawk
HOGAN LOVELLS US LLP

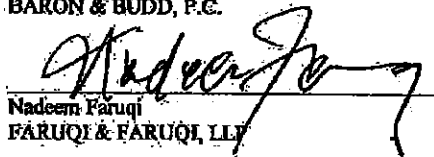
Attorneys for Defendant ConAgra Foods, Inc.

DATED: June 4, 2013



Roland Tellis
BARON & BUDD, P.C.

DATED: June 4, 2013



Nadeem Faruqi
FARUQI & FARUQI, LLP

Attorneys for Plaintiffs Leandro Vicuña, Pere Kyle and David Eckstein

EXHIBIT A

Alexia Potato Products
Settlement Administrator
PO Box XXXX
Faribault MN 55021-XXXX

FOR OFFICE USE ONLY
01

IMPORTANT LEGAL MATERIALS

Barcode
Name
Address
City, State ZIP

Note any corrections to Name or Address:

Claim Form

In re: Alexia Foods, Inc. Settlement

To make a claim, you must complete the online claim form on the Settlement Website at: www._____.com or complete this form and submit by mail. Online submissions must be completed and mailed forms must be postmarked no later than _____. If submitting by mail, send the completed form to:

Alexia Settlement Administrator
PO Box XXXX
Faribault MN 55021-XXXX

A Household may make a claim for up to 10 purchases of included Alexia Frozen Potato Products, by requesting cash, vouchers for Alexia products, or a combination of both. A Household includes all people living in the same dwelling unit. If you are claiming 4 or more Product purchases, you must submit Proof of Purchase for all purchases. Only itemized retail sales receipts including, at a minimum, the purchase of an included Alexia Frozen Potato Product, the purchase price, and the date and place of purchase will be accepted as Proof of Purchase.

The Alexia Frozen Potato Products included in this Settlement are: Sauté Reds, Mashed Potatoes Yukon Gold Potatoes & Sea Salt, Mashed Red Potatoes with Garlic & Parmesan, Waffle Fries, Harvest Sauté, Italian Sauté, Sauté Sweets, and Potato Bites.

Please read all of the following instructions carefully before filling out your Claim Form.

1. Please review the Notice of Proposed Class Action Settlement (the "Notice") that is available at [www.\[SettlementWebsite\].com](http://www.[SettlementWebsite].com) when you complete your Claim Form. If you do not have access to a computer, call 1-800-XXXX ____ to have the Notice sent to you.
2. Type or print legibly in black ink.
3. Complete Part A ("Claimant Information") by filling in your name, your current mailing address, and daytime telephone number with area code. You may also provide your e-mail address.
4. Complete Part B by identifying the number of Alexia products purchased and selecting which benefits or options you choose to receive. Please review the section of the Notice titled "The Settlement Benefits" to determine what benefits apply to you.
5. Complete Part C if you are not providing Proof of Purchase (up to five Products).
6. Complete Part D.
7. If you claim you purchased more than five Products, mail the receipts for all Products along with this Claim Form to: Alexia Settlement Administrator, PO Box XXXX, Faribault MN 55021-XXXX.
8. Keep a copy of your completed Claim Form and any receipts for your records. Any documents you submit with your Claim Form cannot be returned. If your claim is rejected for any reason, the Settlement Administrator will notify you of the rejection and the reasons for such rejection.

Part A: Claimant Information

Claimant Name: _____

Street Address: _____

Daytime Phone Number: _____

City, State, Zip Code: _____

E-mail address (optional): _____

Part B: Purchase Information and Benefit Selection

My household is claiming the following number of Alexia Food Product purchases between December 6, 2007 and [prelim app date]: _____

Total Number of Products My Household Purchased: _____

If claiming more than five Alexia Potato Product purchases, you must attach a receipt or receipts showing each Alexia-product purchase on which the claim is based, or other similar documentation that reflects an eligible purchase (e.g. retailer card statement or product packaging).

All Claimants, please choose one of the following three options:

☐

Vouchers for all Products My Household Purchased

(Two vouchers worth up to \$3.75 each for each Product purchased.)

☐

Cash for all Products My Household Purchased

(Cash (in the form of a check) equaling \$3.50 for each Product purchased.)

☐

A combination of Vouchers and Cash for the Products My Household Purchased.

Complete if choosing a combination of Vouchers and Cash:

Number of Products for which Vouchers are requested: _____

Two vouchers worth up to \$3.75 each for each Product purchased. You may not select both vouchers and cash for the same Product.

Number of Products for which Cash is requested: _____

Cash (in the form of a check) equaling \$3.50 for each Product purchased. You may not select both vouchers and cash for the same Product.

** Please note: the total number of Products purchased for which vouchers are requested and number of Products for which cash is requested cannot exceed the total Products purchased.*

Are you enclosing purchase receipts or other proof-of-purchase documentation?

☐

Yes →

Attach proofs of purchase for all Products claimed. Complete Part D.

☐

No →

Complete Parts C and D. Otherwise, your Claim will be rejected.

Part C: Purchase Verification (Skip if you have attached proofs of purchase for all Products claimed.)

If you are not providing all Proofs of Purchase, provide the following information for the Products claimed, for up to five Products:

Product Name

Purchased between December 6, 2007 and [prelim. approval date]? (YES or NO)

- 1) _____
- 2) _____
- 3) _____
- 4) _____
- 5) _____

Part D Signature. All Claimants must complete Part D.

I certify under penalty of perjury that the information stated in this Claim Form is correct.

Dated _____

Signature _____

EXHIBIT B

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

**If You Bought Alexia Frozen Potato Products
Between December 6, 2007, and [Preliminary Approval Date],**

**Your Rights May Be Affected by a Settlement
and You May be Eligible For Settlement Benefits.**

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

- Please read this notice carefully. Your legal rights are affected whether you act, or don't act.
- A proposed nationwide Settlement has been reached in a class action lawsuit, where Plaintiffs claimed that certain Alexia frozen potato products, advertised as "natural" or "all natural," should not have been advertised in that manner because they contained the ingredient disodium dihydrogen pyrophosphate to retain the color of the potatoes.
- You are included in the Settlement if you purchased any of the following Alexia frozen potato products in the United States between December 6, 2007 and Month 00, 20XX: Sauté Reds, Mashed Potatoes Yukon Gold Potatoes & Sea Salt, Mashed Red Potatoes with Garlic & Parmesan, Waffle Fries, Harvest Sauté, Italian Sauté, Sauté Sweets, and Potato Bites.
- Those included in the Settlement will be eligible to receive either a cash payment up to \$35 (\$3.50 per qualifying product purchased for a maximum of 10 products) or alternatively food product vouchers worth up to \$75 in retail value for Alexia products (vouchers worth up to \$7.50 per qualifying purchase for a maximum of 10 products) or a combination of cash and vouchers for a maximum of 10 products. The amount of benefits you may receive will be based on the amount of products you purchased and whether you have receipts. There is a limit of one claim (of up to 10 products purchased) per household.

| YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT | |
|--|--|
| SUBMIT A CLAIM FORM BY [DATE] | This is the only way to receive a share of the Settlement benefits. |
| EXCLUDE YOURSELF BY [DATE] | You won't get a share of the Settlement benefits, but will retain any right you may have to sue ConAgra about the claims in this case. |
| OBJECT OR COMMENT BY [DATE] | Write to the Court explaining why you don't like the Settlement. You must remain in the class to comment in |

QUESTIONS? CALL 1-866- TOLL FREE, OR VISIT WWW.[SETTLEMENTWEBSITE].COM
PARA UNA NOTIFICACIÓN EN ESPAÑOL, LLAMAR O VISITAR NUESTRO WEBSITE

| | |
|--|--|
| | support of or in opposition to the Settlement. |
| APPEAR IN THE LAWSUIT OR ATTEND A HEARING BY [DATE] | Ask to speak in Court about your opinion of the Settlement. You may enter your appearance in Court through an attorney if you so desire. |
| DO NOTHING | You won't get a share of the Settlement benefits and will give up your rights to sue ConAgra about the claims in this case. |

- These rights and options – **and the deadlines to exercise them** – are explained in this Notice.
- If you have any questions, then please read on and visit [www.\[settlementwebsite\].com](http://www.[settlementwebsite].com).

QUESTIONS? CALL 1-866- TOLL FREE, OR VISIT [WWW.\[SETTLEMENTWEBSITE\].COM](http://WWW.[SETTLEMENTWEBSITE].COM)
 PARA UNA NOTIFICACIÓN EN ESPAÑOL, LLAMAR O VISITAR NUESTRO WEBSITE

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QUESTIONS? CALL 1-866- TOLL FREE, OR VISIT WWW.[SETTLEMENTWEBSITE].COM
 PARA UNA NOTIFICACIÓN EN ESPAÑOL, LLAMAR O VISITAR NUESTRO WEBSITE

BASIC INFORMATION

1. Why was this Notice issued?

A Court authorized this Notice because you have a right to know about a proposed Settlement of this class action lawsuit and about all of your options, before the Court decides whether to give final approval to the Settlement. This Notice explains the lawsuit, the Settlement, and your legal rights.

Judge Phyllis J. Hamilton of the U.S. District Court for the Northern District of California is overseeing this case. The case is known as *In re Alexia Foods, Inc. Litigation*, No. 11-cv-06119. The people who sued are called the Plaintiffs. The Defendant is ConAgra.

The Court has not decided in favor of any party, and there has been no decision that ConAgra did anything wrong. This Notice is not an expression of any opinion by the Court about the merits of any of the claims or defenses made by any of the parties in this case or the fairness or adequacy of the proposed Settlement. This Notice is provided so that you may decide what steps, if any, to take in relation to the proposed Settlement.

2. What is a Class Action?

A class action is a lawsuit in which one or more individuals called “Class Representatives” (in this case, Leandro Vicuna, Pere Kyle and David Eckstein) sue an individual, company or other entity on behalf of all other people who have similar claims. Together, these people are referred to as a “Class” or “Class Members.” In a class action, the court resolves the legal issues, legal claims and legal defenses for all Class Members in one lawsuit, except for those people who ask to be excluded from the Class.

3. What is this lawsuit about?

This is a case about ConAgra’s advertising of its Alexia frozen potato products. The Plaintiffs claim that ConAgra falsely represented in its advertising that Alexia frozen potato products are “natural” or “all natural” when those products contained the ingredient disodium dihydrogen pyrophosphate to retain the color of the potatoes.

ConAgra denies that it falsely advertised its products and denies that it did anything wrong. ConAgra denies that the Plaintiffs and the Class have suffered any damages or that they have been harmed in any way. ConAgra, however, has chosen to provide its customers with a cash payment and/or vouchers for free products rather than spending additional money on costly litigation.

4. Why is there a Settlement?

QUESTIONS? CALL 1-866- TOLL FREE, OR VISIT [WWW.\[SETTLEMENTWEBSITE\].COM](http://WWW.[SETTLEMENTWEBSITE].COM)
PARA UNA NOTIFICACIÓN EN ESPAÑOL, LLAMAR O VISITAR NUESTRO WEBSITE

The Court has not decided in favor of the Plaintiffs or ConAgra. There has been no trial. Instead, both sides agreed to a Settlement. By agreeing to the Settlement, the Parties avoid the costs and uncertainty of a trial and Class Members receive the benefits described in this Notice. The Plaintiffs and their attorneys believe that the Settlement is in the best interests of the Class Members.

WHO'S INCLUDED IN THE SETTLEMENT?

5. How do I know if I am in the Settlement Class?

To participate in the Settlement, you first have to determine if you are a Class Member. The Class includes anyone who bought the Alexia frozen potato products listed below in the United States between December 6, 2007 and [preliminary approval date].

“Alexia frozen potato products” include:

- Sauté Reds,
- Mashed Potatoes Yukon Gold Potatoes & Sea Salt,
- Mashed Potatoes Red Potatoes with Garlic & Parmesan,
- Waffle Fries,
- Harvest Sauté,
- Italian Sauté,
- Sauté Sweets, and
- Potato Bites.

THE SETTLEMENT BENEFITS

6. What does the Settlement provide?

If the Settlement is approved, ConAgra will pay up to three million two hundred thousand dollars (\$3,200,000), consisting of a Cash Settlement Fund in an amount up to two million five hundred thousand dollars (\$2,500,000) as well as a Voucher Settlement Fund in the amount of seven hundred thousand dollars (\$700,000). Additionally, ConAgra has agreed as follows: “For as long as ConAgra chooses to sell the Alexia Products, ConAgra will use citric acid or other naturally-sourced compound in the Alexia Products, rather than disodium dihydrogen pyrophosphate. If the Food and Drug Administration determines in the future that products containing disodium dihydrogen pyrophosphate can be labeled ‘natural,’ ConAgra reserves the right to use disodium dihydrogen pyrophosphate in the Alexia Products.” Class Members who submit valid Claim Forms have the choice to receive a cash payment, vouchers, or a combination of cash payments and vouchers for up to 10 Alexia frozen potato product purchases. The amount of cash or vouchers that you may receive depends on the quantity of the Alexia products you purchased and whether you have receipts.

QUESTIONS? CALL 1-866- TOLL FREE, OR VISIT [WWW.\[SETTLEMENTWEBSITE\].COM](http://WWW.[SETTLEMENTWEBSITE].COM)
PARA UNA NOTIFICACIÓN EN ESPAÑOL, LLAMAR O VISITAR NUESTRO WEBSITE

You can choose to receive cash, vouchers, or both based on Alexia frozen potato products you purchased between December 6, 2007 and [preliminary approval date], as follows:

- **Cash Option:** You are eligible to receive \$3.50 cash for each product you purchased (up to 10 products), for a total of up to \$35. You may file a claim for between one and five purchases by signing under penalty of perjury that you made qualifying purchases and providing the information requested. You will not need to provide receipts for up to five product purchases. If you want to file a claim for between four and 10 purchases, you will need to provide the proof of purchase requested on the claim form for all purchases.
- **Voucher Option:** You are eligible to receive two \$3.75 Alexia product food vouchers for every one Alexia product you purchased (up to 10 products), for a total of up to \$75.00 in vouchers. You may file a claim for between one and five purchases by signing under penalty of perjury that you made qualifying purchases and providing the information requested. You will not need to provide receipts for up to five product purchases. If you want to file a claim for between four and 10 purchases, you will need to provide the proof of purchase requested on the claim form for all purchases.
- **Cash/Voucher Combination Option:** You may choose a combination of cash and vouchers for up to a total of 10 products purchased. For example, you may file a claim for five cash payments and five voucher awards. You must still provide the proof of purchase requested on the claim form for anything more than five claimed purchases.

There is a limit of one claim (for up to 10 product purchases) per household.

- If the total value of claims filed is less than the amount available to satisfy those claims, then ConAgra will distribute any remaining value available to consumers as vouchers for Alexia frozen food products.
- If the total value of claims filed is more than the amount available to satisfy those claims, then Class Member benefits will be reduced proportionally.

7. When will I get my payment or vouchers?

Benefits will be distributed if the Court grants final approval to the Settlement and after any appeals are resolved. If Judge Hamilton approves the Settlement after a hearing on final approval, there may be appeals. We don't know how much time it could take to resolve any appeals that may be filed. If Judge Hamilton doesn't approve the Settlement or the Settlement isn't approved in any appeal that may be brought, you will not receive cash or vouchers for Alexia products.

QUESTIONS? CALL 1-866- TOLL FREE, OR VISIT WWW.[SETTLEMENTWEBSITE].COM
PARA UNA NOTIFICACIÓN EN ESPAÑOL, LLAMAR O VISITAR NUESTRO WEBSITE

HOW TO GET BENEFITS

8. How do I get benefits?

If you are a Class Member and you want to participate in the Settlement, you must complete and submit a Claim Form by **Month Day, Year**. The claim form is included with this notice and can also be found at [www.\[SettlementWebsite\].com](http://www.[SettlementWebsite].com) or by calling 1-8xx-xxx-xxxx.

The Claim Form can be submitted online or by mail. If you choose to submit it online, you must do so on or before **Month Day, Year**. If you choose to submit a hard-copy of the Claim Form by mail, it must be postmarked by **Month Day, Year** and mailed to:

Alexia Settlement
[address]
Faribault, MN 55021-XXXX.

If you do not submit a valid Claim Form by the deadline, you will not receive any cash or vouchers for Alexia products from the Settlement.

REMAINING IN THE SETTLEMENT

9. What am I giving up if I stay in the Class?

If you stay in the Class, you cannot sue or be part of any other lawsuit against ConAgra relating to ConAgra's advertising of Alexia frozen potato products in the United States from December 6, 2007 to [preliminary approval date]. In addition, all of the Court's orders will apply to you and legally bind you. If the Court grants final approval of the settlement, all members of the Class (except any such person who has filed a proper and timely request for exclusion) shall release and forever discharge, and shall be forever barred from asserting, instituting or maintaining against any or all of the Released Persons, any and all claims, demands, actions, causes of action, lawsuits, arbitrations, damages or liabilities of any nature whatsoever, whether legal, equitable or otherwise, arising or accruing at any time on or before the Preliminary Approval Date, based on or arising from the use of the terms "Natural" or "All Natural" on the labels or in the advertising or promotion of the Alexia Products for all times before the Preliminary Approval Date, which have been asserted or which could reasonably have been asserted in the Action (collectively, the "Claims").

If the Settlement is not approved, the case will proceed as if no Settlement had been attempted. There can be no assurance that if the Settlement is not approved and litigation resumes, the Class will recover more than is provided for under the Settlement, or will recover anything.

The Settlement Agreement is available at [www.\[SettlementWebsite\].com](http://www.[SettlementWebsite].com) or by calling 1-8xx-xxx-xxxx.

QUESTIONS? CALL 1-866- TOLL FREE, OR VISIT [WWW.\[SETTLEMENTWEBSITE\].COM](http://WWW.[SETTLEMENTWEBSITE].COM)
PARA UNA NOTIFICACIÓN EN ESPAÑOL, LLAMAR O VISITAR NUESTRO WEBSITE

10. What happens if I do nothing at all?

If you do nothing, you won't get any cash or Alexia food vouchers from this Settlement. But, unless you exclude yourself, you won't be able to start a lawsuit or be part of any other lawsuit against ConAgra relating to ConAgra's advertising of the referenced Alexia frozen potato products in the United States from December 6, 2007 through [preliminary approval date] ever again.

If you have any questions you can talk to the law firms listed in Question 11 for free or you can, of course, talk to your own lawyer if you have questions about what this means.

THE LAWYERS REPRESENTING YOU

11. Do I have a lawyer in the case?

The Court has appointed two law firms to represent you as "Class Counsel", including Mark Pifko and Roland Tellis of the law firm Baron & Budd, P.C and Nadeem Faruqi of the law firm Faruqi & Faruqi, LLP. You do not have to pay Class Counsel. If you want to be represented by your own lawyer, and have that lawyer appear in court for you in this case, you may hire one at your own expense.

12. How will the lawyers be paid?

Class Counsel has not yet received any payment for their services in conducting the litigation on behalf of the Class Representatives and the Members of the Class. If the Court approves the Settlement, ConAgra has agreed to pay, from a total settlement fund of up to \$3,200,000, attorneys' fees and expenses up to \$800,000, subject to the approval of the Court. Any award will cover the fees and expenses for the attorneys in the two cases filed against ConAgra and will be paid by ConAgra and will be deducted from the amount available to pay benefits to Class Members.

If the Court approves the Settlement, ConAgra has also agreed not to oppose requests that the Class Representatives be paid up to \$5,000 each for helping Class Counsel on behalf of the whole Class.

EXCLUDING YOURSELF FROM THE SETTLEMENT

13. How do I get out of – or exclude myself from – the Settlement?

You have the right not to be part of the Settlement by excluding yourself or "opting out" of the Class. If you wish to exclude yourself, you must send a letter, postmarked no later than **Month Day, Year**, to the Claims Administrator at the following address:

QUESTIONS? CALL 1-866- TOLL FREE, OR VISIT WWW.[SETTLEMENTWEBSITE].COM
PARA UNA NOTIFICACIÓN EN ESPAÑOL, LLAMAR O VISITAR NUESTRO WEBSITE

Alexia Settlement
[address]
Faribault, MN 55021-XXXX

Your letter must include a statement that you request to be excluded from the Class, such as: **“I request exclusion from the Class”** and must be signed by you. You must include your full name, address, and telephone number. If you don’t include the required information or submit your request for exclusion on time, you will remain a Class Member and will not be able to sue ConAgra about the claims in this Settlement.

14. If I don’t exclude myself, can I sue ConAgra for the same thing later?

No. Unless you exclude yourself, you give up any right to sue ConAgra for the claims that this Settlement resolves, including any claims relating to ConAgra’s advertising of Alexia frozen food products in the United States from December 6, 2007 through [preliminary approval date].

15. If I exclude myself, can I get anything from this Settlement?

No. If you exclude yourself, do not submit a Claim Form to ask for cash or food vouchers for Alexia frozen potato products.

OBJECTING TO THE SETTLEMENT

16. How do I object to the Settlement?

You have the right to file written comments and/or objections with the Court if there is something about the Settlement that you don’t like. You also have the right to appear at the Final Approval Hearing (*see* Question 18), either in person or through your own counsel, and tell the Court why you object to the Settlement. You will still be in the Settlement and will receive benefits if you timely submit your Claim Form and the Settlement is approved. **Even if you object, you may submit the Claim Form in order to share in the benefits of the Settlement.**

To object, you must send a letter that contains all of the following:

- Your name and current address, and your lawyer’s name and address if you are objecting through counsel;
- The name of the lawsuit, as *In re: Alexia Foods, Inc. Litigation*, Civil Action No. 11-cv-06119-PJH;
- A statement of your objections and the reasons for each objection you make;
- Information reflecting that you are a Class Member (for example, a receipt that shows the purchase of an Alexia frozen food product);

QUESTIONS? CALL 1-866- TOLL FREE, OR VISIT WWW.[SETTLEMENTWEBSITE].COM
PARA UNA NOTIFICACIÓN EN ESPAÑOL, LLAMAR O VISITAR NUESTRO WEBSITE

- If you (or your lawyer) want to appear and speak at the Final Approval Hearing, a statement that you wish to appear and speak; **and**
- Your signature (or your lawyer's signature).

You must mail your written objection, postmarked no later than **Month Day, Year**, to the following address:

| |
|---------------------------------|
| Settlement Administrator |
| [address] [city, st zip] |

You may file an objection without asking to appear at the Final Approval Hearing.

17. What's the difference between objecting and excluding myself from the Settlement?

Objecting simply means telling the Court that you don't like something about the Settlement. You can object only if you stay in the Class. Excluding yourself from the Class is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT'S FINAL APPROVAL HEARING

18. When and where will the Court decide whether to approve the Settlement?

Judge Hamilton will hold a Final Approval Hearing on **Month Day, Year**, at x:xx x.m., at the U.S. Federal Building and Courthouse, [address]. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check [www.\[SettlementWebsite\].com](http://www.[SettlementWebsite].com) or call 1-8xx-xxxx for updates.

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 will also consider how much the lawyers representing Class Members should be paid and if the Class Representative and other Plaintiffs should receive incentive awards. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

GETTING MORE INFORMATION

19. Where do I get more information?

This Notice summarizes the Settlement. More details are in a Settlement Agreement. You can get a copy of the Settlement Agreement at [www.\[SettlementWebsite\].com](http://www.[SettlementWebsite].com). You may also write with questions to [address], Faribault, MN 55021-xxxx. You can

QUESTIONS? CALL 1-866- TOLL FREE, OR VISIT [WWW.\[SETTLEMENTWEBSITE\].COM](http://WWW.[SETTLEMENTWEBSITE].COM)
PARA UNA NOTIFICACIÓN EN ESPAÑOL, LLAMAR O VISITAR NUESTRO WEBSITE

also get a Claim Form at the website, or by calling the toll free number, 1-8xx-xxx-xxxx.

QUESTIONS? CALL 1-866- TOLL FREE, OR VISIT [WWW.\[SETTLEMENTWEBSITE\].COM](http://WWW.[SETTLEMENTWEBSITE].COM)
PARA UNA NOTIFICACIÓN EN ESPAÑOL, LLAMAR O VISITAR NUESTRO WEBSITE

EXHIBIT C

LEGAL NOTICE

If You Bought Alexia Frozen Potato Products Between December 6, 2007 and Month 00, 20XX

Your Legal Rights May Be Affected by a Settlement and You May be Eligible For Settlement Benefits

There is a \$3.2 million Settlement in a class action lawsuit with ConAgra Foods, Inc. that concerns advertising of certain Alexia frozen potato products. The Court has not decided in favor of any party, and there has been no decision that ConAgra did anything wrong. Both sides have agreed to settle to avoid the costs of continuing the lawsuit.

What is the lawsuit about?

The lawsuit claims the following Alexia frozen potato products, which were advertised as "natural" or "all natural," should not have been advertised in that manner because they contained the ingredient disodium dihydrogen pyrophosphate to retain the color of the potatoes: Sauté Reds, Mashed Potatoes Yukon Gold Potatoes & Sea Salt, Mashed Red Potatoes with Garlic & Parmesan, Waffle Fries, Harvest Sauté, Italian Sauté, Sauté Sweets, and Potato Bites.

Who is included?

You are included if you bought the products listed above in the U.S. between December 6, 2007 and Month 00, 20XX.

What does the Settlement provide?

People who bought included products are eligible to choose: (1) a cash payment of \$3.50 for each product purchased, up to a maximum of 10 products and \$35.00 in cash; (2) food vouchers with a value of up to \$7.50 for each product purchased, up to a maximum of 10 products and \$75.00 in food vouchers, or (3) a combination of cash and

vouchers for up to 10 products total. Your benefits amount will be based on the number of products you purchased and whether you have proof of purchase.

If the total amount of claims exceeds available settlement fund proceeds, benefits will be reduced proportionally so that all eligible class members benefit.

What Are My Rights?

1. You Can Accept the Settlement. If you wish to receive the benefits under the settlement, you **MUST** fill out and submit a Claim Form by [____], 2013. You can obtain a Claim Form by (1) calling the Settlement Administrator at 1-800-[____], (2) mailing a written request for a Claim Form including your name and mailing address by regular mail to: [____] Settlement Administrator, P.O. Box[____], or (3) online at [www.\[SettlementWebsite\].com](http://www.[SettlementWebsite].com). If you fail to timely submit a Claim Form and do not exclude yourself from the settlement, then you will be bound by the settlement but will not receive any benefits of the settlement.

2. You Can Object to the Settlement. If you believe the settlement is unsatisfactory, you may submit a written objection with the Settlement Administrator.

The deadline for submitting an objection is [____], 2013.]

3. You Can "Opt Out" of the Settlement. If you do not wish to participate in this settlement, you must provide written notice

so indicating. Such notice shall include your name, current address, and a statement that you want to be excluded from the lawsuit *In re: Alexia Foods, Inc. Litigation*, Case No. 11-cv-06119-PJH. Such notice must be postmarked no later than [], 2013]. Your written notice should be sent to: Alexia Foods Settlement Administrator, P.O. []. Please be advised that if you “opt out” of the settlement, you will not receive any benefits under the settlement and will be responsible for any attorneys’ fees and costs you incur if you choose to pursue your own lawsuit.

The Fairness Hearing

On [], 2013, at 9:00 a.m., the Court will hold a hearing in the United States District Court for the Northern District of California, 1301 Clay Street, Oakland, CA 94612, to determine: (1) whether the proposed settlement is fair, reasonable and adequate and should receive final approval; and (2) whether the application for Plaintiffs’ attorneys’ fees and expenses should be granted. Objections to the proposed settlement by Class Members will be considered by the Court. Class Members who support the proposed settlement do not need to appear at the hearing or take any other action to indicate their approval.

Additional Information

You may seek the advice and guidance of your own attorney if you desire. If you would like a detailed notice, you can get one by e-mailing [E-MAIL ADDRESS], by downloading one from [www.\[Settlementwebsite\]](http://www.[Settlementwebsite]), by writing to [ADDRESS], or by calling [PHONE NUMBER]. A copy of the settlement agreement is available at [www.\[settlementwebsite\].com](http://www.[settlementwebsite].com), or may be obtained by examining the publicly available court records. You can also visit [www.\[settlementwebsite\]](http://www.[settlementwebsite]) if you have any questions about this settlement. Please do not contact the Court or Clerk for information.

By order of the United States District Court
for the Northern District of California

For more information: 1-866-000-0000
www.<SettlementWebsite>.com

EXHIBIT D

Media Plan

In re Alexia Foods, Inc. Litigation- Estimated 75% Reach

1/18/2013

Target Audience(s)

People Who Have Used Frozen Vegetables in the Last 6 Months ("Frozen Vegetable Users")

Paid Media**Print Media****Magazine(s)***People*

Circulation

3,450,000

Unit Type/Size

1/3 Page (2.125" x 10")

Insertions

1

Newspaper Supplement(s)*Parade*

33,000,000

3/10 Page (4" x 5.75")

1

USA Weekend

22,250,000

2/5 Page (5" x 6.4375")

1

Online Media**Web**

Ad Type/Size

Estimated Impressions

24/7 Network

728x90, 300x250, 160x600

128,000,000

Facebook.com

100x100

128,000,000

Estimated Media Delivery

This plan will deliver an estimated 75.03% reach against "Frozen Vegetable Users" with an estimated 1.5 frequency.

EXHIBIT E

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 OAKLAND DIVISION

4 Case No 11-cv-06119-PJH

5 In re: ALEXIA FOODS, INC.
6 LITIGATION

7 [PROPOSED] ORDER GRANTING
8 PRELIMINARY APPROVAL OF CLASS
9 ACTION SETTLEMENT AND PROVISIONAL
10 CLASS CERTIFICATION

11 Hearing Information

12 Date:

13 Time:

14 Courtroom:

15 Judge: Hon. Phyllis J. Hamilton

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28 [PROPOSED] ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT

1 Plaintiffs Leandro Vicuña ("Vicuna"), Pere Kyle ("Kyle"), and David Eckstein
 2 ("Eckstein," collectively "Plaintiffs"), having filed a motion for an order preliminarily approving
 3 the settlement reflected in the Stipulation of Settlement ("Agreement") entered into by Plaintiffs
 4 and Defendant ConAgra Foods, Inc. ("ConAgra" or "Defendant"); that said motion having come
 5 on for a hearing before the above-entitled Court; the Court having reviewed and considered all
 6 documents, evidence and arguments of counsel presented in support of said motion; the Court
 7 being fully advised of the premises and good cause appearing therefore, the Court enters its order
 8 and, subject to final determination by the Court as to the fairness, reasonableness and adequacy
 9 of the settlement, finds and orders as follows:

10 **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:**

11 1. For settlement purposes only, pursuant to Federal Rule of Civil Procedure 23, the
 12 Court hereby conditionally certifies the following class ("Settlement Class")¹: "All residents of
 13 the United States of America who, at any time between December 6, 2007, and [Preliminary
 14 Approval Date], purchased any of the referenced Alexia Products (i.e. "Sauté Reds," "Mashed
 15 Potatoes Yukon Gold Potatoes & Sea Salt," "Mashed Potatoes Red Potatoes with Garlic &
 16 Parmesan," "Waffle Fries," "Harvest Sauté," "Italian Sauté," "Sauté Sweets," and "Potato
 17 Bites")." Excluded from this definition are (a) ConAgra, (b) all of ConAgra's past and present
 18 respective parents, subsidiaries, divisions, affiliates, persons and entities directly or indirectly
 19 under its or their control in the past or in the present, (c) ConAgra's respective assignors,
 20 predecessors, successors and assigns; and the past or present partners, shareholders, managers,
 21 members, directors, officers, employees, agents, attorneys, insurers, accountants,
 22 (d) representatives of any and all of the foregoing, and (e) any government entities.

23 2. The Court conditionally certifies the proposed Settlement Class, and finds that the
 24 requirements of Fed. R. Civ. P. 23(a) are satisfied, for settlement purposes only, as follows:

25 a. Pursuant to Fed. R. Civ. P. 23(a)(1), the members of the Settlement Class are so

26
 27 ¹ Subject to the exclusions set forth in Section 5.3 of the Agreement.

1 numerous that joinder of all members is impracticable.

2 b. Pursuant to Fed. R. Civ. P. 23(a)(2) and 23(c)(1)(B), the Court determines that
3 there are common issues of law and fact for the Settlement Class.

4 c. Pursuant to Fed. R. Civ. P. 23(a)(3), the claims of the Class Representatives
5 (defined herein) are typical of the claims of the Settlement Class that they
6 represent.

7 d. Pursuant to Fed. R. Civ. P. 23(a)(4), the Class Representatives will fairly and
8 adequately protect and represent the interests of all members of the Settlement
9 Class. The interests of the Class Representatives are not antagonistic to those of
10 the Settlement Class. The Class Representatives are represented by counsel who
11 are experienced and competent in the prosecution of complex class action
12 litigation.

13 3. The Court further finds that the requirements of Fed. R. Civ. P. 23(b)(3) are
14 satisfied, as follows:

15 a. Questions of law and fact common to the members of the Settlement Class
16 predominate over questions that may affect only individual members; and

17 b. A class action is superior to all other available methods for the fair and efficient
18 adjudication of this controversy.

19 4. The Court appoints Plaintiffs Vicuna, Kyle, and Eckstein as class representatives
20 (“Class Representatives”) for the Settlement Class.

21 5. The Court preliminarily finds that the following counsel fairly and adequately
22 represent the interests of the Settlement Class and hereby appoints Roland Tellis and Mark Pifko
23 of Baron & Budd, P.C., and Nadeem Faruqi of Faruqi & Faruqi, LLP, as counsel for the
24 Settlement Class pursuant to Fed. R. Civ. P. 23(g).

1 6. The settlement was the result of the parties' good-faith negotiations. The
2 settlement was entered into by experienced counsel and only after extensive arm's-length
3 negotiations. The Settlement Agreement is not the result of collusion.

4 7. The Settlement falls well within the range of reason. The Settlement has no
5 obvious deficiencies.

6 8. The Court finds that the Agreement and the settlement set forth therein are
7 preliminarily approved as fair, reasonable and adequate as to all potential Settlement Class²
8 members.

9 9. The Court approves, as to form and content (or as may be amended by the Court),
10 the Class Notice, Short Form Notice and Media Plan attached as Exhibits B, C and D to the
11 Agreement. The Court finds that the dissemination of the Class Notice, as directed by this
12 Order, constitutes the best notice practicable under the circumstances and provides sufficient
13 notice to all members of the Settlement Class. The contents of the Class Notice and the manner
14 of its dissemination satisfy the requirements of state and federal due process. The Court
15 authorizes the parties to make minor revisions to the Class Notice as they may jointly deem
16 necessary or appropriate, without necessity of further Court action or approval.

17 10. The Rust Consulting firm is hereby appointed to administer the notice procedure,
18 process the claims, objections, and opt-outs.

19 11. A final approval hearing shall be held by this Court to consider and finally
20 determine:

- 21 a. Whether the Agreement should be finally approved as fair, reasonable, and
- 22 adequate;
- 23 b. Whether to approve Plaintiffs' Counsel's Fee and Expense Application, as
- 24 provided in paragraph 3.1 of the Agreement; and
- 25 c. The merits of any objections to the Agreement and the settlement set forth therein,

26 ² All capitalized and defined terms shall have the meaning ascribed to them in the Settlement
27 Agreement.

1 or any of its terms.

2 The final approval hearing described in this paragraph may be postponed, adjourned, or
3 continued by order of the Court without further notice to the Settlement Class.

4 12. Any members of the Settlement Class who do not request exclusion, and who
5 object to approval of the proposed settlement in compliance with the requirements of the
6 Agreement, may appear at the final approval hearing in person or through counsel to show cause
7 why the proposed settlement should not be approved as fair, reasonable, and adequate.

8 13. Any member of the Settlement Class who desires exclusion therefrom must mail,
9 by the date set forth in the Class Notice, the information required in the Class Notice completed
10 to the addresses set forth in the Class Notice. All persons who properly submit a completed
11 request for exclusion shall not be Settlement Class Members and shall have no rights with
12 respect to the settlement.

13 14. If the Agreement is finally approved, the Court shall enter a Settlement Order and
14 Judgment approving the Agreement. Said Settlement Order and Judgment shall be fully binding
15 with respect to all members of the Settlement Class who did not request exclusion by the date set
16 in the Class Notice, in accordance with the terms of the Class Notice and the Agreement.

17 15. All discovery, pretrial deadlines and other pretrial proceedings in this Action are
18 stayed and suspended until further order of this Court, except as otherwise agreed to by the
19 parties or as may be necessary to implement the Agreement or this Order.

20 16. In the event that the proposed settlement as provided in the Agreement is not
21 approved by the Court, or entry of a Settlement Order and Judgment as provided in the
22 Agreement does not occur for any reason, then the Agreement, all drafts, negotiations,
23 discussions, and documentation relating thereto, and all orders entered by the Court in
24 connection therewith shall become null and void. In such event, the Agreement and all
25 negotiations and proceedings relating thereto shall be withdrawn without prejudice to the rights
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1 of any and all parties thereto, who shall be restored to their respective positions as of the date of
2 the execution of the Agreement.

3 17. The Agreement is not a concession or admission and shall not be used or
4 construed against Plaintiffs, Defendant or any of the Released Persons as an admission or
5 indication with respect to any claim of any fault or omission by Plaintiffs, Defendant or any of
6 the Released Persons. No act performed or document executed pursuant to or in furtherance of
7 the settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence
8 of, the validity of any released claim or of any wrongdoing or liability of Defendant; or (ii) is
9 or may be deemed to be or may be used as an admission of, or evidence of, any fault or
10 omission of Defendant in any civil, criminal or administrative proceeding in any court,
11 administrative agency or other tribunal. Nothing in this order shall be relied upon, cited as,
12 constitute evidence of, or constitute an admission that class or collective action certification is or
13 may be appropriate in any other action.

14 18. The dates of performance of this order are as follows:

- 15 a. The Class Notices shall be disseminated in accordance with the provisions of
16 Section IV of the Agreement. The parties shall use their best efforts to complete
17 such dissemination by _____, 2013.
- 18 b. Requests for exclusion must be received by _____, 2013.
- 19 c. Online submissions of Claim Forms must be completed, and mailed Claim Forms
20 must be postmarked, no later than _____, 2013.
- 21 d. Objections to the settlement must be postmarked no later than _____, 2013.
- 22 e. Plaintiffs' Counsel shall prepare and file with the Court a joint list of class
23 members who have filed timely requests for exclusion by _____, 2013.
- 24 f. Plaintiffs' Counsel shall file and serve papers in support of final approval of the
25 Settlement, responding to any objections or motion to intervene, and requesting
26 attorneys' fees, costs and expenses by _____, 2013.

1 g. Defendant shall file papers, if any, in support of final approval of the settlement
2 and responding to any objections or motions to intervene by _____,
3 2013.

4 h. The final approval hearing shall be held on _____, 2013, at __:__ a.m.
5

6 19. The Court retains jurisdiction to consider all further applications arising out of the
7 proposed settlement.
8

9 IT IS SO ORDERED.

10 DATED: _____, 2013

11 _____
12 Hon. Phyllis J. Hamilton
13 Judge, United States District Court
14 In and For the Northern District of California
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EXHIBIT F

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re: ALEXIA FOODS, INC. LITIGATION

No. 11-cv-06119-PJH

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL TO CLASS ACTION
SETTLEMENT AND FINAL JUDGMENT**

Date:

Time:

Courtroom:

Judge: Hon. Phyllis J. Hamilton

On _____, 2013, this Court granted preliminary approval of the proposed class action Settlement between the parties.

The Court also provisionally certified a nationwide Settlement Class for settlement purposes, approved the procedure for giving notice and forms of Notice, and set a final approval hearing to take place on _____, 2013. The Settlement Class is defined as: "All residents of the United States of America who, at any time between December 6, 2007, and [Preliminary Approval Date], purchased any of the referenced Alexia Products (i.e. "Sauté Reds," "Mashed Potatoes Yukon Gold Potatoes & Sea Salt," "Mashed Potatoes Red Potatoes with Garlic & Parmesan," "Waffle Fries," "Harvest Sauté," "Italian Sauté," "Sauté Sweets," and "Potato Bites")." Excluded from this definition are (a) ConAgra, (b) all of ConAgra's past and present respective parents, subsidiaries, divisions, affiliates, persons and entities directly or indirectly under its or their control in the past or in the present, (c) ConAgra's respective assignors, predecessors, successors and assigns; and the past or present partners, shareholders, managers,

1 members, directors, officers, employees, agents, attorneys, insurers, accountants,
2 (d) representatives of any and all of the foregoing, and (e) any government entities.

3 On _____, 2013, the Court held a duly noticed final approval hearing to consider:
4 (1) whether the terms and conditions of the Stipulation of Settlement are fair, reasonable and
5 adequate; (2) whether a judgment should be entered dismissing the Consolidated Complaint on
6 the merits and with prejudice in favor of the Defendant and against all persons or entities who
7 are Settlement Class members herein who have not requested exclusion from the Settlement
8 Class; and (3) whether and in what amount to award counsel for the Settlement Class as
9 attorneys' fees and expenses and whether and in what amount to award the class representatives
10 as compensation.

11 The Court, having considered all matters submitted to it at the hearing and otherwise, and
12 it appearing that the Class Notice substantially in the form approved by the Court was given in
13 the manner that the Court ordered to persons who purchased the Alexia Products at issue, and
14 that a Short Form Notice in the form approved by the Court was disseminated in accordance with
15 the provisions of Section IV of the Agreement as ordered by the Court.

16 The Court, having considered and determined that the proposed settlement of the claims
17 of the Settlement Class Members against the Defendant, as well as the release of the Defendant
18 and the Released Persons, and the awards of attorneys' fees and expenses requested and class
19 representative compensation requested, are fair, reasonable and adequate, hereby orders:

20 NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

21 1. The Stipulation, including the definitions contained therein, is incorporated by
22 reference into this Settlement Order and Judgment.

23 2. The Court finds that the prerequisites for a class action under Federal Rules of
24 Civil Procedure ("Fed. R. Civ. P.") 23(a) and (b)(3) have been satisfied in that: (a) the number of
25 Settlement Class Members is so numerous that joinder of all members thereof is impracticable;
26 (b) there are questions of law and fact common to the Settlement Class; (c) the claims of the
27 Representative Plaintiffs are typical of the claims of the Settlement Class they seek to represent;
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1 (d) the Representative Plaintiffs have and will fairly and adequately represent the interests of the
2 Settlement Class; (e) the questions of law and fact common to the Settlement Class Members
3 predominate over any questions affecting any individual Settlement Class Member; and (f) a
4 class action is superior to the other available methods for the fair and efficient adjudication of the
5 controversy.

6 3. Pursuant to Fed. R. Civ. P. 23, this Court hereby finally certifies this action as a
7 nationwide class action on behalf of: All residents of the United States of America who, at any
8 time between December 6, 2007, and [Preliminary Approval Date], purchased any of the
9 referenced Alexia Products (i.e. "Sauté Reds," "Mashed Potatoes Yukon Gold Potatoes & Sea
10 Salt," "Mashed Potatoes Red Potatoes with Garlic & Parmesan," "Waffle Fries," "Harvest
11 Sauté," "Italian Sauté," "Sauté Sweets," and "Potato Bites")." Excluded from this definition are
12 (a) ConAgra, (b) all of ConAgra's past and present respective parents, subsidiaries, divisions,
13 affiliates, persons and entities directly or indirectly under its or their control in the past or in the
14 present, (c) ConAgra's respective assignors, predecessors, successors and assigns; and the past or
15 present partners, shareholders, managers, members, directors, officers, employees, agents,
16 attorneys, insurers, accountants, (d) representatives of any and all of the foregoing, and (e) any
17 government entities.

18 4. The Court appoints Roland Tellis and Mark Pifko of Baron & Budd, P.C., and
19 Nadeem Faruqi of Faruqi & Faruqi, LLP as counsel for the Settlement Class. The Court
20 designates named plaintiffs Leandro Vicuña, Pere Kyle, and David Eckstein as the Class
21 Representatives.

22 5. Notice of the pendency of this action as a class action and of the proposed
23 settlement was given to Settlement Class Members in a manner reasonably calculated to provide
24 the best notice possible. The form and method of notifying the Settlement Class of the pendency
25 of the Action as a class action and of the terms and conditions of the proposed Settlement met the
26 requirements of Fed. R. Civ. P. 23, due process, and any other applicable law; constituted the
27 best notice practicable under the circumstances; and constituted due and sufficient notice to all
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1 persons and entities entitled thereto.

2 6. The Stipulation is approved as fair, reasonable and adequate, and the Settlement
3 Class Members and the Parties are directed to consummate the Stipulation of Settlement in
4 accordance with its terms and conditions.

5 7. Pursuant to Fed. R. Civ. P. 23(h), the Court hereby awards Plaintiffs' Counsel
6 attorneys' fees and expenses in the amount of \$ _____. The Court also awards
7 stipends in the amount of \$5,000 to each Representative Plaintiff. These amounts are to be paid
8 by ConAgra in the time and manner described in the Stipulation of Settlement. Such amounts
9 are in lieu of statutory fees to which the Representative Plaintiffs might otherwise be entitled.

10 8. The Action is hereby dismissed with prejudice and without costs as against the
11 Defendant and the Released Persons.

12 9. Representative Plaintiffs and all Settlement Class Members are hereby
13 permanently barred and enjoined from instituting, commencing or prosecuting, either directly or
14 in any other capacity, any and all of the Claims against any of the Released Persons.

15 10. Effective as of the Final Settlement Approval Date, each and all of the Settlement
16 Class Members (except any such person who has filed a proper and timely request for exclusion)
17 shall release and forever discharge, and shall be forever barred from asserting, instituting or
18 maintaining against any or all of the Released Persons, any and all claims, demands, actions,
19 causes of action, lawsuits, arbitrations, damages or liabilities of any nature whatsoever, whether
20 legal, equitable or otherwise, arising or accruing at any time on or before the Preliminary
21 Approval Date, based on or arising from the use of the terms "Natural" or "All Natural" on the
22 labels or in the advertising or promotion of the Alexia Products for all times before the
23 Preliminary Approval Date, which have been asserted or which could reasonably have been
24 asserted in the Action (collectively, the "Claims"). In addition, upon the Final Settlement
25 Approval Date, the Claims are hereby compromised, settled, released, discharged and dismissed
26 as against the Released Parties on the merits by virtue of the proceedings herein and this
27 Settlement Order and Judgment. Notwithstanding the foregoing, nothing herein shall be
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1 construed as a release of ConAgra from carrying out its obligations under the Stipulation of
2 Settlement should the Final Settlement Approval Date occur.

3 11. Neither the Stipulation, nor any of its terms and provisions, nor any of the
4 negotiations or proceedings connected with it, nor any of the documents or statements referred to
5 therein shall be:

6 (a) offered by any person or received against the Defendant as evidence or
7 construed as or deemed to be evidence of any presumption, concession, or admission by the
8 Defendant of the truth of the facts alleged by the Representative Plaintiffs or any Settlement
9 Class Member or the validity of any claim that has been or could have been asserted in the
10 Action or in any litigation, or other judicial or administrative proceeding, or the deficiency of
11 any defense that has been or could have been asserted in the Action or in any litigation, or of any
12 liability, negligence, fault or wrongdoing of the Defendant;

13 (b) offered by any person or received against the Defendant as evidence of a
14 presumption, concession or admission of any fault, misrepresentation or omission with respect to
15 any statement or written document approved or made by the Defendant or any other wrongdoing
16 by the Defendant;

17 (c) offered by any person or received against the Defendant or as evidence of
18 a presumption, concession, or admission with respect to any liability, negligence, fault, or
19 wrongdoing, or in any way referred to for any other reason against any of the settling parties, in
20 any civil, criminal, or administrative action or proceeding; provided, however, that nothing
21 contained in this paragraph shall prevent the Stipulation of Settlement (or any agreement or order
22 relating thereto) from being used, offered, or received in evidence in any proceeding to approve,
23 enforce, or otherwise effectuate the Settlement (or any agreement or order relating thereto) or the
24 Settlement Order and Judgment, or in which the reasonableness, fairness, or good faith of the
25 parties in participating in the Settlement (or any agreement or order relating thereto) is an issue,
26 or to enforce or effectuate provisions of the Settlement, the Settlement Order and Judgment, or
27 the Proofs of Claim and Release as to the Defendant, Representative Plaintiffs, or the Settlement
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1 Class Members; or

2 (d) offered by any person or received against any Representative Plaintiff as
3 evidence or construed as or deemed to be evidence that any of their claims in any of the cases
4 consolidated herein lack merit.

5 12. Without affecting the finality of this Settlement Order and Judgment in any way,
6 this Court hereby retains continuing jurisdiction over: (a) the disposition of the settlement
7 benefits; and (b) the settling parties for purposes of construing, enforcing and administering the
8 Stipulation of Settlement.

9 13. Without further order of the Court, the settling parties may agree to reasonably
10 necessary extensions of time to carry out any of the provisions of the Stipulation of Settlement.

11 14. In the event that the Final Settlement Approval Date does not occur, this
12 Settlement Order and Judgment shall automatically be rendered null and void and shall be
13 vacated and, in such event, all orders entered and releases delivered in connection herewith shall
14 be null and void.

15 DONE this ____ day of _____, 2013.

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17 _____
18 Hon. Phyllis J. Hamilton
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Exhibit 2

BARON & BUDD, P.C.®

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Dallas, TX 75219-4281

Tel: 214.521.3605
Fax: 214.520.1181**Baron & Budd's Practice and Accomplishments****Firm Overview**

Baron & Budd, P.C. is among the largest and most accomplished plaintiffs' law firms in the country. With approximately 40 attorneys and more than 200 staff, Baron & Budd has the expertise and resources to handle complex litigation throughout the United States. As a law firm that prides itself on remaining at the forefront of litigation, Baron & Budd has spearheaded many significant cases for entities and individuals.

Since the firm was founded in 1977, Baron & Budd has achieved national acclaim for its work on cutting-edge litigation:

- In September 2010, Baron & Budd was one of only four firms chosen to serve on both the Plaintiffs' Executive Committee and on the Plaintiffs' Steering Committee of the Multi-District Litigation in the Gulf Oil Spill litigation.
- In August 2010, Baron & Budd was retained by the State of Louisiana to provide counsel to the State's designated Trustees in connection with issues related to the Deepwater Horizon explosion and resulting oil spill.
- In 2002-2006, 2008, 2011-2012, Baron & Budd was named to the *National Law Journal's* "Plaintiffs' Hot List" of exemplary plaintiffs' firms in the United States.
- In 2004, *American Lawyer* named Baron & Budd one of the sixteen most successful plaintiffs' firms in the country.
- In 2006, the non-profit Public Justice named a team of Baron & Budd attorneys "Trial Lawyer of the Year" for its work on litigation that spanned 21 years, involved over 1,600 plaintiffs, and resulted in a total recovery of more than \$150 million.
- In 2007, Russell Budd and Baron & Budd attorney Burton LeBlanc were among 14 attorneys nationwide to be honored with the Wiedemann Wysocki National Finance Council Award from the American Association for Justice in recognition of their commitment to the legal profession and their efforts to improve the civil justice system.
- In 2009, Baron & Budd was a finalist for the Public Justice Trial Lawyer of the Year Award for its recovery of more than \$400 million on behalf of more than 150 municipalities from 17 states.
- Baron & Budd has been repeatedly selected by The Legal 500 as one of the country's premier law firms in mass tort claims and class action litigation.

Additional information about Baron & Budd is available on the firm's website, www.baronandbudd.com.

Summary of Significant Areas of Litigation

Financial Litigation

\$410 Million Bank of America Settlement Over Excessive Bank Overdraft Fees

Baron & Budd attorneys worked closely with other law firms in a class action lawsuit asserting manipulation of data by banks in order to increase overdraft fee revenue. The firm helped achieve a \$410 million settlement with Bank of America, the largest bank involved in the bank overdraft fee litigation. The case alleged that Bank of America, along with a number of other banks, intentionally re-ordered debit card transactions to promote overdraft fees. Not only did the case result in repayment of these charges, but it also led to widespread changes in the banking system. Because of the lawsuit, many large banks have changed their overdraft fee policies, no longer “re-ordering debits” and not offering “courtesy” overdraft services without customer consent. Bank of America, for example, eliminated all debit card overdraft fees in 2010.

Predatory Credit Card Practices

Baron & Budd currently represents the states of West Virginia, Mississippi and Hawaii in litigation against national banks and other financial institutions regarding their unfair and deceptive marketing practices related to their credit card service plans, including payment protection plans. These defendants have preyed upon unsuspecting consumers, including the elderly and the disabled, by charging them for products ancillary to their credit cards when the consumers either did not authorize such charges or could never qualify to benefit from them.

Stock Option Back-Dating

Baron & Budd achieved a \$20 million settlement on behalf of individuals who purchased Semtech stock. Firm shareholder Burton LeBlanc served as co-lead counsel in the case. Plaintiffs in the case alleged that Semtech manipulated grant dates for stock options, which result in understatement of Semtech’s compensation expenses and overstatement of its reported income.

Protecting Shareholders’ Interest in Corporate Transition

As co-lead counsel in *In Re: 7-Eleven, Inc. Shareholders Litigation*, Baron & Budd represented shareholders in negotiations to increase the amount of an offer in a transaction turning a publicly-traded company into a privately-held entity. Baron & Budd achieved a \$5 per share increase in the offer which provided an additional \$145 million to 7-Eleven shareholders.

Settlement of Mutual Fund Advisors' Breaches of Fiduciary Duties

Baron & Budd represented shareholders in recovering funds in various mutual fund families against the fund advisors for their breach of their fiduciary duties for failing to file proof of claim forms in settled securities cases for which the funds were eligible. Baron & Budd reached a series of confidential settlements that resulted in money being returned from the fund advisor to the mutual fund.

Protecting Public Investors from Corporate Self-Dealing

In 2010, Baron & Budd successfully protected the interests of public investors in Affiliated Computer Services, Inc. (ACS). While ACS was being sold to Xerox, ACS's management and largest shareholder negotiated a better price for their own shares as well as remarkable future employment compensation packages. The insiders at the same time voted to sell ACS at a price well below its fair market value, which would have forced public shareholders to sell their shares for less. Working with other national law firms, Baron & Budd was able to obtain \$69 million in additional compensation for ACS public shareholders.

Consumers' Rights

Baron & Budd led the fight for victims' rights in two landmark victories, *Amchem Products v. Windsor* and *Ortiz v. Fibreboard Corp.*, which are widely recognized among the most appellate decisions for consumer rights.

Ortiz v. Fibreboard Corp., 526 U.S. 815, 119 S. Ct. 2295 (1999) was one of the last decisions handed down by the United States Supreme Court in 1999. The Court's 7-2 decision was handed down after months of fierce debate over whether future claims by victims of asbestos exposure should be handled as a class action.

Baron & Budd led the charge to dismiss the Fiberboard mandatory class action settlement that would have severely limited the rights of people to pursue individual claims based on the severity of their specific illness and specific circumstances of their exposure.

Writing on behalf of the Court, Justice Souter questioned the fairness of the settlement because, if allowed to go forward, Fiberboard would essentially have a "get out of jail free card." Fiberboard would have been able to settle all asbestos claims, including all future claims, with only \$500,000 of the company's own money, thus retaining virtually all of its net worth at the expense of the victims of its asbestos-containing products.

The *Ortiz* decision corroborated an earlier Supreme Court decision in which Baron & Budd also fought for victims' rights: *Amchem Products v. Windsor*, 521 U.S. 591, 117 S. Ct. 2231, 138 L.Ed2d 689 (1997).

Environmental Litigation

Lead Role in the Gulf Oil Spill Litigation

Immediately after the explosion that caused the massive Gulf Oil Spill, Baron & Budd got to work, helping individuals and businesses that had sustained economic and/or physical damages. Scott Summy, shareholder and head of Baron & Budd's water contamination litigation group, serves on the Plaintiffs' Executive Committee and the Plaintiffs' Steering Committee in the oil spill litigation. Shareholder Burton LeBlanc was retained by the State of Louisiana to provide counsel to the State's designated Trustees in connection with issues related to the Deepwater Horizon explosion and resulting oil spill. The firm currently represents hundreds of individuals and companies in the litigation, including the Louisiana Restaurant Association.

\$423 Million National MTBE Settlement

In May 2008, Baron & Budd helped negotiate a \$423 million settlement on behalf of more than 150 water providers in 17 states regarding Methyl Tertiary Butyl Ether (MTBE) contamination in groundwater with many of the country's leading gas companies. The settlement requires gasoline refiners to pay water providers' costs to remove MTBE from public drinking water wells and for refiners to pay for treatment of qualifying wells that may become contaminated within the next 30 years.

Plaintiffs' cases were initially filed in their respective state courts before they were later transferred to a Multi-District Litigation (MDL) court in New York. Baron & Budd shareholder Scott Summy, who filed the first-ever MTBE case in the United States, served as national co-lead counsel. Baron & Budd shareholders Celeste Evangelisti, Cary McDougal, Laura Baughman, Carla Burke and Stephen Johnston also represented the plaintiffs.

In 2008, the team of attorneys who were involved in the MTBE litigation was recognized as finalists for the "Trial Lawyer of the Year Award," an annual award given by Public Justice, a non-profit legal organization, for any attorney's contribution to the public interest.

\$105 Million Atrazine Settlement

Baron & Budd served as Class Counsel in litigation regarding the contamination of approximately 1,200 public drinking water systems by the chemical atrazine. The firm represented over thirty water providers primarily throughout the Midwest, including Missouri, Kansas, Ohio, and Illinois. In 2011, the Court approved a \$105 million settlement for water systems that have detected atrazine in their water supplies to reimburse the costs of removing the chemical from finished water.

Atrazine is a widely used agricultural chemical that is commonly applied to crops throughout the United States to control weeds. Despite the threat of water contamination and industry knowledge of the environmental risks, approximately 77 million pounds of atrazine is sprayed on U.S. crops each year.

Clean Air for School Children

In 2008, Baron & Budd shareholder Laura Baughman and attorney Thomas Sims represented three San Francisco Bay-area environmental organizations in negotiating a settlement with Laidlaw Transit, Inc. In the settlement, Laidlaw agreed to invest a minimum of \$4.7 million dollars over five years to retrofit older buses in its California fleet with air pollution control devices to reduce harmful diesel exhaust. Laidlaw also agreed to invest \$23.6 million in its fleet over seven years to either retrofit additional buses or purchase new buses that meet the most stringent air pollution standards in the country, which would ultimately protect young children from being exposed to harmful diesel exhaust. The following year, the team settled with two additional bus companies, which helped ensure that additional polluting buses would be replaced with newer, cleaner models or retrofitted with pollution control devices.

Clean Groundwater in California

In 2004, Baron & Budd shareholders Scott Summy and Laura Baughman negotiated a string of settlements on behalf of California non-profit Communities for a Better Environment (CBE) that required several major oil companies to upgrade gas station storage tanks, clean up groundwater contamination and take steps to prevent gasoline leakage from thousands of underground storage tanks in California. Monetary and injunctive relief granted in this case was valued at \$107 million.

MTBE Settlement on Behalf of the City of Santa Monica

In 2003, Baron & Budd represented the City of Santa Monica in a MTBE contamination settlement with several major oil companies. MTBE had contaminated five of Santa Monica's eleven wells, forcing the City to import water for \$3 million a year.

In total, the oil companies paid \$250 million, which provided funds for the City to build a water treatment system to clean MTBE from their supply, to continue buying water until their own supply was clean, and to monitor groundwater quality during and after the cleanup.

The Exxon Valdez Oil Spill

In 1993, Baron & Budd was awarded the Public Justice Award for "outstanding contribution to environmental protection and public interest" for its work on the rehabilitation of the damage caused by the Exxon Valdez oil spill in Alaska's Prince William Sound.

The Exxon Valdez oil spill occurred in remote Prince William Sound, Alaska on March 24, 1989 when the Exxon Valdez, an oil tanker bound for Long Beach, California, struck Prince William Sound's Bilgh Reef, ran aground and spilled nearly 11 million gallons of crude oil.

Much like in the recent Gulf Coast Oil Spill, the cause of Exxon Valdez can be pointed primarily at the oil company for neglecting to properly adhere to safety regulations. Exxon failed to repair the tanker's Raycas radar system, which would

have warned the crew of an impending collision with the Bligh reef, because it was just too expensive to fix and operate. The tanker had been operating for more than a year without a functioning Raycas radar.

As a result of the Valdez spill, the Oil Pollution Act of 1990 (OPA) was passed, allowing those who lost income or profits because of an oil spill to recover compensation from those responsible for the spill.

Groundbreaking Water Contamination Case in Tucson, Arizona

In 1985, Baron & Budd filed a lawsuit on behalf of more than 1,600 Tucson-area residents against an aircraft manufacturer, the City of Tucson and the Tucson Airport Authority over TCE contamination of the community's groundwater. Since Tucson is the largest city in the United States that receives all of its drinking water from underground sources, the industrial solvents used at the airport an aircraft company were of particular concern. Spilled on the ground and seeping through the sandy soil into the groundwater, the invisible yet harmful contaminants caused several unusual forms of cancer and other diseases at almost epidemic levels, particularly among children in the area.

The firm's cutting-edge work on this case not only brought compensation to individuals to help them deal with the consequences of their injuries, it helped define Arizona law on pollution coverage issues.

As a result, the public interest legal organization Public Justice presented the Baron & Budd legal team with its "Trial Lawyer of the Year Award" in 2006. The award recognizes the trial attorney or attorneys who have made the greatest contribution to the public interest each year by trying or settling a precedent-setting case or group of cases.

Pharmaceutical Litigation

Avandia

Baron & Budd represented over 7,000 victims harmed by using the diabetes drug Avandia. In addition, Baron & Budd currently represents the states of Mississippi, West Virginia, South Carolina, Utah, New Mexico, Maryland and Kentucky in their pending lawsuits against GlaxoSmithKline arising out of its fraudulent marketing of Avandia in those states.

FenPhen

Baron & Budd played a leading role in representing people harmed by the diet drug Fen-Phen. The firm was instrumental in negotiating the Seventh Amendment to the AHP Settlement Agreement, which required the defendants to place an additional \$1.275 billion into a trust for those affected.

Toxic Exposure Litigation

Closing Down the West Dallas Lead Smelter

In the West Dallas Lead Smelter case, Baron & Budd took on local environmental contamination to protect future generations of children from exposure to lead. One of Dallas' largest public housing projects sat in a low-income neighborhood directly across the street from a secondary lead smelter. For many years, the smelter converted used automotive batteries into lead components for resale. Particulate emissions from the factory smokestacks literally blanketed the surrounding community with lead-bearing soot.

Baron & Budd represented more than 200 families in a lawsuit that ultimately closed the lead smelter and paid sizable confidential settlements to court-supervised trusts for 445 children affected by lead poisoning. Although the neurological damage to these children is irreversible, the funds recovered in the settlement have enabled them to move into adulthood with medical, rehabilitative and vocational assistance. Closing the lead smelter and requiring the company to fund a community soil clean-up project helped prevent future damage to other neighborhood children.

Settlement for Central Texas Residents Harmed by Lead Exposure

Baron & Budd shareholder Laura Baughman represented more than 130 people who were exposed to high levels of lead and other toxic substances while growing up in a small town in Central Texas. Baron & Budd obtained a sizeable confidential settlement for the firm's clients, providing them with the resources to help pay for rehabilitative, psychological and other medical expenses.

Settlement for Harms Caused by Chemical Leaks

Baron & Budd successfully represented more than 850 workers injured by exposure to ethylene dichloride (EDC) in Lake Charles, Louisiana as a result of the negligent and reckless conduct of Conoco, Inc., Condea Vista Chemical Company, and a number of contractors that caused one of the largest chemical spills in U.S. history. In addition to its status as a probable human carcinogen, EDC exposure can cause serious damage to the heart, central nervous system, liver, kidneys, lungs, gastrointestinal system and commonly results in depression, memory loss and personality changes.

Professional Biographies

The Firm's Shareholders

Russell W. Budd is a major force in the world of plaintiff's attorneys, having devoted his three-decade career to championing the rights of people and communities injured by corporate malfeasance. Currently Mr. Budd presides over one of the nation's largest plaintiff's firms, Baron & Budd, PC, headquartered in Dallas, Texas with offices in Austin, Texas; Los Angeles, California and Baton Rouge, Louisiana.

Mr. Budd, a shareholder of Baron & Budd since 1985 and president and managing shareholder since 2002, has expanded the firm from its cornerstone asbestos practice to a national firm capable of tackling the biggest defendants in areas as diverse as water contamination, *qui tam*, California Proposition 65 violations, pharmaceutical injuries, Chinese drywall, insurance claims, securities fraud, BP Oil Spill claims, and predatory credit card practices.

Over the last decade, Mr. Budd has played significant roles in asbestos litigation on a national level. As chair and member of several asbestos creditors' bankruptcy committees, Mr. Budd successfully resolved over 100,000 victims' claims with some of Wall Street's biggest companies. Mr. Budd was the chief negotiator of a \$4 billion national settlement with Halliburton that established a trust fund to protect present and future asbestos victims throughout the United States - the largest asbestos trust fund of its kind anywhere in the world. He was on the committee that negotiated a \$3.9 billion settlement with United States Gypsum to benefit asbestos claimants. And, he participated in negotiations that led W.R. Grace to agree to fund a bankruptcy trust on behalf of asbestos claimants with nearly \$3 billion in cash and stock equity.

Under Mr. Budd's direction, Baron & Budd donated \$3 million to the International Pleural Mesothelioma Program at Brigham and Women's Hospital to research curative therapy for Mesothelioma, a cancer caused by exposure to asbestos. The firm has also given generously to the Asbestos Disease Awareness Organization, Lung Cancer Alliance and to other asbestos awareness advocacy organizations.

Mr. Budd serves on the Board of Governors of the American Association for Justice (AAJ) and previously served on the Board of Directors and Executive Committee of the Texas Trial Lawyers Association (TTLA).

On July 13, 2010, Mr. Budd was awarded the prestigious Harry M. Philo Award Trial Lawyer of the Year Award from the American Association for Justice (AAJ) at the organization's annual conference in Vancouver, BC. The award was presented in recognition of his dedicated and consistent leadership in protecting the rights of individuals through the civil-justice system. In 2007, he earned the prestigious Wiedemann Wysocki National Finance Council Award from the

American Association for Justice, an award honoring attorneys for their commitment to the legal profession and their efforts to improve the civil justice system.

Under Mr. Budd's leadership, Baron & Budd has won numerous awards. The firm was recently named by National Law Journal's to its "Hot List" of exemplary plaintiffs' firms in the United States and has been included in the Hot List eight times.

Mr. Budd and his wife are very involved in the community and one of the causes closest to his heart is Habitat for Humanity, which gives hardworking Dallas families a chance at first-time home ownership. He has personally contributed generously to the "Building on Faith" project, a collaborative initiative between the Dallas Faith Communities Coalition (DFCC), the City of Dallas and Habitat for Humanity to build 100 affordable single-family homes in West Dallas. In addition, Mr. Budd has donated land to the City of Dallas that enabled the completion of a massive bike and hike trail. In 2010, Mr. Budd was the only attorney selected to serve on the Foundation Board of the National Comprehensive Cancer Network (NCCN).

Steve T. Baron oversees Baron & Budd's asbestos litigation section and is one of the law firm's chief negotiators. Mr. Baron's efforts have helped provide compensation to thousands of asbestos victims. Along with Russell Budd, Mr. Baron participated in the Halliburton and W.R. Grace negotiations that set aside billions of dollars for the benefit of asbestos victims. Mr. Baron also serves on advisory and claimants committees for various asbestos bankruptcy trusts to protect the rights of asbestos victims.

Dan Alberstone co-manages the firm's Los Angeles office. Mr. Alberstone has nearly 30 years of broad experience prosecuting and defending major commercial and complex business litigation matters, including extensive jury trial experience.

Mr. Alberstone has been selected as lead trial counsel by both institutional and individual clients in their most significant and high-profile matters, including partnership cases, real estate cases, breach of contract cases, entertainment cases, environmental cases, and cases alleging unfair business practices. In the real estate sector, Mr. Alberstone has successfully prosecuted a case for the American Skiing Company, the owner of the Canyons Ski Resort in Park City, Utah, in an action to force the resort's landlord to agree to an assignment of ground lease in a \$123 million transaction. He also obtained a more than \$14 million award for a major real estate developer in connection with the purchase and sale of an historic bank building in downtown Los Angeles. Mr. Alberstone achieved a more than \$8 million award for the owner of the Edison Bar in downtown Los Angeles in an action involving the purchase and sale of a large commercial building and, successfully defended the Estate of Jonathan Ritter in an action brought to compel specific performance of a contract to purchase three citrus farms owned by the Estate.

In the entertainment area, he has successfully defeated an action by a union president and three board members against the Screen Actors' Guild and 41 other

members of its national board and successfully defended screenwriter in work-for-hire action brought by employer claiming ownership of screenplay. He also represented ESPN and Good Morning America reporter Erin Andrews in connection with the prosecution of a stalker who had surreptitiously videoed Ms. Andrews in the privacy of her hotel rooms. The Los Angeles Daily Journal recognized Mr. Alberstone for obtaining one of the top plaintiff's verdicts in 2009.

Laura Baughman's position at Baron & Budd calls upon her to exercise her knowledge as an attorney and a civil engineer.

As managing shareholder of the firm's Qui Tam litigation team, Ms. Baughman focuses on strategies to ferret out and litigate against those who have perpetrated fraud against the government. Sometimes called "whistleblower" cases, Ms. Baughman's team handles a variety of cases in which the government has been defrauded of Medicare, Medicaid, defense and other monies. The recently signed Dodd-Frank Wall Street Reform and Consumer Protection Act's provision of monetary rewards and protection to people who speak out against bribery and other types of financial fraud, has resulted in an increase in the firm's handling of such cases. Ms. Baughman is a member of Taxpayers Against Fraud, a non-profit organization dedicated to combating fraud and educating taxpayers about the realities of fraud.

In addition, Ms. Baughman leads the firm's work in California involving Proposition 65 litigation. She served as co-lead counsel in a California Proposition 65 water contamination case that required several major oil companies to clean up groundwater that had been contaminated by gasoline leaking from storage tanks and to take steps to prevent similar leaks in the future. The settlement was valued at \$107 million. Ms. Baughman settled another Proposition 65 case which required the retrofitting of school buses with devices to reduce diesel engine exhaust emissions, a known carcinogen. Ms. Baughman is currently counsel on a case seeking to require the disclosure of elevated levels of lead in certain brands of children's fruit juice, canned fruits and baby food.

In addition to her legal advocacy, Ms. Baughman has a long history of community service. She has represented several clients on a pro bono basis through the Dallas Volunteer Attorney Program and over the years has served as co-chair of several committees for Attorneys Serving the Community. Formerly a member of the Dallas Bar Association's Community Involvement Committee, she was the chair of the group's "Lawyers Have Heart" 5-K run benefiting the American Heart Association. While in law school, Baughman was the vice president of Texas Law Fellowships, a non-profit public interest organization.

Carla M. Burke, a shareholder in Baron & Budd's water contamination litigation section, began her legal career with the firm's appellate section. Ms. Burke has taken a prominent role in the briefing and legal analysis of MTBE Multi-District Litigation cases. She has also authored and presented numerous papers and presentations on the topics of toxic tort and water contamination litigation and premises liability law. In addition to her responsibilities at the firm, Ms. Burke has served as an adjunct clinical instructor of law at the Southern Methodist

University School of Law Legal Clinic and, before law school, an English professor at a local college.

Denyse Clancy focuses on the litigation and appeals process for asbestos cancer cases, primarily mesothelioma.

In 2009, Ms. Clancy won two \$8.5 million dollar verdicts in Philadelphia on behalf of two asbestos victims that were included in the top 100 verdicts of the year in the United States and the top 25 largest settlements and awards in Pennsylvania in 2009 by Pennsylvania Law Weekly. In 2007, Ms. Clancy won a substantial verdict from a Galveston jury on behalf of a retired pipefitter suffering from asbestos-mesothelioma.

Ms. Clancy has also achieved substantial appellate victories on behalf of asbestos sufferers and their families. She was lead appellate counsel in a case in which the California Court of Appeals decision upheld a \$20 million verdict on behalf of a California asbestos sufferer and her family. In 2010, Ms. Clancy was lead appellate counsel in a case in which the Pennsylvania Court of Appeals upheld a verdict against an asbestos wire manufacturer. In 2011, she was lead appellate counsel in a case in which the California Court of Appeals reversed a summary judgment that was granted in favor of Kaiser Gypsum Company and remanded the case to the trial court.

Ms. Clancy lectures around the country on the issues of asbestos and asbestos cancer. In 2011, she was invited as Visiting Faculty to speak at the Harvard Medical School's course on "Current Concepts and Controversies in Asbestos-Related Disease."

Ms. Clancy graduated Valedictorian of the Southern Methodist University School of Law and was an Editor of the SMU Law Review.

Celeste A. Evangelisti has devoted her career to representing individuals, municipalities, and water suppliers seeking funds to clean up contaminated community water supplies. Along with Baron & Budd shareholder Scott Summy, Ms. Evangelisti was part of the legal team for Communities for a Better Environment that received the *California Lawyer* "Attorneys of the Year" Award for Environmental Law for the resolution of a precedent-setting case requiring major oil companies to clean up more than a thousand sites contaminated by the gasoline additive MTBE. Ms. Evangelisti is a frequent speaker and presenter on legal topics concerning the prosecution of water contamination cases involving the gasoline additive MTBE and other water contaminants.

Stephen C. Johnston is a shareholder in Baron & Budd's water contamination litigation section. Prior to joining the water group, Mr. Johnston spent several years in the firm's asbestos litigation group, representing victims of mesothelioma and other asbestos-related diseases. He earned his law degree at Texas Tech University.

J. Todd Kale is a shareholder who first joined Baron & Budd in 2008 when the firm consolidated with Dallas-based law firm Silber Pearlman. Mr. Kale worked with mesothelioma sufferers and other victims of asbestos-related disease at Silber Pearlman from 1993, shortly after the law firm was founded, and continues that work at Baron & Budd. Mr. Kale oversees the firm's Bank-ID section and works closely with new and potential asbestos clients.

John Langdoc is no stranger to the complex medical and scientific issues involved in the cases he tries. Before becoming a lawyer, he was a scientist who studied how the brain works. At Baylor College of Medicine he researched the brains of people with schizophrenia, depression, and autism. Earlier, in graduate school, Mr. Langdoc helped discover that some prescription anti-depressants can cause brain birth defects.

Mr. Langdoc melds his scientific training and experiences with a core belief that the best way to work on a legal case is "to not do any of the stuff they teach you in law school."

As a lead trial attorney, Mr. Langdoc has been successful in obtaining some of the most significant verdicts of their kind, across the country. Some of his recent verdicts include a \$9M verdict against the Dow Chemical Company for a man who was exposed to carcinogens while working at their plant, Dow has announced that it plans to continue to have lawyers fight the verdict on appeal; a \$20M verdict for a woman who was unknowingly exposed to carcinogens from drywall when she helped her husband clean up on some home remodeling projects, the verdict was upheld on appeal in California; a \$12M verdict for a man who was exposed to carcinogens at a paper mill, the verdict resulted in a settlement agreement the day after the verdict in Pennsylvania; and an \$11M verdict for a man who was exposed to carcinogens as a painter.

Mr. Langdoc is a frequent lecturer at continuing legal education seminars for attorneys. He is typically asked to lecture on his experiences working on significant legal cases, and focuses on his belief that the best thing lawyers can do is work on their cases like they were never mis-trained to spin and distort the truth. He has been elected a Super Lawyer Rising Star, and was elected a Shareholder and Lead Trial Attorney at Baron & Budd faster than any lawyer in the firm's history.

J. Burton LeBlanc, IV's background covers the spectrum of environmental law and securities litigation. He has extensive experience litigating complex cases and has represented the state of Louisiana in cases against the oil and gas industry involving the underpayment of severance taxes and royalties. In June 2008, LeBlanc & Waddell, a firm co-founded by LeBlanc, merged with the national law firm of Baron & Budd, P.C., based in Dallas.

Mr. LeBlanc has also represented governmental entities, including the state of Mississippi, in complex consumer fraud litigation. Today Mr. LeBlanc concentrates his practice in the areas of environmental law, securities litigation

and asbestos litigation. Mr. LeBlanc has worked to recover hundreds of millions of dollars for injured working men and women in Louisiana, including multiple jury verdicts over one million dollars.

Mr. LeBlanc currently serves as President-Elect of the American Association for Justice ("AAJ") f/k/a the American Trial Lawyers Association ("ATLA"), and has previously served as vice-president, treasurer and parliamentarian. In addition, he has been a member of the Executive Committee and the Board of Governors of the AAJ, where he was awarded the Wiedeman Wysocki National Finance Council Award twice, most recently in July of 2010. Mr. LeBlanc has been a member of the AAJ National Finance Council, a member of the Board of Trustees of the AAJ PAC Committee, Chair of the National Finance Council, and is a member of the Leaders Forum for AAJ.

Mr. LeBlanc is a past President of the Louisiana Association for Justice ("LAJ") f/k/a Louisiana Trial Lawyers Association ("LTLA") and serves on the Executive Committee of the LAJ. He has served on the Council of Directors and the Board of Governors for the LAJ as well as the Committee for the Environmental Law/Toxic Tort Section of the LAJ.

In addition to being a committee member of the American Bar Association's Section on Toxic Torts, and a supporting member of the Trial Lawyers for Public Justice Foundation, LeBlanc was also named to a list of top plaintiffs' attorneys compiled by surveys of top defense counsel in September 2010.

Cary L. McDougal has served as lead attorney in over 75 jury trials in state and federal court. He has tried cases in diverse areas of the law such as premises liability, product liability, general personal injury, medical malpractice, insurance litigation and environmental litigation. As manager of Baron & Budd's water contamination litigation section, Mr. McDougal currently represents over 200 municipalities and water providers across the country that are seeking clean-up costs for the contamination of their water supplies. His practice includes management of Baron & Budd's cases in the Multi-District (MDL) MTBE water contamination litigation, which is considered one of the most complex pieces of litigation in the country. He also manages the firm's involvement in the BP Oil Spill litigation.

Scott Summy is a shareholder at Baron & Budd, one of the largest and oldest firms in the United States that specializes in environmental litigation. Mr. Summy heads up the firm's water contamination litigation section, whose practice is dedicated to complex water contamination issues across the country. Mr. Summy primarily represents public water providers, such as municipalities, water districts and utilities, and school districts whose water has been contaminated. Mr. Summy seeks cost recovery on behalf of his clients for treatment facilities, operation and maintenance costs of the treatment facility, out of pocket expenses and administrative costs. Mr. Summy also represents private well owners around the country whose wells are contaminated. Mr. Summy has represented approximately 200 public water providers across the country with MTBE contamination, and he is designated co-lead counsel for all plaintiffs. Mr. Summy

has reached settlements with most of the defendants in these cases totaling over \$450 million, including BP/Amoco.

Mr. Summy is continuing to file new MTBE cases across the country. He was also lead counsel in landmark environmental cases in California designed to protect natural resources. These cases were brought against all major oil companies and were successfully resolved, earning Mr. Summy and his legal team the "Attorney of the Year" award from *California Lawyer* in 2001.

Mr. Summy also represents over 30 water providers in atrazine litigation. Baron & Budd is the largest firm in the United States representing public water providers and private well owners on a contingency fee basis. Through his work in water cases across the country, Mr. Summy has obtained recoveries in excess of a billion dollars against major oil companies, including BP. Mr. Summy has been selected to be included in The Best Lawyers in America from 2006-2010. He and his team were also Finalists for the Public Justice Trial Lawyer of the Year Award in 2009. Mr. Summy currently serves on the Plaintiffs' Executive Committee in the Deepwater Horizon litigation.

Roland Tellis co-manages the firm's Los Angeles office. His practice focuses on complex, high-profile litigation, including consumer class actions, financial fraud, business torts, corporate misconduct, automobile defect, food labeling, false advertising, securities fraud, and environmental contamination.

Mr. Tellis has represented clients in numerous jury trials, including several multi-million dollar disputes. In 2005, Mr. Tellis received commendation from the U.S. Department of Justice and the Federal Bureau of Investigation for his assistance in the successful prosecution of a \$120 million securities Ponzi scheme perpetrated by foreign currency traders. Mr. Tellis also represented a multi-national food company in a trial involving the theft of its trade secrets by competing scientists. Mr. Tellis represented the owner of a commercial real estate portfolio in a trial involving hundreds of millions of dollars. Mr. Tellis also represented the Screen Actors' Guild and members of its national board.

Mr. Tellis has become a leader in representing plaintiffs in multi-district class action litigation and has become a formidable force in protecting consumer rights. Mr. Tellis is lead or co-lead class counsel in several complex class action cases, including cases in the financial services sector, the automobile industry and the food and beverage group. Mr. Tellis' experience exemplifies the depth and breadth of resources that Baron & Budd, P.C. provides for its clients.

Some of Mr. Tellis's consumer class actions include *Bias et al. v. Wells Fargo Bank* (putative class action concerning fraud in the setting of default related bank fees); *Stitt et al. v. Citibank et al.* (putative class action concerning fraud in the setting of default related bank fees); *Ellis et al. v. JPMorgan Chase et al.* (putative class action concerning fraud in the setting of default related banks fees); *Payne et al. v. Bank of America, et al.* (putative class action involving manipulation of the LIBOR U.S. Dollar rate); *In re L'Oreal Wrinkle Cream Marketing and Sales Practices Litigation* (putative class action involving fraudulent marketing of skin care products); *In re Avon Anti-Aging Skincare Creams and Products Marketing and Sales Practices Litigation* (putative class action involving fraudulent marketing of skin care products); *Delacruz v. Cytosport, Inc.* (putative class action

concerning false advertising, fraud, and misrepresentations regarding dietary supplement products); *Aarons et al. v. BMW of North America, LLC et al.* (putative class action concerning premature transmission failure in MINI Cooper vehicles); and *In re Alexia Foods, Inc. Litigation* (putative class action concerning false advertising, fraud, and misrepresentations concerning frozen food products).

Mr. Tellis served on the Board of Governors of the Association of Business Trial Lawyers and is a Lawyer Representative to the Ninth Circuit Judicial Conference. Mr. Tellis is Co-Chair of the Settlement Panel of the United States District Court for the Central District of California.

Of Counsel

Mazin A. Sbaiti works in the general litigation section of Baron & Budd. He has successfully represented plaintiffs and defendants in matters involving securities, antitrust, breach-of-contract, fraud, intellectual property, consumer protection, product liability and employment matters. Often called in to represent clients seeking to replace their counsel, Mr. Sbaiti has extensive experience resuscitating cases from the brink of dismissal or default. Mr. Sbaiti is a former law clerk for the U.S. Court of Appeals for the Sixth Circuit, and summer clerk for the Eastern District of New York. He graduated with honors from Columbia Law School where he headed the Moot Court Executive Board, served on the Editorial Board of the Human Rights Law Review, taught first-year law students research and writing, was a teaching fellow in financial accounting and financial statement analysis, and published an article on Social Security Law.

Allen Vaught is a decorated U.S. Army veteran and former Texas State Representative. A member of the U.S. Army Reserve from 1997 until 2005, Mr. Vaught took leave from Baron & Budd in 2003 to serve in Operation Iraqi Freedom. He commanded one of the Army's first units to enter Fallujah and served as the city's de facto mayor. Mr. Vaught heads the firm's FLSA litigation section, where he spearheads new litigation against employers who are not fairly compensating their employees.

Associates

Christopher C. Colley works with Baron & Budd clients who suffer from mesothelioma, primarily out of the firm's Baton Rouge office. Mr. Colley worked with the Dallas-based law firm Silber Pearlman until the firm consolidated with Baron & Budd in 2008. He earned his law degree from the Texas Tech University School of Law.

Chad Cotton is an attorney with Baron & Budd's asbestos litigation section, representing individuals with mesothelioma and other asbestos cancers. He concentrates his practice on the liability of employers and the owners of the facilities where his clients were exposed to asbestos. Mr. Cotton earned his J.D. from Southern Methodist University's Dedman School of Law.

Irma Espino is an attorney with Baron & Budd's water contamination litigation section, where she works primarily with clients who have been harmed by the Gulf Oil Spill. Espino originally joined the firm in 2002 as a case manager and later paralegal for pharmaceutical cases. In 2004, she left the firm to attend law school at the University of Miami School of Law, where she received honors in Litigation Skills and Trial Advocacy Program and was a member of the Business Law Review. She rejoined Baron & Budd in 2010.

Ann Harper has spent her career representing people who have developed mesothelioma and other serious illnesses caused by asbestos exposure. She works in Baron & Budd's settlement department, where she oversees the firm's Client Care department and works closely with the firm's clients to pursue claims through asbestos bankruptcy trust funds.

Steven Lopez is an attorney with the firm's asbestos litigation group. He joined the firm after completing his legal education at the Baylor University College of Law.

Mitchell McCrea is an attorney in the law firm's water litigation section. Growing up on his family's ranches and farm in southern New Mexico, Texas and California, Mr. McCrea was constantly aware of water's ever-increasing value and scarcity. Following graduate studies on environmental history and the history of the American West at the University of New Mexico, Mr. McCrea determined he could best make a positive impact on the world's natural resources if he was armed with a law degree. He graduated *cum laude* from Texas Tech University Law School.

Natasha Mehta works in Baron & Budd's commercial litigation section, which she joined in 2011. Ms. Mehta earned her J.D. at the University of California.

Marty A. Morris works with the firm's asbestos litigation group, representing people with mesothelioma and other asbestos-related diseases. Mr. Morris was an attorney with a well-known commercial litigation firm for several years before joining Baron & Budd in 1999. He earned his J.D. at South Texas College of Law, where he was honored with the Order of the Coif. He was also a member of the South Texas Law Review and the Advocacy Program.

Mark Pifko represents clients in complex and class action litigation matters. Mr. Pifko has taken on powerful corporations on cases involving false advertising, fraud and scientific and technical disputes. Mr. Pifko's experience on both sides of the courtroom encompasses more than 50 class action lawsuits and other matters concerning consumer goods, food products, dietary supplements, vehicles and software. Mr. Pifko has been involved in a class action against McDonald's regarding violations of California's gift card laws. He also worked on matters concerning Harley Davidson Motor Company and alleged motorcycle defects. Additionally, Mr. Pifko has experience representing clients in California Proposition 65 litigation, with a focus on cases involving manufacturers and retailers of dietary supplement and health-care products who failed to warn customers about potential cancer risks. Mr. Pifko has also represented employees who were denied wages and benefits owed under the California Labor Code, and settle the \$1.5 million case against San Francisco-based Bare Escentuals, who failed to provide workers with breaks and wages. In addition to his work in the courtroom, Mr. Pifko is a talented writer who has been published in several magazines on class action law and consumer advocacy.

M. Cristina Sanchez is an attorney with the firm's water contamination litigation section, representing municipalities, water providers and private well owners seeking clean-up costs for polluted drinking water supplies. She earned her J.D. at Southern Methodist University's Dedman School of Law, where she was the National Champion, recipient of the Best Brief Award and Second Place Oralist in the 2002 Hispanic National Bar Association Moot Court Competition. She also won First Place in the 2001 Southern Methodist University Client Counseling Competition and served as Chief Counsel for SMU's Criminal Defense Legal Clinic in 2002.

Thomas M. Sims has worked on a variety of environmental cases, ranging from water contamination to air pollution. In the Tucson, Arizona groundwater contamination case, Mr. Sims served as trial counsel in two lengthy bench trials that led to favorable verdicts for his clients. Mr. Sims also served on the legal team that was awarded the 2006 Public Justice "Trial Lawyer of the Year" Award for their work on this Tucson water contamination case. Mr. Sims earned his law degree, with honors, from the University of Texas School of Law.

Peter Smith brings a wealth of real estate and commercial expertise to Baron and Budd. Whether it's representing individuals or corporations in trial or arbitration, Mr. Smith works to reach the best solution for his clients. His practice focuses on cases involving property, partnership disputes, fraud, antitrust, breach of contract, breach of fiduciary duty, unfair business practices and copyright. In one of his notable cases, Mr. Smith worked on an action for the American Skiing Company, the owner of the Canyons Ski Resort in Park City, Utah, to compel the resort's landlord to agree to a lease in a \$123 million transaction. He also worked on a trial team that successfully defended the estate of actor John Ritter in an action brought to compel specific performance of a contract to purchase three citrus farms owned by the Ritter estate.

BARON & BUDD, P.C.®

Natalie J. Velasco began her career working as an administrative assistant at a plaintiffs' law firm, where she later discovered a passion for the law. Ms. Velasco works with clients throughout the settlement process. She earned her J.D. at Southern Methodist University Dedman School of Law.

Exhibit 3



Faruqi & Faruqi, LLP focuses on complex civil litigation, including securities, antitrust, wage and hour, and consumer class actions as well as shareholder derivative and merger and transactional litigation. The firm is headquartered in New York, and maintains offices in California, Delaware and Pennsylvania.

Since its founding in 1995, Faruqi & Faruqi, LLP has served as lead or co-lead counsel in numerous high-profile cases which ultimately provided significant recoveries to investors, consumers and employees.

PRACTICE AREAS

SECURITIES FRAUD LITIGATION

Since its inception over eighteen years ago, Faruqi & Faruqi, LLP has devoted a substantial portion of its practice to class action securities fraud litigation. In *In re PurchasePro.com, Inc. Securities Litigation*, No. CV-S-01-0483-JLQ (D. Nev.), as co-lead counsel for the class, Faruqi & Faruqi, LLP secured a \$24.2 million settlement in a securities fraud litigation even though the corporate defendant was in bankruptcy. As noted by Senior Judge Justin L. Quackenbush in approving the settlement, ***"I feel that counsel for plaintiffs evidenced that they were and are skilled in the field of securities litigation."***

Other past achievements include: *In re Olsten Corp. Sec. Litig.*, No. 97-CV-5056 (E.D.N.Y.) (recovered \$25 million dollars for class members), *In re Tellium, Inc. Sec. Litig.*, No. 02-CV-5878 (FLW) (D.N.J.) (recovered \$5.5 million dollars for class members); *In re Mitcham Indus., Inc. Sec. Litig.*, No. H-98-1244 (S.D. Tex.) (recovered \$3 million dollars for class members despite the fact that corporate defendant was on the verge of declaring bankruptcy), and *Ruskin v. TIG Holdings, Inc.*, No. 98 Civ. 1068 LLS (S.D.N.Y.) (recovered \$3 million dollars for class members).

Recently, in *Shapiro v. Matrixx Initiatives, Inc.*, No. CV-09-1479-PHX-ROS (D. Ariz.), Faruqi & Faruqi, LLP, as co-lead counsel for the class, defeated defendants' motion to dismiss, succeeded in having the action certified as a class action, and secured preliminary approval of a \$4.5 million dollar settlement for the class. In *In re Ebix, Inc. Securities Litigation*, No. 1:11-cv-02400-RWS (N.D. Ga.), the court denied defendants' motion to dismiss and Faruqi & Faruqi, LLP, as sole lead counsel, is currently conducting discovery on behalf of class members.

Additionally, Faruqi & Faruqi, LLP is serving as court-appointed lead counsel in the following cases:

- *Percoco v. Deckers Outdoor Corp.*, No. 1:12-cv-01001-SLR (D. Del.) (sole lead counsel);
- *McGee v. Am. Oriental Bioengineering, Inc.*, No. 2:12-cv-05476-FMO-SHx (C.D. Cal.) (sole lead counsel);
- *Lauria v. BioSante Pharm., Inc.*, No. 12 C 0772 (N.D. Ill.) (sole lead counsel);



- *Austin v. AEterna Zentaris Inc.*, No. 1:12-civ-04711 (PKC) (S.D.N.Y.) (sole lead counsel);
- *McIntyre v. Chelsea Therapeutics Int'l, LTD*, No. 3:12-CV-213-MOC-DCK (sole lead counsel);
- *In re Carbo Ceramics, Inc. Stock & Options Sec. Litig.*, No. 1:12-cv-01034-LLS (S.D.N.Y.) (lead counsel for options investors);
- *In re China Organic Sec. Litig.*, No. 1:11-cv-08623-JMF (S.D.N.Y.) (sole lead counsel);
- *In re GLG Life Tech Corp. Sec. Litig.*, No. 1:11-cv-09150-KBF (S.D.N.Y.) (sole lead counsel).

SHAREHOLDER MERGER AND TRANSACTIONAL LITIGATION

Faruqi & Faruqi, LLP places special emphasis on prosecuting shareholder class actions brought nationwide against officers, directors and other parties responsible for corporate wrongdoing. Most of these cases are based upon state statutory or common law principles involving fiduciary duties owed to investors by corporate insiders as well as Exchange Act violations.

Faruqi & Faruqi, LLP has obtained significant monetary and therapeutic recoveries, including millions of dollars in increased merger consideration for public shareholders; additional disclosure of significant material information so that shareholders can intelligently gauge the fairness of the terms of proposed transactions and other types of therapeutic relief designed to increase competitive bids and protect shareholder value. As noted by Judge Timothy S. Black of the United States District Court for the Southern District of Ohio in appointing lead counsel *Nichting v. DPL Inc.*, Case No. 3:11-cv-14 (S.D. Ohio), "[a]lthough all of the firms seeking appointment as Lead Counsel have impressive resumes, the Court is most impressed with Faruqi & Faruqi."

As lead counsel in *Knee v. Brocade Comm'ns Sys., Inc.*, No. 1-12-CV-220249, slip op. at 2 (Cal. Super. Ct. Santa Clara Cnty. Apr. 10, 2012) (Kleinberg, J.), Faruqi & Faruqi, LLP, enjoined the 2012 shareholder vote because information relating to projected executive compensation was not properly disclosed in the proxy statement. Similarly, as sole class counsel for plaintiffs in *Kajaria v. Cohen*, No. 1:10-CV-03141 (N.D. Ga., Atlanta Div.), Faruqi & Faruqi, LLP, succeeded in having the district court order Bluelinx Holdings Inc., the target company in a tender offer, to issue additional material disclosures to its recommendation statement to shareholders before the expiration of the tender offer.

Furthermore, in *In re Playboy Enterprises, Inc. Shareholders Litigation*, Consol. C.A. No. 5632-VCN (Del. Ch.) Faruqi & Faruqi recently achieved a substantial post close settlement of \$5.25 million. In *In re Cogent, Inc. Shareholders Litigation*, Consol. C.A. No. 5780-VC (Del. Ch.) Faruqi & Faruqi, LLP, as co-lead counsel, obtained a post-close cash settlement of \$1.9 million after two years of hotly contested litigation; *In re Bausch & Lomb Inc. Buyout Litig.*, Index No. 07/6384 (N.Y. Supr. Ct., Monroe Cty. 2008) Faruqi & Faruqi, LLP, as co-lead counsel, caused Bausch & Lomb Inc. to disclose to shareholders critical material information concerning its merger with Warburg Pincus LLC and in *Rice v. Lafarge North America, Inc., et al.*, No. 268974-V (Montgomery Cty., Md. Circuit Ct.), Faruqi & Faruqi, LLP, as co-lead



counsel represented the public shareholders of Lafarge North America ("LNA") in challenging the buyout of LNA by its French parent, Lafarge S.A., at \$75.00 per share. After discovery and intensive injunction motions practice, the price per share was increased from \$75.00 to \$85.50 per share, or a total benefit to the public shareholders of \$388 million. The Lafarge court gave Class counsel, including Faruqi & Faruqi, LLP, shared credit with a special committee appointed by the company's board of directors for a significant portion of the price increase.

Also, in *In re: Hearst-Argyle Shareholder Litig.*, Lead Case No. 09-Civ-600926 (N.Y. Sup. Ct.) as co-lead counsel for plaintiffs, Faruqi & Faruqi, LLP litigated, in coordination with Hearst-Argyle's special committee, an increase of over 12.5%, or \$8,740,648, from the initial transaction value offered for Hearst-Argyle Television Inc.'s stock by its parent company, Hearst Corporation. Faruqi & Faruqi, LLP, in *In re Alfa Corp. Shareholder Litig.*, Case No. 03-CV-2007-900485.00 (Montgomery Cty, Ala. Cir. Ct.) was instrumental, along with the Company's special committee, in securing an increased share price for Alfa Corporation shareholders of \$22.00 from the originally-proposed \$17.60 per share offer, which represented over a \$160 million benefit to class members, and obtained additional proxy disclosures to ensure that Alfa shareholders were fully-informed before making their decision to vote in favor of the merger, or seek appraisal.

Moreover, in *In re Fox Entertainment Group, Inc. S'holders Litig.*, Consolidated C.A. No. 1033-N (Del. Ch. 2005), Faruqi & Faruqi, LLP, as co-lead counsel, and in coordination with Fox Entertainment Group's special committee, created an increased offer price from the original proposal to shareholders, which represented an increased benefit to Fox Entertainment Group, Inc. shareholders of \$450 million. Also, in *In re Howmet Int'l S'holder Litig.*, Consolidated C.A. No. 17575 (Del. Ch. 1999) Faruqi & Faruqi, LLP, in coordination with Howmet's special committee, successfully obtained an increased benefit to class members of \$61.5 million dollars).

Further, in *Brickell Partners v. Emerging Commns., Inc.*, Civil No. 16415 (Del. Ch. 1998) Faruqi & Faruqi, LLP, in its monitoring role as Class counsel achieved a post-trial settlement on behalf of the Class of \$5,596,037.40. After being consolidated with an appraisal hearing, the action was litigated vigorously for over four years, including a six week trial, where Faruqi & Faruqi, LLP in a secondary, monitoring role, represented the Class' interests with primary trial counsel - counsel for the hedge fund Greenlight Capital L.P. After trial the Court returned a verdict in favor of plaintiff. The case established new law and new standards for determining the fiduciary duties of corporate directors, especially directors that have specialized backgrounds (such as, accountants, lawyers, financial experts, etc.). The decision is now reported as *In re Emerging Commns., Inc. S'holders Litig.*, No. 16415, 2004 Del. Ch. LEXIS 70 (Del. Ch., May 3, 2004).



Faruqi & Faruqi, LLP, is committed to bringing novel post-close cases seeking damages as a result of an unfair buyout. Faruqi & Faruqi, LLP has handled a number of high profile cases such as *In re Smurfit-Stone Container Corp. S'holder Litig.*, Consol. C.A. No. 6164-VCP (Del. Ch. March 24, 2011); *In re Cogent S'holder Litig.*, C.A. No. 5780-VCP (Del. Ch. 2010); *In re Massey Energy Co. Derivative and Class Action Litig.*, C.A. No. 5430-CS (Del. Ch. 2010); *In re Novell, Inc. S'holder Litig.*, Consol. C.A. No. 6032-VCN (Del. Ch. 2010); *In re Playboy Enterprises, Inc. S'holders Litig.*, Consol. C.A. No. 5632-VCN (Del. Ch. 2010); *In re MFW S'holder Litig.*, Consol. C.A. No. 6566-CS (Del. Ch. 2011); *In re BJ's Wholesale Club, Inc. S'holders Litig.*, Consol. C.A. No. 6623-VCN (Del. Ch. 2011); *In re Morton's Restaurant Group, Inc. S'holder Litig.*, Consol. C.A. No. 7122-CS (Del. Ch. 2011).

SHAREHOLDER DERIVATIVE LITIGATION

Faruqi & Faruqi, LLP has extensive experience litigating shareholder derivative actions on behalf of corporate entities. This litigation is often necessary when the corporation has been injured by the wrongdoing of its officers and directors. This wrongdoing can be either active, such as the wrongdoing by certain corporate officers in connection with purposeful backdating of stock-options, or passive, such as the failure to put in place proper internal controls, which leads to the violation of laws and accounting procedures. A shareholder has the right to commence a derivative action when the company's directors are unwilling or unable, to pursue claims against the wrongdoers, which is often the case when the directors themselves are the wrongdoers.

The purpose of the derivative action is threefold: (1) to make the company whole by holding those responsible for the wrongdoing accountable; (2) the establishment of procedures at the company to ensure the damaging acts can never again occur at the company; and (3) make the company more responsive to its shareholders. Improved corporate governance and shareholder responsiveness are particularly valuable because they make the company a stronger one going forward, which benefits its shareholders. For example, studies have shown the companies with poor corporate governance scores have 5-year returns that are 3 .95% below the industry average, while companies with good corporate governance scores have 5-year returns that are 7.91 % above the industry-adjusted average. The difference in performance between these two groups is 11 .86%. *Corporate Governance Study: The Correlation between Corporate Governance and Company Performance*, Lawrence D. Brown, Ph.D., Distinguished Professor of Accountancy, Georgia State University and Marcus L. Caylor, Ph.D. Student, Georgia State University. Faruqi & Faruqi, LLP has achieved all three of the above stated goals of a derivative action. The firm regularly obtains significant corporate governance changes in connection with the successful resolution of derivative actions, in addition to monetary recoveries that inure directly to the



benefit of the company. In each case, the company's shareholders indirectly benefit through an improved market price and market perception.

In *In re UnitedHealth Group Incorporated Derivative Litig.*, Case No. 27 CV 06-8065 (Minn. 4th Judicial Dist. 2009) Faruqi & Faruqi, LLP, as co-lead counsel for plaintiffs, obtained a recovery of more than \$930 million for the benefit of the Company and corporate governance reforms designed to make UnitedHealth a model of corporate responsibility and transparency. **At the time, the settlement reached was believed to be the largest settlement ever in a derivative case.** See "UnitedHealth's Former Chief to Repay \$600 Million," Bloomberg.com, December 6, 2007 ("the settlement . . . would be the largest ever in a 'derivative' suit . . . according to data compiled by Bloomberg.").

As co-lead counsel in *Weissman v. John, et al.*, Cause No. 2007-31254 (Tex. Harris County 2008) Faruqi & Faruqi, LLP, diligently litigated a shareholder derivative action on behalf of Key Energy Services, Inc. for more than three years and caused the company to adopt a multitude of corporate governance reforms which far exceeded listing and regulatory requirements. Such reforms included, among other things, the appointment of a new senior management team, the realignment of personnel, the institution of training sessions on internal control processes and activities, and the addition of 14 new accountants at the company with experience in public accounting, financial reporting, tax accounting, and SOX compliance.

More recently, Faruqi & Faruqi, LLP concluded shareholder derivative litigation in *The Booth Family Trust, et al. v. Jeffries, et al.*, Lead Case No. 05-cv-00860 (S.D. Ohio 2005) on behalf of Abercrombie & Fitch Co. Faruqi & Faruqi, LLP, as co-lead counsel for plaintiffs, litigated the case for six years through an appeal in the U.S. Court of Appeals for the Sixth Circuit where it successfully obtained reversal of the district court's ruling dismissing the shareholder derivative action in April 2011. Once remanded to the district court, Faruqi & Faruqi, LLP caused the company to adopt important corporate governance reforms narrowly targeted to remedy the alleged insider trading and discriminatory employment practices that gave rise to the shareholder derivative action.

The favorable outcome obtained by Faruqi & Faruqi, LLP in *In re Forest Laboratories, Inc. Derivative Litigation*, Lead Civil Action No. 05-cv-3489 (S.D.N.Y. 2005) is another notable achievement for the firm. After more than six years of litigation, Faruqi & Faruqi, LLP, as co-lead counsel, caused the company to adopt industry-leading corporate governance measures that included rigorous monitoring mechanisms and Board-level oversight procedures to ensure the timely and complete publication of clinical drug trial results to the investing public and to deter, among other things, the unlawful off-label promotion of drugs.



ANTITRUST LITIGATION

The attorneys at Faruqi & Faruqi, LLP represent direct purchasers, competitors, third-party payors, and consumers in a variety of individual and class action antitrust cases brought under Sections 1 and 2 of the Sherman Act. These actions, which typically seek treble damages under Section 4 of the Clayton Act, have been commenced by businesses and consumers injured by anticompetitive agreements to fix prices or allocate markets, conduct that excludes or delays competition, and other monopolistic or conspiratorial conduct that harms competition.

Actions for excluded competitors. Faruqi & Faruqi represents competitors harmed by anticompetitive practices that reduce their sales, profits, and/or market share. One representative action is *Babyage.com, Inc., et al. v. Toys "R" Us, Inc., et al.* where Faruqi & Faruqi was retained to represent three internet retailers of baby products, who challenged a dominant retailer's anticompetitive scheme, in concert with their upstream suppliers, to impose and enforce resale price maintenance in violation of §§ 1 and 2 of the Sherman Act and state law. The action sought damages measured as lost sales and profits. This case was followed extensively by the Wall Street Journal. After several years of litigation, this action settled for an undisclosed amount.

Actions for direct purchasers. Faruqi & Faruqi represents direct purchasers who have paid overcharges as a result of anticompetitive practices that raise prices. These actions are typically initiated as class actions. A representative action on behalf of direct purchasers is *Rochester Drug Co-Operative, Inc. v. Warner Chilcott Public Limited Company, et al.*, No. 12-3824 (E.D. Pa.), in which Faruqi & Faruqi was appointed co-lead counsel for the proposed plaintiff class under Federal Rule of Civil Procedure 23(g). Faruqi & Faruqi's attorneys are counsel to direct purchasers (typically wholesalers) in multiple such class actions.

Actions for third-party payors. Faruqi & Faruqi represents, both in class actions and in individual actions, insurance companies who have reimbursed their policyholders at too high a rate due to anticompetitive prices that raise prices. One representative action is *In re Tricor Antitrust Litigation*, No. 05-360 (D. Del.), where Faruqi & Faruqi represented PacifiCare and other large third-party payors challenging the conduct of Abbott Laboratories and Laboratories Fournier in suppressing generic drug competition, in violation of §§ 1 and 2 of the Sherman Act. The *Tricor* litigation settled for undisclosed amount in 2010.

Results. Faruqi & Faruqi's attorneys have consistently obtained favorable results in their antitrust engagements. Non-confidential results include the following: *In re Iowa Ready-Mixed Concrete Antitrust Litigation*, No. C 10-4038 (N.D. Iowa) (\$18.5 million settlement); *In re Metoprolol Succinate Direct Purchaser Antitrust Litigation*, 06-52 (D. Del.) (\$20 million settlement); *In re Ready-Mixed Concrete*



Antitrust Litigation, No. 05-979 (S.D. Ind.) (\$40 million settlement); *Rochester Drug Co-Operative, Inc., et al. v. Braintree Labs, Inc.*, No. 07-142-SLR (D. Del.) (\$17.25 million settlement).

A more complete list of Faruqi & Faruqi's active and resolved antitrust cases can be found on its web site at www.faruqilaw.com.

CONSUMER FRAUD LITIGATION

Attorneys at Faruqi & Faruqi, LLP have represented consumers in a variety of state and federal complex class action cases. In *Thomas v. Global Vision Products*, Case No. RG-03091195, California Superior Ct., Alameda Cty.), Faruqi & Faruqi, LLP served as co-lead counsel in a consumer class action lawsuit against Global Vision Products, Inc., the manufacturer of the Avacor hair restoration product and its officers, directors and spokespersons, in connection with the false and misleading advertising claims regarding the Avacor product. Though the company had declared bankruptcy in 2007, Faruqi & Faruqi, LLP, along with its co-counsel, successfully prosecuted two trials to obtain relief for the class of Avacor purchasers. In January 2008, a jury in the first trial returned a verdict of almost \$37 million against two of the creators of the product. In November 2009, another jury awarded plaintiff and the class more than \$50 million in a separate trial against two other company directors and officers. This jury award represented the largest consumer class action jury award in California in 2009 (according to VerdictSearch, a legal trade publication).

In *Kelly, v. Phiten*, 11-cv-00067 JEG (S.D. IA 2011), Faruqi & Faruqi, LLP served as co-lead counsel in action concerning Defendant Phiten USA's alleged false and misleading statements that its jewelry and other products are capable of balancing the user's energy flow. Faruqi & Faruqi, LLP negotiated a settlement entitling claimants to up to 300% of the cost of the product and substantial injunctive relief requiring Phiten to modify its advertising claims.

Faruqi & Faruqi, LLP was also successful in *In re: HP Power-Plug Litigation*, Case No. 06-1221 (N.D. Cal.), in obtaining full relief to class members with a settlement of a cash payment up to \$650.00, or in the alternative, a repair free-of-charge and free of shipping and handling costs and new limited warranty, to compensate class members for defective laptops manufactured by defendant HP. Also, in *Delre v. Hewlett-Packard Co.*, C.A. No. 3232-02 (N.J. Super. Ct. 2002), Faruqi & Faruqi, LLP obtained full relief for a class of approximately 170,000 members who purchased HP dvd-100i dvd-writers ("HP 100i") after HP misrepresented the write-once ("DVD+R") capabilities of the HP 100i; including, the compatibility of DVD+RW disks written by HP 100i with DVD players and other optical storage devices. HP agreed to replace the defective HP 100i with its more current, second generation DVD writer, the HP 200i, for affected class members and refund the \$99 it had charged some consumers to upgrade from the HP 100i



to the HP 200i prior to the settlement. Also, in *Potter v. Sharper Image Corp.*, No. CGC-03426350 (Cal. Sup. Ct.) Faruqi & Faruqi, LLP was lead counsel on behalf of a class of purchasers of Sharper Image's Ionic Breeze air purifiers alleging unfair and deceptive trade practices.

Faruqi & Faruqi, LLP is serving as counsel for plaintiffs in *In re: Toyota Motor Corp. Hybrid Brake Marketing, Sales Practices, And Product Liability Litigation*, MDL No. 2172-CJC-RNB (C.D. Cal. 2011) on behalf of a proposed nationwide class of purchasers of Prius Hybrid and Lexus HS250h automobiles. Faruqi & Faruqi, LLP, and co-counsel defeated a complex motion to dismiss filed by defendants who challenged plaintiffs' allegations pursuant to California's consumer laws including the UCL, the CLRA, and FAL as well as plaintiffs' breach of implied warranty of merchantability and breach of contract claims.

Faruqi & Faruqi, LLP is currently co-lead counsel in the following cases:

- *Avram v. Samsung Electronics America, Inc., et al.*, Case No. 11-CIV-6973 SRC-MAS (D.N.J. 2011) (representing a proposed nationwide class of persons who purchased mislabeled refrigerators from Samsung Electronics America, Inc. for misrepresenting the energy efficiency of certain refrigerators.)
- *Bates v. General Nutrition Centers, Inc., et al.*, Case No. 12-cv-01336-ODW-AJW (C.D. Cal. 2012) (representing a prospective class of consumers who purchased C-4 Extreme, a product containing a dangerous and synthetic stimulant, which has been deceptively marketed as a pre-workout "dietary supplement".)
- *Bates v. Kashi Co., et al.*, Case No. 11-CV-1967-H BGS (S.D. Cal. 2011) (representing a proposed nationwide class of purchasers of Kashi products that were deceptively labeled as "all natural.")
- *Dei Rossi v. Whirlpool Corp., et al.*, Case No. 2:12-cv-00125-JAM-JFM (E.D. Cal. 2012) (representing a proposed class of people who purchased mislabeled KitchenAid brand refrigerators from Whirlpool Corp., Best Buy, and other retailers.)
- *Dzielak v. Whirlpool Corp., et al.*, Case No. 12-CIV-0089 SRC-MAS (D. N.J. 2011) (representing a proposed nationwide class of purchasers of mislabeled Maytag brand washing machines for misrepresenting the energy efficiency of such washing machines.)
- *In re: Haier Freezer Consumer Litig.*, Case No. 11-CV-02911 EJD (D.N.J. 2011) (representing a proposed class of people who purchased mislabeled freezers from Haier America Trading, LLC and General Electric Company.)
- *In re: Michaels Stores Pin Pad Litig.*, Case No. 1:11-CV-03350 CPK (N.D. Ill. 2011) (representing a nationwide class of persons against Michaels Stores, Inc. for failing to secure and safeguard customers personal financial data.)
- *Loreto v. Coast Cutlery Co.*, Case No. 11-3977 SDW-MCA (D.N.J. 2011) (representing a proposed nationwide class of people who purchased knives that were of a lesser quality than advertised.)
- *Rodriguez v. CitiMortgage, Inc.*, Case No. 1:11-cv-04718-PGG-DCF (S.D.N.Y. 2011) (representing a proposed nationwide class of military personnel against CitiMortgage for illegal foreclosures.)
- *Rossi v. The Procter & Gamble Co.*, Case No. 11-CIV-7238 JLL (D.N.J. 2011) (representing a proposed nationwide class of purchasers of Crest Sensitivity Treatment & Protection toothpaste.)
- *In re: Scotts EZ Seed Litigation*, Case No. 7:12-cv-04727-VB (S.D.N.Y. 2012) (representing a proposed class of mulch grass seed products advertised as a superior grass seed product capable of growing grass in the toughest conditions and with half the water.)



EMPLOYMENT PRACTICES GROUP

Faruqi & Faruqi, LLP is a recognized leader in protecting the rights of employees. The firm's Employment Practices Group is committed to protecting the rights of current and former employees nationwide. The firm is dedicated to representing employees who may not have been compensated properly by their employer or who have suffered investment losses in their employer-sponsored retirement plan. The firm also represents individuals (often current or former employees) who assert that a company has allegedly defrauded the federal or state government.

Faruqi & Faruqi represents current and former employees nationwide whose employers have failed to comply with state and/or federal laws governing minimum wage, hours worked, overtime, meal and rest breaks, and unreimbursed business expenses. In particular, the firm focuses on claims against companies for (i) failing to properly classify their employees for purposes of paying them proper overtime pay, or (ii) requiring employees to work "off-the-clock," and not paying them for all of their actual hours worked.

In prosecuting claims on behalf of aggrieved employees, Faruqi & Faruqi has successfully defeated summary judgment motions, won numerous collective certification motions, and obtained significant monetary recoveries for current and former employees. In the course of litigating these claims, the firm has been a pioneer in developing the growing area of wage and hour law. In *Creely, et al. v. HCR ManorCare, Inc.*, C.A. No. 3:09-cv-02879 (N.D. OH), Faruqi & Faruqi, along with its co-counsel, obtained one of the first decisions to reject the application of the Supreme Court's Fed. R. Civ. P. 23 certification analysis in *Wal-Mart Stores, Inc. v. Dukes et. al.*, 131 S. Ct. 2541 (2011) to the certification process of collective actions brought pursuant to the Fair Labor Standards Act of 1938 ("FLSA"). The firm, along with its co-counsel, also recently won a groundbreaking decision for employees seeking to prosecute wage and hour claims on a collective basis in *Symczyk v. Genesis Healthcare Corp. et al.*, No. 10-3178 (3d Cir. 2011). In *Symczyk*, the Third Circuit reversed the district court's ruling that an offer of judgment mooted a named plaintiff's claim in an action asserting wage and hour violations of the FLSA. Notably, the Third Circuit also affirmed the two-step process used for granting certification in FLSA cases. The *Creely* decision, like the Third Circuit's *Genesis* decision, will invariably be relied upon by courts and plaintiffs in future wage and hour actions.

Some of the firm's notable recoveries include *Bazzini v. Club Fit Management, Inc.*, C.A. No. 08-cv-4530 (S.D.N.Y. 2008), wherein the firm settled a FLSA collective action lawsuit on behalf of tennis professionals, fitness instructors and other health club employees on very favorable terms. Similarly, in *Garcia, et al., v. Lowe's Home Center, Inc., et al.*, C.A. No. GIC 841120 (Cal. Sup. Ct. 2008), Faruqi &



Faruqi served as co-lead counsel and recovered \$1.6 million on behalf of delivery workers who were unlawfully treated as independent contractors and not paid appropriate overtime wages or benefits.

The firm's Employment Practices Group also represents participants and beneficiaries of employee benefit plans covered by the Employee Retirement Income Security Act of 1974 ("ERISA"). In particular the firm protects the interests of employees in retirement savings plans against the wrongful conduct of plan fiduciaries. Often, these retirement savings plans constitute a significant portion of an employee's retirement savings. ERISA, which codifies one of the highest duties known to law, requires an employer to act in the best interests of the plan's participants, including the selection and maintenance of retirement investment vehicles. For example, an employer who administers a retirement savings plan (often a 401(k) plan) has a fiduciary obligation to ensure that the retirement plan's assets (including employee and any company matching contributions to the plan) are directed into appropriate and prudent investment vehicles.

Faruqi & Faruqi has brought actions on behalf of aggrieved plan participants where a company and/or certain of its officers breached their fiduciary duty by allowing its retirement plans to invest in shares of its own stock despite having access to materially negative information concerning the company which materially impacted the value of the stock. The resulting losses can be devastating to employees' retirement accounts. Under certain circumstances, current and former employees can seek to hold their employers accountable for plan losses caused by the employer's breach of their ERISA-mandated duties.

The firm's Employment Practices Group also represents whistleblowers in actions under both federal and state False Claims Acts. Often, current and former employees of business entities that contract with, or are otherwise bound by obligations to, the federal and state governments become aware of wrongdoing that causes the government to overpay for a good or service. When a corporation perpetrates such fraud, a whistleblower may sue the wrongdoer in the government's name to recover up to three times actual damages and additional civil penalties for each false statement made. Whistleblowers who initiate such suits are entitled to a portion of the recovery attained by the government, generally ranging from 15% to 30% of the total recovery.

False Claims Act cases often arise in context of Medicare and Medicaid fraud, pharmaceutical fraud, defense contractor fraud, federal government contractor fraud, and fraudulent loans and grants. For instance, in *United States of America, ex rel. Ronald J. Streck v. Allergan, Inc. et al.*, No. 2:08-cv-05135-ER (E.D. Pa.), Faruqi & Faruqi represents a whistleblower in an un-sealed case alleging fraud against thirteen pharmaceutical companies who underpaid rebates they were obliged to pay to state Medicaid programs on drugs sold through those programs.



Based on its experience and expertise, the firm has served as the principal attorneys representing current and former employees in numerous cases across the country alleging wage and hour violations, ERISA violations and violations of federal and state False Claims Acts.

ATTORNEYS

NADEEM FARUQI

Mr. Faruqi is Co-Founder and Managing Partner of the firm. Mr. Faruqi oversees all aspects of the firm's practice areas. Mr. Faruqi has acted as sole lead or co-lead counsel in many notable class or derivative action cases, such as: *In re Olsten Corp. Secs. Litig.*, C.A. No. 97-CV-5056 (E.D.N.Y.) (recovered \$25 million dollars for class members); *In re PurchasePro, Inc., Secs. Litig.*, Master File No. CV-S-01-0483 (D. Nev. 2001) (\$24.2 million dollars recovery on behalf of the class in securities fraud action); *In re Avatex Corp. S'holders Litig.*, C.A. No. 16334-NC (Del. Ch. 1999) (established certain new standards for preferred shareholders rights); *Dennis v. Pronet, Inc.*, C.A. No. 96-06509 (Tex. Dist. Ct.) (recovered over \$15 million dollars on behalf of shareholders); *In re Tellium, Inc. Secs. Litig.*, C.A. No. 02-CV-5878 (D.N.J.) (class action settlement of \$5.5 million); *In re Tenet Healthcare Corp. Derivative Litig.*, Lead Case No. 01098905 (Cal. Sup. Ct. 2002) (achieved a \$51.5 million benefit to the corporation in derivative litigation).

Upon graduation from law school, Mr. Faruqi was associated with a large corporate legal department in New York. In 1988, he became associated with Kaufman Malchman Kirby & Squire, specializing in shareholder litigation, and in 1992, became a member of that firm. While at Kaufman Malchman Kirby & Squire, Mr. Faruqi served as one of the trial counsel for plaintiff in *Gerber v. Computer Assocs. Int'l, Inc.*, 91-CV-3610 (E.D.N.Y. 1991). Mr. Faruqi actively participated in cases such as: *Colaprico v. Sun Microsystems*, No. C-90-20710 (N.D. Cal. 1993) (recovery in excess of \$5 million on behalf of the shareholder class); *In re Jackpot Secs. Enters., Inc. Secs. Litig.*, CV-S-89-805 (D. Nev. 1993) (recovery in excess of \$3 million on behalf of the shareholder class); *In re Int'l Tech. Corp. Secs. Litig.*, CV 88-440 (C.D. Cal. 1993) (recovery in excess of \$13 million on behalf of the shareholder class); and *In re Triangle Inds., Inc. S'holders Litig.*, C.A. No. 10466 (Del. Ch. 1990) (recovery in excess of \$70 million).

Mr. Faruqi earned his Bachelor of Science Degree from McGill University, Canada (B.Sc. 1981), his Master of Business Administration from the Schulich School of Business, York University, Canada (MBA 1984) and his law degree from New York Law School (J.D., *cum laude*, 1987). Mr. Faruqi was Executive Editor of New York Law School's Journal of International and Comparative Law. He is the



author of "Letters of Credit: Doubts As To Their Continued Usefulness," Journal of International and Comparative Law, 1988. He was awarded the Professor Ernst C. Stiefel Award for Excellence in Comparative, Common and Civil Law by New York Law School in 1987.

LUBNA M. FARUQI

Ms. Faruqi is Co-Founder of Faruqi & Faruqi, LLP. Ms. Faruqi is involved in all aspects of the firm's practice. Ms. Faruqi has actively participated in numerous cases in federal and state courts which have resulted in significant recoveries for shareholders.

Ms. Faruqi was involved in litigating the successful recovery of \$25 million to class members in *In re Olsten Corp. Secs. Litig.*, C.A. No. 97-CV-5056 (E.D.N.Y.). She helped to establish certain new standards for preferred shareholders in Delaware in *In re Avatex Corp. S'holders Litig.*, C.A. No. 16334-NC (Del. Ch. 1999). Ms. Faruqi was also lead attorney in *In re Mitcham Indus., Inc. Secs. Litig.*, Master File No. H-98-1244 (S.D. Tex. 1998), where she successfully recovered \$3 million on behalf of class members despite the fact that the corporate defendant was on the verge of declaring bankruptcy.

Upon graduation from law school, Ms. Faruqi worked with the Department of Consumer and Corporate Affairs, Bureau of Anti-Trust, the Federal Government of Canada. In 1987, Ms. Faruqi became associated with Kaufman Malchman Kirby & Squire, specializing in shareholder litigation, where she actively participated in cases such as: *In re Triangle Inds., Inc. S'holders Litig.*, C.A. No. 10466 (Del. Ch. 1990) (recovery in excess of \$70 million); *Kantor v. Zondervan Corp.*, C.A. No. 88 C5425 (W.D. Mich. 1989) (recovery of \$3.75 million on behalf of shareholders); and *In re A.L. Williams Corp. S'holders Litig.*, C.A. No. 10881 (Del. Ch. 1990) (recovery in excess of \$11 million on behalf of shareholders).

Ms. Faruqi graduated from McGill University Law School at the age of twenty-one with two law degrees: Bachelor of Civil Law (B.C.L.) (1980) and a Bachelor of Common Law (L.L.B.) (1981).

MICHAEL J. HYNES

Mr. Hynes is Managing Partner in Faruqi & Faruqi, LLP's Pennsylvania office and Co-Chair of the firm's Shareholder Derivative Litigation Department.

Prior to joining Faruqi & Faruqi, Mr. Hynes practiced law at Barroway Topaz Kessler Meltzer & Check, LLP, where he concentrated on shareholder derivative litigation. Mr. Hynes has served as lead or co-lead counsel in numerous high profile derivative actions relating to the "backdating" of stock options, including *In re Monster Worldwide, Inc. Derivative Litig.*, Index No. 06-108700 (New York County, NY); *In re Barnes & Noble, Inc. Derivative Litig.*, Index No. 06-602389 (New York County, NY); *In re Affiliated Computer Services, Inc. Derivative Litig.*, Cause No. 06-3403 (Dallas County, TX); and *In re Progress*



Software Corp. Derivative Litig., Civil A. No. 07-1937-BLS2 (Suffolk County, MA). Settlements of these, and similar actions, resulted in significant monetary and corporate governance improvements for those companies and their public shareholders. He is currently litigating cases involving breaches of fiduciary duties arising out of the use of improper accounting methods, the payment of excessive compensation to executive officers, violations of the Foreign Corrupt Practices Act, and violations of the False Claims Act.

Prior to joining Barroway Topaz, Mr. Hynes practiced law at Cozen O'Connor, where he concentrated on bankruptcy and commercial litigation. He was also an attorney with the Defenders' Association of Philadelphia from 1991 to 1996, where he defended thousands of misdemeanor and felony cases and obtained jury trial experience.

Mr. Hynes received his law degree from Temple University School of Law (J.D. 1991), and is a graduate of Franklin and Marshall College (1987). Mr. Hynes is licensed to practice law in Pennsylvania, New Jersey and Montana, and has been admitted to practice in the United States Court of Appeals for the Ninth Circuit and the United States District Courts for the Eastern and Middle Districts of Pennsylvania.

DAVID E. BOWER

David E. Bower is Managing Partner of Faruqi & Faruqi, LLP's California office. Mr. Bower has extensive experience in securities class actions, real estate and corporate litigation, and complex commercial litigation matters. Mr. Bower has been in the private practice of law since 1981. Prior to forming his own law firm, Law Offices of David E. Bower, in 1996, Mr. Bower practiced for two years with the law firm Hornberger & Criswell where he supervised and coordinated complex business litigation. From 1989 to 1994, he was a partner with the law firm Rivers & Bower where he handled business, construction, real estate, insurance, and personal injury litigation and business and real estate transactions. From 1984 to 1989, he practiced in the insurance bad faith defense and complex litigation department of the Los Angeles, California based law firm of Gilbert, Kelley, Crowley & Jennett. From 1981 to 1984, he practiced law in New York as a partner with the law firm Boysen, Scheffer & Bower.

Mr. Bower is a graduate of the Mediation Training Program at UCLA and has a certification in Advanced Mediation Techniques. He has presided in over 200 mediations since becoming certified and is currently on the Los Angeles Superior Court Pay Panel of mediators and arbitrators. He is the past Chairman of the Board of Directors of Mental Health Advocacy Services, a non-profit legal services firm in Los Angeles. He is now the President of the Board of A New Way of Life Reentry Project, a non-profit serving ex-convicts seeking reentry into society as productive citizens.



He graduated from State University of New York (at Buffalo) (B.A. 1977) and received his law degree from the Southwestern University School of Law (J.D. 1981). Mr. Bower is admitted to the bar in California and New York.

PETER B. ANDREWS

Peter B. Andrews is Managing Partner of Faruqi & Faruqi, LLP's Delaware office. Mr. Andrews joined Faruqi & Faruqi in January of 2013 and has concentrated his legal career representing plaintiffs in securities fraud class actions, shareholder mergers and acquisitions class actions, shareholder derivative actions and corporate governance matters.

Before joining Faruqi & Faruqi LLP, Mr. Andrews practiced with the law firm Grant & Eisenhofer in Delaware, where he actively engaged in litigation before the Delaware Court of Chancery, as well as federal and state courts throughout the country. Highlights of his past representation include: identifying legal flaws in LLC agreement resulting in \$20M settlement with oil & gas holding company surrounding merger of LLC back into parent company (*Altas Energy Resources, LLC Unitholder Litigation*, Del. Ch.); representing investors against the directors and officers of a failed telecom company for breaches of fiduciary duty securing a \$7M settlement (*Rahl v. Flag Telecom, Inc.*, S.D.N.Y.); representing public pension funds in opt-out securities litigation against the officers and directors of Enron (*OPERS v. Enron Corp.*, S.D. Tex.); representing former employees of a failed health system in order to secure promised interests in pension benefits (*Burstein v. Allegheny Health System*, E.D. Pa.); and representing a class of former customers against a major cable television provider (*Baldasari v. Suburban Cable TV Co. (Comcast Corporation)*).

Mr. Andrews began his career with a major Philadelphia defense firm where he represented securities brokers and broker-dealers in various disputes, including customer complaint litigation. While practicing in Philadelphia, he also represented clients in regulatory proceedings before the NYSE, NASD, and SEC, and advised clients as to best practices under federal and state insurance and securities laws.

Mr. Andrews is a graduate (1992) of Colby College in Waterville, Maine, and a graduate (1998) of the Dickinson School of Law of the Pennsylvania State University. Upon graduation from law school, Mr. Andrews clerked for the Honorable Alan M. Black of the Court of Common Pleas of Lehigh County, Pennsylvania.

Mr. Andrews is admitted to practice in Delaware and Pennsylvania and numerous federal courts, including the Third Circuit Court of Appeals.



JUAN E. MONTEVERDE

Mr. Monteverde is a partner in Faruqi & Faruqi, LLP's New York office and Chair of the firm's Shareholder Merger and Transactional Litigation Department. Mr. Monteverde has concentrated his legal career advocating shareholder rights and has appeared before the Delaware Chancery Court on numerous occasions on behalf of shareholders in mergers and acquisitions class actions.

Before joining Faruqi & Faruqi, LLP, Mr. Monteverde gained extensive experience litigating over 50 mergers and acquisitions class actions from inception to conclusion. In particular, Mr. Monteverde acted as lead counsel or co-lead counsel for shareholders in *In re Bear Stearns Litigation*, Index No. 600780/08 (N.Y. Sup. Ct. 2008) (challenging acquisition of Bear Stearns for \$2.00 per share by JP Morgan, price increased to \$10.00 per share); *Sullivan v. Gorog, et al.*, Case Number BC398258 (Cal. Super. Ct. 2008) (prosecution of preliminary injunction seeking to enjoin tender offer by Best Buy Co. Inc. of Napster, Inc., resulting in post-tender offer settlement for the enlargement of appraisal rights of Napster shareholders); *In re Metavante Shareholder Litigation*, Consolidated Case No. 09-cv-5325 (Wis. Cir. Ct. 2009) (obtained significant supplemental disclosures to shareholders to enable an informed vote regarding the acquisition of Metavante by Fidelity); *In re Candela Corporation Shareholders Litigation*, Lead Civil Action No. 09-4092-BLS1 (Mass. Sup. Ct. 2009) (obtaining settlement of additional disclosures pertaining to the acquisition of Candela Corporation by Syneron Medical Ltd. and reformation of merger agreement to reduce termination fee by approximately 20%); and *Ubaney v. Rubinstein, et al.*, Civil Action No. 5459-VCL (Del. Ch. Ct. 2010) (obtaining supplemental disclosures in connection with the acquisition of Palm, Inc., including complete disclosure of Palm Inc.'s financial projections and free cash flows for 2010 through 2015).

At Faruqi & Faruqi, LLP, Mr. Monteverde continues to protect shareholder rights. He has acted as lead counsel or co-lead counsel in *Knee v. Brocade Comm'ns Sys., Inc.*, No. 1-12-CV-220249, slip op. at 2 (Cal. Super. Ct. Santa Clara Cnty. Apr. 10, 2012) (Kleinberg, J.) (enjoining the 2012 shareholder vote because certain information relating to projected executive compensation (as related to an equity plan share increase that had a potential dilutive effect on shareholders) was not properly disclosed in the proxy statement); *In re Cogent, Inc. Shareholders Litigation*, Consol. C.A. No. 5780-VC (Del. Ch.) (obtaining post-close cash settlement of \$1.9 million after two years of hotly contested litigation); in *In Re Valeant Pharmaceuticals International Shareholders Litigation*, Consolidated Case No. 5644-VCS (Del. Ch. Ct. 2010) (negotiating significant supplemental disclosures regarding the acquisition of Valeant by Biovail); and *McGowan v. ICX Technologies, Inc., et al.*, C.A. No. 1:10CV1013 (Eastern Dist. Of VA 2010) (achieving a class action settlement for additional disclosures pertaining to the tender offer of ICX



Technologies, Inc. and extending the appraisal rights period for ICX Technologies shareholders by 20 days).

Mr. Monteverde has taught a New York CLE course regarding the financial and legal fundamentals underlying the valuation of mergers and acquisitions of publicly traded companies, Valuations Issues in Mergers and Acquisitions, October 20, 2010. Mr. Monteverde has also been a panel speaker in the session for "Don't Get Caught in the Past" at the 2011 Corporate Counsel CLE Seminar in Naples, Florida, where he discussed the current corporate governance developments in the mergers and acquisitions law practice and new trends in corporate governance law and practice at the start of the new decade.

Mr. Monteverde graduated from California State University of Northridge (B.S. Finance 2002) and St. Thomas University School of Law (J.D., *cum laude*, 2006). While at St. Thomas University School of Law, Mr. Monteverde was a staff editor of law review and the president of the law school newspaper. Mr. Monteverde is admitted to practice in the courts of New York, the United States District Court for the Southern District of New York and Eastern District of New York, Eastern District of Wisconsin, District of Colorado and Seventh Circuit for the United States Court of Appeals.

ANTONIO VOZZOLO

Antonio Vozzolo is a partner in Faruqi & Faruqi, LLP's New York office and Chair of the firm's Consumer Fraud Litigation Department. Mr. Vozzolo's practice focuses on representing individuals and institutional investors seeking redress for financial and consumer fraud

Mr. Vozzolo was one of the primary counsel responsible for prosecuting *In re PurchasePro, Inc., Secs. Litig.*, Master File No. CV-S-01-0483 (D. Nev. 2001), a case against the officers and directors of PurchasePro.com as well as AOL Time Warner, Inc., America On-Line, Inc., and Time Warner, Inc., for federal securities laws violations, culminating in a \$24.2 million settlement.

Mr. Vozzolo's other notable cases are *Thomas v. Global Vision Products*, Case No. RG-03091195 (Cal. Super. Ct., Alameda Cty.) (representing certified class of California consumers for false and misleading advertising claims regarding Avacor hair restoration product; \$37 million jury verdict for the first trial, \$50 million jury verdict for separate trial against two of the remaining directors and officers); *In re: HP Power-Plug Litigation*, Case No. 06-1221 (N.D. Cal.) (representing a proposed nationwide class of persons who purchased defective laptops; cash payment up to \$650.00, or in the alternative, a repair free-of-charge); *Delre v. Hewlett-Packard Co.*, C.A. No. 3232-02 (N.J. Super. Ct. 2002) (representing a proposed nationwide class of persons for false and misleading advertising claims regarding capabilities of model 100i DVD writers; recovery included replacement of the 100i writer with upgraded, second



generation 200i DVD writer and a refund of the \$99 defendant had previously charged consumers to upgrade from the 100i to the 200i).

Mr. Vozzolo graduated, *cum laude*, from Fairleigh Dickinson University in 1992 with a Bachelor of Science (B.Sc.), where he was on the Dean's List, and with a Masters in Business Administration (M.B.A.) in 1995. He is a graduate of Brooklyn Law School (J.D. 1998). Mr. Vozzolo served as an intern to the Honorable Ira Gammerman of the New York Supreme Court and the New York Stock Exchange while attending law school.

KENDALL S. ZYLSTRA

Mr. Zylstra is a partner in Faruqi & Faruqi, LLP's Pennsylvania office and Co-Chair of the firm's Antitrust Litigation Department.

Mr. Zylstra has spent the last several years focusing on antitrust class actions challenging practices such as unfair trade practices, national price-fixing claims, monopolies, and the delayed-generic entry pharmaceutical cases

Prior to joining the Firm, Mr. Zylstra represented victims of human radiation experiments from the Cold War Era. He was significantly responsible for litigating two mass actions, which settled for nearly \$5 million and played a significant role in winning a reversal of summary judgment in *Bibeau, et al. v. Pacific Northwest Research Foundation, et al.*, 188 F. 3d 1005 (9th Circ. 1999).

For over five years, Mr. Zylstra was the Head of the Antitrust Department at a notable plaintiff's class action litigation firm, and developed a portfolio of antitrust cases, including gasoline dealer-franchises suing large oil companies for unfair trade practices; representing medical device wholesalers and distributors asserting antitrust claims against monopolists; and representing two internet companies in a litigation asserting vertical price fixing claims against a giant retailer and its co-conspirator manufacturers.

Mr. Zylstra graduated from Calvin College in 1987 with a Bachelor of Arts and from Temple University School of Law (J.D. 1991) where he received the *Temple Law Alumni/ae Award* for Moot Court Excellence. Mr. Zylstra was an Assistant District Attorney in Philadelphia, PA between 1991-1996, where he gained extensive trial experience in the prosecution of hundreds of cases primarily involving cases of sexual assault.

PETER KOHN

Mr. Kohn is a partner in Faruqi & Faruqi, LLP's Pennsylvania office and Co-Chair of the firm's Antitrust Litigation Department. Prior to joining the firm, Mr. Kohn was a shareholder at Berger &



Montague, P.C., where he prepared for trial several noteworthy lawsuits under the Sherman Act, including *In re Buspirone Patent & Antitrust Litigation*, MDL No. 1410 (S.D.N.Y.) (\$220M settlement), *In re Cardizem CD Antitrust Litigation*, No. 99-MD-1278 (E.D. Mich.) (\$110M settlement), *Meijer, Inc. v. Warner-Chilcott*, No. 05-2195 (D.D.C.) (\$22M settlement), *In re Relafen Antitrust Litigation*, No. 01-12239 (D. Mass.) (\$175M settlement), *In re Remeron Direct Purchaser Antitrust Litigation*, No. 03-cv-0085 (D.N.J.) (\$75M settlement), *In re Terazosin Hydrochloride Antitrust Litigation*, No. 99-MDL-1317 (S.D. Fla.) (\$72.5M settlement), and *In re Tricor Direct Purchaser Antitrust Litig.*, No. 05-340 (D. Del.) (\$250M settlement). The court appointed him as co-lead counsel for the plaintiffs in *In re Pennsylvania Title Ins. Antitrust Litig.*, No. 08cv1202 (E.D. Pa.) (pending action on behalf of direct purchasers of title insurance alleging illegal cartel pricing under § 1 of the Sherman Act).

A sampling of Mr. Kohn's reported cases in the antitrust arena includes *Delaware Valley Surgical Supply Inc. v. Johnson & Johnson*, 523 F.3d 1116 (9th Cir. 2008) (issue of direct purchaser standing under *Illinois Brick*); *Babyage.com, Inc. v. Toys "R" Us, Inc.*, 558 F. Supp.2d 575 (E.D. Pa. 2008) (denying defendants' motion to dismiss following the Supreme Court's decisions in *Twombly* and *Leegin*, and for the first time in the Third Circuit adopting the Merger Guidelines method of relevant market definition); *J.B.D.L. Corp. v. Wyeth-Ayerst Laboratories, Inc.*, 485 F.3d 880 (6th Cir. 2007) (affirming summary judgment in exclusionary contracting case); and *Babyage.com, Inc. v. Toys "R" Us, Inc.*, 458 F. Supp.2d 263 (E.D. Pa. 2006) (discoverability of surreptitiously recorded statements prior to deposition of declarant).

Mr. Kohn is a 1989 graduate of the University of Pennsylvania (B.A., English) and a 1992 *cum laude* graduate of Temple University Law School, where he was senior staff for the *Temple Law Review* and received awards for trial advocacy. Mr. Kohn was recognized as a "recommended" antitrust attorney in the Northeast in 2009 by the Legal 500 guide (www.legal500.com) and was chosen by his peers as a "SuperLawyer" in Pennsylvania in 2009, 2010, and 2011. In 2011, Mr. Kohn was selected as a Fellow in the Litigation Counsel of America, a trial lawyer honorary society composed of less than one-half of one percent of American lawyers. He is a member of the bars of the Supreme Court of Pennsylvania (1992-present), the United States District Court for the Eastern District of Pennsylvania (1995-present), the United States District Court for the Eastern District of Michigan (2010-present), the United States Court of Appeals for the Third Circuit (2000-present), the United States Court of Appeals for the Sixth Circuit (2005-present), and the United States Court of Appeals for the Federal Circuit (2011-present).



RICHARD W. GONNELLO

Richard W. Gonnello is a partner in the Firm's New York office and Chair of the firm's Securities Fraud Litigation Department. Mr. Gonnello focuses his practice on shareholder litigation and class actions.

Prior to joining the firm, Mr. Gonnello was a partner at Entwistle & Cappucci LLP and an associate at Latham & Watkins LLP. Mr. Gonnello has represented institutional and individual investors in obtaining substantial recoveries in numerous class actions, including *In re Royal Ahold Sec. Litig.*, No. 03-md-01539 (D. Md. 2003) (\$1.1 billion) and *In re Tremont Securities Law, State Law and Insurance Litigation*, No. 08-cv-11117 (S.D.N.Y. 2011) (\$100 million+). Mr. Gonnello has also obtained favorable recoveries for institutional investors pursuing direct securities fraud claims, including cases against *Qwest Communications International, Inc.* (\$175 million+) and *Tyco Int'l Ltd* (\$21 million).

Mr. Gonnello has co-authored the following articles: "'Staehr' Hikes Burden of Proof to Place Investor on Inquiry Notice," *New York Law Journal*, December 15, 2008; and "Potential Securities Fraud: 'Storm Warnings' Clarified," *New York Law Journal*, October 23, 2008.

Mr. Gonnello graduated *summa cum laude* from Rutgers University in 1995, where he was named Phi Beta Kappa. He received his law degree from UCLA School of Law (J.D. 1998), and was a member of the UCLA Journal of Environmental Law & Policy.

BETH A. KELLER

Ms. Keller is a partner in Faruqi & Faruqi, LLP's New York office and Co-Chair of the firm's Shareholder Derivative Litigation Department. Her practice focuses on shareholder derivative litigation and securities class actions in federal and state court.

Since joining Faruqi & Faruqi, Ms. Keller has been actively involved in numerous complex cases in which the firm, as sole or co-lead counsel, achieved substantial corporate governance enhancements and/or financial recoveries for the corporation and its shareholders, including *In re Tenet Healthcare Corp. Derivative Litig.*, Lead Case No. 01098905 (Cal. Sup. Ct. 2002); *In re Advanced Mktg. Svcs., Inc. Derivative Litig.*, No. C1C824845 (Cal. Super. Ct.); *In re Ligand Pharm. Inc. Derivative Litig.*, Lead Case No. G1C834255 (Cal. Super. Ct.); and *In re Novastar Fin., Inc. Derivative Litig.*, Lead Case No. 04-CV-212685 (Cir. Ct. Mo. 2004).

Ms. Keller graduated from Hobart & William Smith Colleges in 1999 with a Bachelors of Arts in Political Science and English and from the State University of New York at Buffalo Law School in 2002. Ms. Keller participated in the Desmond Moot Court Competition while at law school. She is a member of both the New York and New Jersey Bars and is admitted to practice in the United States District Courts



for the Southern, Eastern and Western Districts of New York.

T. TALYANA BROMBERG

Ms. Bromberg joined Faruqi & Faruqi, LLP's Pennsylvania office in March of 2013 as a partner and Chair of the False Claims Litigation Department.

Prior to joining the Firm, Ms. Bromberg practiced law at Grant & Eisenhofer, P.A. where she represented whistleblowers in pharmaceutical, financial, health care, and government contractor cases, with settlements totaling over \$4.5 billion. Among these settlements was a \$1.6 billion settlement against Abbott Laboratories related to off-label promotion and payment of kickbacks for anti-seizure drug Depakote, and a \$3 billion settlement against GlaxoSmithKline related to unlawful marketing tactics and kickbacks for GSK drugs. During her tenure at Grant & Eisenhofer, Ms. Bromberg, among others, also represented sophisticated institutional investors in complex international securities class actions, including *In re Parmalat Securities Litigation* and *In re Vivendi Universal S.A. Securities Litigation*.

Ms. Bromberg previously served as partner at a prominent law firm in Riga, Latvia, where she focused on commercial litigation. She also served as in-house counsel for a U.S.-Latvian joint venture in the exporting and manufacturing sector. Ms. Bromberg received her L.L.M. degree from the University of Pennsylvania Law School and her J.D. equivalent from the University of Latvia School of Law in Riga, Latvia in 1989. Ms. Bromberg is a member of the New York Bar and is admitted to practice in the United States District Courts for the Eastern and Southern Districts of New York.

JACOB A. GOLDBERG

Mr. Goldberg is partner of Faruqi & Faruqi, LLP's Pennsylvania office. Mr. Goldberg has concentrated his legal career in all facets of complex commercial litigation in the federal and state courts.

Prior to joining the firm as a partner, Mr. Goldberg was a partner at Berger & Montague, P.C. and Schiffrin & Barroway, LLP. In 2004, he formed his own firm where he focused on commercial disputes, including theft of trade secrets, theft of business plan and breaches of contract while continuing to litigate cases involving violations of fiduciary duties, consumer protection laws, and the federal securities laws.

Among Mr. Goldberg's most notable cases are *In Re New America High Income Fund Secs. Litig.* (D. Mass 1990) (alleged false and misleading prospectus for junk bond fund; \$2.5 million settlement); *Rosenthal v. Dean Witter Reynolds, Inc.*, (Colo. Dist. Ct. 18th Jud. Dist. 1991); *In re IKON Office Solutions Secs. Litig.*, No. 98-04286 (E.D. P.A. 1998) (alleged complex accounting fraud involving manipulation of reserves; \$111 million settlement); *In re Creditrust Corp. Secs. Litig.* (D. Md. 2000) (alleged complex accounting fraud, relating to predicting financial results for securitized debt and



adequately assessing gains on sales); *In re Scholastic, Inc. Secs. Litig.* (S.D. N.Y. 1997) (alleged false financial projections and inadequate reserves; \$7 million settlement); *Cohen v. Mirage Resorts, Inc.*, 119 Nev. Adv. Op. No. 1 (Feb. 7, 2003) (Nevada Supreme Court reversed dismissal of shareholder action related to fair value of shares in a freeze out merger); *In re QuadraMed, Inc. Secs. Litig.*, No. 02-04770 (N.D. Cal. 2002) (alleged manipulation of revenue and new management and auditor cover-up; \$5.25 million settlement); and *Studer v. Heng Fung Holdings* (D. Colo. 2002) (derivative lawsuit, alleging the stripping of company assets to a related entity; approximately \$1.75 million settlement).

Mr. Goldberg graduated from Columbia University (B.A. 1988) and Temple University School of Law (J.D., *cum laude*, 1992) and practices from the Philadelphia area. He is admitted before all courts in the Commonwealth of Pennsylvania and to the United States Supreme Court, the United States Courts of Appeal for the Third and Fourth Circuits, and the United States District Courts for the Eastern District of Pennsylvania, Central District of Illinois, and District of Colorado. His admission to the Bar of the State of New York is pending. Mr. Goldberg is a dual citizen of the United States of America and the Republic of Ireland.

ADAM R. GONNELLI

Mr. Gonnelli is a partner in Faruqi & Faruqi, LLP's New York office and Chair of the firm's Employment Practices Group.

Since joining Faruqi & Faruqi, Mr. Gonnelli has concentrated his practice on wage and hour litigation, transaction litigation and consumer class actions. Representative cases include *Garcia v. Lowe's, Cos., Inc.*, No. 841120 (Cal. Super. Ct.) (case to recover overtime pay for delivery drivers); *In re NutraQuest, Inc.*, No. 06-202 (D.N.J.) (consumer fraud case against national diet supplement company); *Wanzo v. Nextel Commc'ns, Inc.*, No. GIC 791626 (Cal. Sup. Ct.) (consumer case challenging change in "nights and weekends" plan); *Rice v. Lafarge North America*, No. 268974 (Md. Cir. Ct.) (merger case resulted in a benefit of \$388 million); and *In re Fox Entm't Group, Inc. S'holders Litig.*, No. 1033-N (Del. Ch. 2005) (benefit to shareholders of \$450 million).

Mr. Gonnelli received a B.A. from Rutgers University (Newark) in 1989 and a J.D. from Cornell Law School in 1997. At Rutgers University, Mr. Gonnelli lettered in football and fencing and served as Student Government President. Prior to attending law school, Mr. Gonnelli was a Financial Writer at the Federal Reserve Bank of New York, where he wrote educational materials on international trade and monetary policy. While attending Cornell Law School, Mr. Gonnelli served as Editor-in-Chief of the Cornell Journal of Law and Public Policy and was a member of the Atlantic Regional Championship moot court team in the Jessup International Law Moot Court Competition (1997).



GERALD D. WELLS, III

Gerald D. Wells, III is a partner in Faruqi & Faruqi, LLP's Pennsylvania office.

Mr. Wells has substantial experience in prosecuting class actions on behalf of aggrieved employees and consumers. This experience includes ERISA class actions, which involve claims against fiduciaries of a company's 401k plan for making imprudent investments. Mr. Wells has spoken at ERISA conferences on such topics as fiduciary liability and developments in ERISA jurisprudence. In addition, he has significant experience in litigating state and federal wage and hour claims against companies for failing to either (i) properly classify its employees or (ii) requiring employees to work "off-the-clock." He has been counsel of record in numerous notable decisions including, most recently, the action styled *Symczyk v. Genesis Healthcare Corp. et al.*, No. 10-3178 (3d Cir. 2011). In *Symczyk*, the Third Circuit enunciated the process for conditional certification of wage claims in the Third Circuit and overturned a lower court's decision to dismiss the employee's claims on grounds of mootness. 656 F.3d 189 (3d Cir. 2011).

Prior to joining the firm, he served as class counsel in such cases as *In re Bristol-Myers Squibb ERISA Litig.*, No. 02-cv-10129 (S.D.N.Y.) (settlement of ERISA claims of 40,000 class members for \$41.22 million plus structural plan changes valued at up to \$52 million); *Weaver v. Edward D. Jones & Co., L.P.*, Nos. 08-cv-529, 08-cv-540 (N.D. Ohio) (settlement of state and federal wage and hour claims for up to \$19 million); *In re Janney Montgomery Scott Financial Consultant Litig.*, No. 06-cv-3202 (E.D. Pa.) (settlement of state and federal wage and hour claims for up to \$2.88 million). His experience and expertise in wage and hour litigation is well recognized, having been chosen to speak at a conference on recent developments in the field of wage and hour law.

Mr. Wells is a graduate of both Temple University and Temple University School of Law (J.D. 2001). While in law school, he served as the Symposium Editor for the Environmental Law & Technology Journal. Mr. Wells is licensed to practice law in Pennsylvania, New Jersey, and California. In addition, Mr. Wells is admitted to practice before the United States Courts of Appeals for the Third, Eighth, Ninth, and Eleventh Circuits, the United States District Courts for the Eastern District of Pennsylvania, Eastern District of Michigan, Northern District of Illinois, Northern, Southern, Central and Eastern Districts of California and the District Court of New Jersey.

JOSEPH T. LUKENS

Mr. Lukens is a partner in Faruqi & Faruqi, LLP's Pennsylvania office.

Mr. Lukens was a shareholder at the Philadelphia firm of Hangley Aronchick Segal Pudlin & Schiller, where he represented large retail pharmacy chains as opt-out plaintiffs in numerous lawsuits



under the Sherman Act. Among those lawsuits were *In re Brand Name Prescription Drugs Antitrust Litigation* (MDL 897, N.D. Ill.), *In re Terazosin Hydrochloride Antitrust Litigation* (MDL 1317, S.D. Fla.), *In re TriCor Direct Purchaser Antitrust Litigation* (05-605, D. Del.), *In re Nifedipine Antitrust Litigation* (MDL1515, D.D.C.), *In re OxyContin Antitrust Litigation* (04-3719, S.D.N.Y), and *In re Chocolate Confectionary Antitrust Litigation* (MDL 1935, M.D. Pa.). While the results in the opt-out cases are confidential, the parallel class actions in those matters which are concluded have resulted in settlements exceeding \$1.1 billion.

Earlier in his career, Mr. Lukens concentrated in commercial and civil rights litigation at the Philadelphia firm of Schnader, Harrison, Segal & Lewis. The types of matters that Mr. Lukens handled included antitrust, First Amendment, contracts, and licensing. Mr. Lukens also worked extensively on several notable *pro bono* cases including *Commonwealth v. Morales*, which resulted in a rare reversal on a second post-conviction petition in a capital case in the Pennsylvania Supreme Court.

Mr. Lukens graduated from LaSalle University (B.A. Political Science, *cum laude*, 1987) and received his law degree from Temple University School of Law (J.D., *magna cum laude*, 1992) where he was an editor on the *Temple Law Review* and received several academic awards. After law school, Mr. Lukens clerked for the Honorable Joseph J. Longobardi, Chief Judge for the United States District Court for the District of Delaware (1992-93). Mr. Lukens is a member of the bars of the Supreme Court of Pennsylvania (1992-present), the United States Supreme Court (1996-present); the United States District Court for the Eastern District of Pennsylvania (1993-present), the United States Court of Appeals for the Third Circuit (1993-present), and the United States Court of Appeals for the District of New Jersey (1994-present).

Mr. Lukens has several publications, including: *Bringing Market Discipline to Pharmaceutical Product Reformulations*, 42 Int'l Rev. Intel. Prop. & Comp. Law 698 (September 2011) (co-author with Steve Shadowen and Keith Leffler); *Anticompetitive Product Changes in the Pharmaceutical Industry*, 41 Rutgers L.J. 1 (2009) (co-author with Steve Shadowen and Keith Leffler); *The Prison Litigation Reform Act: Three Strikes and You're Out of Court — It May Be Effective, But Is It Constitutional?*, 70 Temp. L. Rev. 471 (1997); *Pennsylvania Strips The Inventory Search Exception From Its Rationale — Commonwealth v. Nace*, 64 Temp. L. Rev. 267 (1991).

JAN R. BARTELLI

Jan R. Bartelli is a partner in Faruqi & Faruqi, LLP's New York office. Prior to joining the firm, she was a partner at Garwin Gerstein & Fisher LLP, where she and her partners represented plaintiffs as lead or co-lead counsel in complex antitrust, securities, and employment discrimination class actions.



Representative cases include *In re: Marine Hose Antitrust Litigation* (S.D.Fla.); *In re Ciprofloxacin Antitrust Litigation* (E.D.N.Y.); *In re Terazosin Hydrochloride Antitrust Litigation* (S.D.Fla.), *In re Cardizem CD Antitrust Litigation* (E.D.Mich), and *Employees Committed for Justice v. Eastman Kodak Company* (W.D.N.Y.). At Faruqi & Faruqi, Ms. Bartelli will practice primarily in the area of antitrust law.

Ms. Bartelli received her law degree from Brooklyn Law School in 1997 and her undergraduate degree from Syracuse University. At Brooklyn Law School, she served as Articles Editor of the Brooklyn Law Review. She was a member of the Moot Court Society and a co-author of the Jerome Prince Evidence Competition.

She is a member of the Bar of New York, and is admitted to the District Courts for the Eastern, Southern and Western Districts of New York.

Prior to entering law school, Ms. Bartelli worked for several years as a newspaper reporter, primarily covering the courts in New Jersey.

JAMES R. BANKO

James R. Banko is an associate in Faruqi & Faruqi's Pennsylvania office in the False Claims Litigation Department. Mr. Banko has substantial practice in complex litigation, including securities and corporate fraud.

Prior to joining the Firm, Mr. Banko practiced law at Grant & Eisenhofer, P.A. where he was a Senior Associate focusing on securities and corporate fraud litigation. Mr. Banko represented sophisticated institutional investors in a high-profile securities fraud class action, *In re Tyco International, Ltd. Securities Litig.*, which resulted in \$3 billion class action settlement and in which Mr. Banko took and defended numerous depositions and wrote class certification, discovery, and summary judgment briefs. Mr. Banko was also involved in the recovery of a successful settlement against a former chief financial officer on behalf of a European fund which included discovery under the Hague Convention. Mr. Banko also took a leading role in several other securities fraud class actions against pharmaceutical companies including briefing of Daubert motions. Representative clients included various state attorney generals, pension funds, and securities funds.

Mr. Banko was previously an associate in the litigation department at Curtis, Mallet-Prevost, Colt & Mosle LLP, New York, NY where he practiced in all aspects of general civil litigation, including complex commercial, contract, corporate, product liability, and trade secret cases, including jury trials. Responsibilities included hearings, pleadings, pretrial discovery, motions for summary judgment, motions in limine, argument of substantive and procedural motions in federal and state courts, engaging in settlement negotiations and drafting of agreements.



Mr. Banko received his J.D. from the University of Pennsylvania Law School (1990) where he was a Senior Board Member of the Journal of International Business Law. Mr. Banko is admitted, and in good standing, in NY, NJ, PA, DC, DE, FL, and CA as well as numerous United States district courts as well as the 1st, 2d, 3d and 9th Circuits and the U.S. Supreme Court.

LAWRENCE B. COHEN

Lawrence B. Cohen is an associate in Faruqi & Faruqi, LLP's Pennsylvania office. He concentrates his practice in the area of antitrust class action litigation.

Mr. Cohen brings a unique perspective to Faruqi & Faruqi, having spent over twenty years as an executive in the sports and entertainment industry. He has held senior level sales and marketing positions at the Anaheim Angels (MLB), The Mighty Ducks of Anaheim (NHL), Tickets.com, and the Philadelphia 76ers (NBA). Mr. Cohen has also served as a sports marketing consultant as well as an adjunct professor in sport management at the University of San Francisco and Drexel University.

Mr. Cohen is a graduate of Temple University School of Law (J.D., *cum laude*, 1996). He also holds a Master's degree in Sport Management from the University of Massachusetts (1989) and a Bachelor of Arts degree in English from Franklin and Marshall College (1987). Mr. Cohen is licensed to practice law in Pennsylvania.

NEILL CLARK

Mr. Clark is an associate in Faruqi and Faruqi, LLP's Pennsylvania office and practices in the antitrust litigation department. Before joining the firm, Mr. Clark was an associate at Berger & Montague, P.C. where he was significantly involved in prosecuting antitrust class actions on behalf of direct purchasers of brand name drugs and charging pharmaceutical manufacturers with illegally blocking the market entry of less expensive competitors.

Eight of those cases have resulted in substantial settlements totaling over \$950 million: *In re Cardizem CD Antitrust Litig.* settled in November 2002 for \$110 million; *In re Buspirone Antitrust Litig.* settled in April 2003 for \$220 million; *In re Relafen Antitrust Litig.* settled in February 2004 for \$175 million; *In re Platinol Antitrust Litig.* settled in November 2004 for \$50 million; *In re Terazolin Antitrust Litig.* settled in April 2005 for \$75 million; *In re Remeron Antitrust Litig.* settled in November 2005 for \$75 million; *In re Ovcon Antitrust Litig.* settled in 2009 for \$22 million; and *In re Tricor Direct Purchaser Antitrust Litig.* settled in April 2009 for \$250 million.



Mr. Clark was also principally involved in a case alleging a conspiracy among hospitals and the Arizona Hospital and Healthcare Association to depress the compensation of per diem and traveling nurses, *Johnson et al. v. Arizona Hospital and Healthcare Association et al.*, No. CV07-1292 (D. Ariz.).

Mr. Clark was selected as a "Rising Star" by Pennsylvania Super Lawyers and listed as one of the Top Young Lawyers in Pennsylvania in the December 2005 edition of Philadelphia Magazine. Two cases in which he has been significantly involved have been featured as "Noteworthy Cases" in the NATIONAL LAW JOURNAL articles, "The Plaintiffs' Hot List" (*In re Tricor Antitrust Litig.* October 5, 2009 and *Johnson v. Arizona Hosp. and Healthcare Ass'n.*, October 3, 2011).

Mr. Clark graduated cum laude from Appalachian State University in 1994 and from Temple University Beasley School of Law in 1998, where he earned seven "distinguished class performance" awards, an oral advocacy award and a "best paper" award.

STEPHEN E. CONNOLLY

Mr. Connolly is an associate in Faruqi & Faruqi, LLP's Pennsylvania office.

Mr. Connolly has focused his career as an attorney in the areas of complex commercial litigation, including class action securities fraud and antitrust litigation.

He received his law degree for the Villanova University School of Law (J.D. 2000) and received a Bachelor of Science from Penn State University (1997).

ROBERT J. GRAY

Mr. Gray is an associate in Faruqi & Faruqi, LLP's Pennsylvania office.

Prior to joining Faruqi & Faruqi, Mr. Gray practiced law at Barroway Topaz Kessler Meltzer & Check, LLP, where he concentrated his practice on complex litigation, including prosecuting class actions on behalf of consumers and employees nationwide. Mr. Gray has extensive experience in litigating wage and hour claims under the Federal Fair Labor Standards Act ("FLSA") and analogous state wage and hour laws. Mr. Gray has served as Class Counsel in numerous nationwide class actions on behalf of employees including: *In re Staples Inc. Wage and Hour Employment Practices Litigation*, No. 08-5746 (D. NJ) (settlement of federal and state wage claims up to \$42,000,000); *Curry v. J.P. Morgan Chase & Co., et al.*, No. 07-06149 (N.D. IL) (settlement of federal and state wage claims up to \$5,000,000); *In re Janney Montgomery Scott Financial Consultant Litig.*, No. 06-cv-3202 (E.D. Pa.) (settlement of state and federal wage and hour claims for up to \$2.88 million.). Mr. Gray also has experience in prosecuting ERISA class actions, which involve claims against fiduciaries of a company's 401k plan for making imprudent investments.



Mr. Gray received his law degree from Temple University School of Law (2000), and is a graduate of La Salle University (1990) (B.S. Accounting/Finance). He is licensed to practice law in Pennsylvania and New Jersey, and has been admitted to practice before the United States District Court for the Eastern District of Pennsylvania. Prior to beginning his legal career, Mr. Gray worked as a forensic accountant for six years, conducting a variety of investigations for numerous governmental agencies and law firms. He received his CPA license in 1997.

CHRISTOPHER MARLBOROUGH

Mr. Marlborough is an associate in Faruqi & Faruqi, LLP's New York office. Since joining Faruqi & Faruqi, LLP, Mr. Marlborough has actively participated in such cases as: *Brocade Commc'ns Sys., Inc. Derivative Litig.*, No. C05-02233 (N.D. C.A.) (for damages to company as a result of backdating employee stock options) and *Thomas v. Global Vision Prods., Inc.*, No. RG03-091195 (Cal. Sup. Ct.) (consumer class action for the false and misleading advertising of the Avacor hair care system). Mr. Marlborough's practice focuses on shareholder litigation and securities class actions in federal and state court as well as consumer fraud cases concerning unfair business practices and false and misleading advertising.

Mr. Marlborough earned a Bachelor of Arts from the State University of New York at Purchase (*magna cum laude*, 1991) and a J.D. from Brooklyn Law School (*magna cum laude*, 2003). As an undergraduate, Mr. Marlborough was a President's Merit Scholar and on the Dean's List. In law school, he was a member of the Brooklyn Law School Journal of Law and Policy and the Jerome Prince Memorial Evidence Competition, Moot Court Writing Team. He was also an Edward V. Sparer Public Interest Fellow and a Judge Moses M. Weinstein Scholar. He authored "Evolution, Child Abuse and the Constitution" which was published in the spring 2003 edition of the Brooklyn Law School Journal of Law and Policy. Mr. Marlborough is admitted to practice in the courts of New York, New Jersey and Florida, as well as the United States District Courts for the Eastern and Southern Districts of New York, the United States District Court for the Southern District of Florida, the United States District Court for the District of New Jersey and the Supreme Court of the United States.

RICHARD SCHWARTZ

Richard Schwartz is an associate in Faruqi & Faruqi, LLP's Pennsylvania office. Mr. Schwartz has been involved extensively in the firm's antitrust, merger, and derivative practice areas. Presently, Mr. Schwartz is a member of the teams prosecuting *Babyage.com, Inc., et al. v. Toys "R" Us, Inc.* and *In re Blood Reagents Antitrust Litig.*



Mr. Schwartz graduated from the University of Washington (B.A.) and the University of Chicago in 2004 (J.D.). While in law school, Mr. Schwartz served as a law clerk at the MacArthur Justice Center in Chicago and as a summer associate with the Chicago law firm Robinson Curley & Clayton P.C. Since law school, Mr. Schwartz has been a commercial litigator in New York and Pennsylvania.

Mr. Schwartz is a member of the bars of the State of New York (2005-present), Commonwealth of Pennsylvania (2010-present), the United States District Court for the Southern District of New York (2006-present), the United States District Court for the Eastern District of New York (2007-present), the United States District Court for the Northern District of New York (2008-present), the United States Court of Appeals for the Second Circuit (2010-present) and the United States District Court for the Eastern District of Pennsylvania (2011-present).

LINDSAY ROSELER

Lindsay Roseler is an associate in Faruqi & Faruqi, LLP's Pennsylvania office. Ms. Roseler specializes in shareholder derivative litigation and mergers & acquisitions class action litigation.

Prior to joining Faruqi & Faruqi, Ms. Roseler was an attorney in the Wilmington, DE office of Grant & Eisenhofer, PA where she gained extensive experience in securities class actions, corporate litigation, false claims act litigation, and antitrust litigation. During her six year tenure at Grant & Eisenhofer, Ms. Roseler was actively involved in representing shareholders in corporate litigation, including *In re ACS Shareholder Litigation* (\$69 million class recovery) and *In re Delphi Financial Group Shareholder Litigation* (\$49 million class recovery). Also while at Grant & Eisenhofer, Ms. Roseler represented institutional investors in large complex securities class actions such as *In re Parmalat Securities Litigation*, and *In re Delphi Corp. Securities Litigation*.

Ms. Roseler received her law degree from Syracuse University College of Law (J.D. 2005), where she was a member of the Syracuse Journal of International Law and Commerce. She is a Certified Mediator and has trained in International Business Mediation and Alternative Dispute Resolution.

Ms. Roseler received a B.A. in International Relations and Diplomacy with a minor in International Business Administration from Schiller International University in Europe. While in Europe, she worked for the United States Commercial Department in Madrid, Spain and for the United States Military in London, England and Heidelberg, Germany. Upon graduation, Ms. Roseler returned to the United States and worked with a world renowned international development foundation before pursuing her legal education. She is fluent in German and has advanced knowledge of Spanish.



DAVID P. DEAN

David P. Dean is an associate in Faruqi & Faruqi, LLP's Pennsylvania office. Mr. Dean concentrates his practice in complex commercial litigation, including shareholder derivative actions, merger and acquisition litigation, qui tam cases, and consumer class actions. Prior to joining Faruqi & Faruqi, LLP, Mr. Dean was a commercial litigator with Deeb Blum Murphy Frishberg & Markovich, PC. Mr. Dean began his career at the Miami-Dade County Public Defender's Office, where he conducted more than thirty jury and bench trials in felony and misdemeanor cases.

Mr. Dean earned his law degree from New York University School of Law (J.D., *magna cum laude*, 2006), and is a graduate of Wesleyan University (B.A., Government, High Honors, 1999). While in law school he served as a notes editor for the NYU Law Review, and gained clinical and internship experience with the Federal Defenders of New York, the New York Office of the Appellate Defender, the Louisiana Capital Assistance Center, and the Kentucky Department of Public Advocacy's Capital Post-Conviction Unit.

Mr. Dean is licensed to practice law in Pennsylvania and Florida, and has been admitted to practice in the United States District Court for the Eastern District of Pennsylvania.

FRANCIS P. McCONVILLE

Mr. McConville is an associate in Faruqi & Faruqi, LLP's New York office. Mr. McConville concentrates his practice on complex civil litigation with a focus on securities and shareholder class action litigation. Prior to joining the firm, Mr. McConville was an associate at Entwistle & Cappucci LLP.

Mr. McConville has represented institutional and individual investors in obtaining substantial recoveries in numerous class actions involving federal and state securities laws and fiduciary duties of corporate officials. Mr. McConville also counseled corporate clients in federal and state court in a wide range of commercial disputes.

Mr. McConville graduated from the University of Notre Dame (B.A., History and Political Science, 2005) and New York Law School (J.D., *magna cum laude*, 2008). While at New York Law School, Mr. McConville served as the Associate Managing Editor of the *New York Law School Law Review*. Mr. McConville is licensed to practice law in the State of New York and admitted to the United States District Courts for the Eastern and Southern Districts of New York.

LIGAYA HERNANDEZ

Ligaya Hernandez is an associate in Faruqi & Faruqi, LLP's Pennsylvania office. Ms. Hernandez specializes in shareholder derivative litigation. Prior to joining Faruqi & Faruqi, LLP, Ms. Hernandez was



an associate with Kessler Topaz Meltzer & Check, LLP where she concentrated her practice on shareholder derivative litigation.

Ms. Hernandez received her J.D. and a Health Law Certificate from Loyola University Chicago in 2009. While in law school she served as Senior Editor for the Annals of Health Law Journal and received the CALI Award for highest grade in Appellate Advocacy. Ms. Hernandez received a Master in Health Services Administration in Health Policy from The George Washington University and a Bachelor of Science degree in Biology from the University of Pittsburgh. She is licensed to practice law in Pennsylvania and New Jersey and is admitted to practice before the United States District Court for the Eastern District of Pennsylvania and the United States District Court for the District of New Jersey.

CRAIG J. SPRINGER

Craig J. Springer is an associate in Faruqi & Faruqi, LLP's Delaware office. Mr. Springer focuses his practice on shareholder merger and transaction litigation.

Mr. Springer graduated from the University of Delaware (B.A. Political Science, 2006) and Widener University School of Law (J.D., *cum laude*, 2009). Mr. Springer was recipient of the Raymond J. Locke Professional Achievement Award and was the Managing Editor of Widener's law review, the Delaware Journal of Corporate Law. As Managing Editor, Mr. Springer was published as a student where he authored *Weissman v. NASD: Piercing the Veil of Absolute Immunity of an SRO Under the Securities Exchange Act of 1934*, 33 Del. J. Corp. L. 451 (2009), and received the Donald E. Pease Award for his published works.

Craig began his legal career clerking for the Honorable Kevin Gross (now Chief Judge) in the United States Bankruptcy Court for the District of Delaware. Upon completion of his clerkship, Mr. Springer was an attorney at a New York law firm, practicing in the commercial litigation department representing large financial institutions and hedge funds.

Before joining the firm, Craig was an attorney at a corporate bankruptcy and commercial litigation boutique law firm in Wilmington, Delaware.

Mr. Springer is admitted to practice law in Delaware, New York and New Jersey.

BARBARA A. ROHR

Barbara A. Rohr is an associate in Faruqi & Faruqi, LLP's California office.

Prior to joining Faruqi & Faruqi, Ms. Rohr practiced civil and employment litigation at Walsh & Associates, APC, and for the City of Los Angeles. Ms. Rohr also gained valuable work experience as a human resources professional in the entertainment industry for six years before attending law school.



Ms. Rohr graduated from Southwestern Law School (J.D., 2010) and Arizona State University (B.A., Psychology and Broadcast Journalism, 1996). In 2010, Ms. Rohr was recognized for earning the highest grade in Sales at Southwestern Law School and received the Los Angeles County Bar Association's Jeffrey S. Turner Outstanding Commercial Law Student award.

Ms. Rohr is licensed to practice law in California and is admitted to practice before the United States District Courts for the Central, Northern, Southern, and Eastern Districts of California.

A. LUKE SMITH

A. Luke Smith is an associate in Faruqi & Faruqi, LLP's Pennsylvania office. He focuses his practice on antitrust actions, primarily on behalf of drug purchasers complaining of suppressed generic competition.

Mr. Smith earned his J.D. in May of 2010 from Pennsylvania State University Dickinson School of Law. As a law student, Mr. Smith was certified as a Miller Center Public Interest Advocate in recognition of his service to the indigent community and also competed in the American Constitution Society Constance Baker Motley National Moot Court Competition. He earned a degree in Business Management from Cheyney University of Pennsylvania in May 2007 (*summa cum laude*).

During law school, Mr. Smith was a student attorney at the Penn State Dickinson School of Law Family Law Clinic, and a judicial intern for the Honorable Joseph A. Greenaway, then of the United States District Court for the District of New Jersey. He also interned at the New Jersey Office of the Public Defender, and at the Pennsylvania Attorney General, Bureau of Consumer Protection.

Mr. Smith is licensed to practice in Pennsylvania and New Jersey and admitted to the United States District Courts for the Eastern District of Pennsylvania and the District of New Jersey.

STEVEN BENTSIA NOV

Steven Bentsianov is an associate in the New York office of Faruqi & Faruqi LLP and concentrates his practice in the area of securities class action litigation.

Mr. Bentsianov graduated from the State University of New York at Binghamton (B.A. in English, 2005) and from Brooklyn Law School (J.D., *magna cum laude*, 2011). While at Brooklyn Law School, Mr. Bentsianov was the Managing Editor of the Brooklyn Journal of Corporate, Financial and Commercial Law and was a Dean Merit Scholar. He also received the CALI Excellence Award in Legal Writing I and II, Banking Law and Corporate Finance.

Mr. Bentsianov gained further experience in law school through internships for U.S. District Judge Brian Cogan in the U.S. District Court for the Eastern District of New York, the Federal Trade



Commission, the Financial Industry Regulatory Authority, and as a summer associate for a securities class action firm.

Mr. Bentsianov is licensed to practice law in New York and New Jersey.

ANDREA CLISURA

Andrea Clisura is an associate in the New York office of Faruqi & Faruqi, LLP and focuses her practice on consumer class action litigation.

Ms. Clisura graduated from New York University (B.A., *magna cum laude*, 2005) and Brooklyn Law School (J.D., *magna cum laude*, 2011). While at Brooklyn Law School, Ms. Clisura was an Associate Managing Editor of the Brooklyn Law School Journal of Law and Policy, and was a member of the Moot Court Honor Society. Her note, "None of Their Business: The Need for Another Alternative to New York's Bail Bond Business," was published in Volume 19, Issue 1 of the Journal of Law and Policy. She also co-authored the hypothetical problem and bench brief for the 2011 Jerome Prince Memorial Evidence Moot Court Competition.

Ms. Clisura also gained experience in law school as an intern: to the Honorable David G. Trager of the Eastern District of New York, for the U.S. Department of Justice (Antitrust Division), and for a New York City-based legal services organization dealing with anti-predatory lending and foreclosure prevention.

Ms. Clisura is licensed to practice law in New York and New Jersey and is admitted to practice before the United States District Courts for the Southern District of New York, the Eastern District of New York and the District of New Jersey.

COURTNEY E. MACCARONE

Courtney E. Maccarone is an associate in the New York office of Faruqi & Faruqi, LLP and focuses her practice on consumer class action litigation.

Ms. Maccarone graduated from New York University (B.A., *magna cum laude*, 2008) and Brooklyn Law School (J.D., *magna cum laude*, 2011). While at Brooklyn Law School, Ms. Maccarone was the Executive Symposium Editor of the Brooklyn Journal of International Law, and was a member of the Moot Court Honor Society. Her note, "Crossing Borders: A TRIPS-Like Treaty on Quarantines and Human Rights" was published in the Spring 2011 edition of the Brooklyn Journal of International Law. Ms. Maccarone also gained experience in law school as an intern to the Honorable Martin Glenn of the Southern District of New York Bankruptcy Court, a research assistant for Brooklyn Law School Professor



of Law Emeritus Norman Poser, a widely respected expert in international and domestic securities regulation, and as a law clerk for a New York City-based class action firm.

Ms. Maccarone is licensed to practice law in New York and New Jersey and is admitted to practice before the United States District Courts for the Eastern and Southern Districts of New York and the District of New Jersey.

SARAH A. WESTBY

Sarah A. Westby is an associate in the New York office of Faruqi & Faruqi, LLP and concentrates her practice in the area of antitrust class action litigation. Ms. Westby graduated Phi Beta Kappa from the University of Delaware (B.A. in Psychology, *magna cum laude*, 2008) and Brooklyn Law School (J.D., *cum laude*, 2011).

While at Brooklyn Law School, Ms. Westby was an Executive Editor of the Brooklyn Journal of International Law. Her note on comparative consumer class action law was selected as the winning submission in the 2010 Trandafir International Business Writing Competition and was published in the University of Iowa Journal of Transnational Law & Contemporary Problems. She also received awards in Trial Advocacy and International Economic Law. Ms. Westby gained experience during law school through internships for U.S. Magistrate Judge Ramon E. Reyes, Jr. in the U.S. District Court for the Eastern District of New York, the U.S. Department of Justice, Civil Rights Division, the New York City Law Department and as a law clerk for an antitrust and consumer class action firm.

Ms. Westby is licensed to practice law in New York.

GARY I. SMITH

Gary I. Smith, Jr. is an associate in Faruqi & Faruqi, LLP's Pennsylvania office. Mr. Smith focuses his practice on complex class action litigation, primarily in the area of antitrust.

Mr. Smith graduated from the University of Arizona (B.S.B.A., Business Economics, 2008) and the Sandra Day O'Connor College of Law at Arizona State University (J.D., 2011). In law school, Mr. Smith served as a research assistant for Professor of Law Amandeep Grewal, earned honors as a Willard H. Pedrick Scholar, and, most notably, spent the Fall of 2010 working alongside Staff Attorneys at the Securities and Exchange Commission's Headquarters in Washington, D.C., in the Office of Compliance, Inspections, and Examinations. While with the SEC, Mr. Smith obtained invaluable insight into federal regulatory oversight and enforcement.

Prior to joining the firm, Mr. Smith gained substantial courtroom and appellate experience at a commercial litigation practice in Phoenix, Arizona. There, Mr. Smith successfully represented his clients'



interests in all facets of litigation, from the institution of legal proceedings through closing arguments at trial.

Mr. Smith is admitted to the Arizona State Bar.

MEGAN SULLIVAN

Megan Sullivan is an associate in the New York office of Faruqi & Faruqi, LLP and concentrates her practice in the area of securities class action litigation.

Prior to joining the firm, Ms. Sullivan was a litigation associate at Crosby & Higgins LLP where she represented institutional and individual investors in securities arbitrations before FINRA and counseled corporate clients in commercial disputes in federal court. Additionally, Ms. Sullivan gained further litigation experience in law school through internships at the Kings County District Attorney's Office and the Adjudication Division of the New York City Department of Consumer Affairs.

Ms. Sullivan graduated from the University of California, Los Angeles (B.A., History, 2008) and from Brooklyn Law School (J.D., *cum laude*, 2011). While at Brooklyn Law School, Ms. Sullivan served as Associate Managing Editor of the Brooklyn Journal of Corporate, Financial and Commercial Law. Ms. Sullivan is licensed to practice law in the State of New York.

GABRIEL V. CELII

Gabriel V. Celii is an associate in Faruqi & Faruqi, LLP's Pennsylvania office. He focuses his practice on antitrust litigation.

Mr. Celii graduated magna cum laude from the University of Pittsburgh (B.A. in Political Science, B.A. in Philosophy, 2008) and earned his J.D. from Villanova University School of Law (2011). During law school, Mr. Celii volunteered legal services through Philadelphia VIP, a program dedicated to assisting the indigent. He also was a judicial intern for the Honorable Linda Carpenter, of the Court of Common Pleas—Trial Division for the First Judicial District of Pennsylvania.

Before joining the firm, Mr. Celii gained litigation and appellate experience while practicing at a boutique Philadelphia firm, primarily handling Employment and Labor Law matters.

Mr. Celii is admitted to the Pennsylvania State Bar.

JAVIER O. HIDALGO

Javier O. Hidalgo is an associate in the New York office of Faruqi & Faruqi, LLP and focuses his practice on consumer class action litigation.



Mr. Hidalgo graduated from Swarthmore College (B.A., Sociology & Anthropology, 2004) and New York Law School (J.D., 2012). Mr. Hidalgo gained experience in law school working as a paralegal at Faruqi & Faruqi, LLP starting in spring of 2009.

Mr. Hidalgo is licensed to practice law in New York and is admitted to practice before the United States District Courts for the Eastern and Southern Districts of New York

DAVID M. SBORZ

David M. Sborz is an associate in the New York office of Faruqi & Faruqi, LLP, concentrating in shareholder merger and transactional litigation.

Prior to joining the firm, Mr. Sborz gained experience working for Bank of America/Merrill Lynch ("BOA/ML") in the Private Equity/Derivatives Unit analyzing proposed and finalized Dodd-Frank Regulations and assisting operations teams with meeting compliance requirements.

Additionally, Mr. Sborz served as legal associate with the U.S. Commodity Futures Trading Commission ("CFTC"), Division of Enforcement, where he conducted investigations into futures, options, commodities, speculation limits, Ponzi schemes, and market manipulation. Mr. Sborz also assisted in the preparation of court pleadings and documents filed in the United States District Courts across jurisdictions and administrative forums.

Mr. Sborz graduated from Wilkes University (B.A. in Criminology/Political Science, *magna cum laude*, 2009) and from New York Law School (J.D., *magna cum laude*, 2012, Law Review and Moot Court Association).

Mr. Sborz is licensed to practice law in New York and New Jersey and is admitted to practice before the United States District Court for the District of New Jersey.

TIFFANY Y.L. TANG

Tiffany Y.L. Tang is an associate in the New York office of Faruqi & Faruqi, LLP and focuses her practice on class action securities fraud litigation.

Ms. Tang graduated from Columbia College (B.A. in Economics-Political Science, 2009) and from Cornell Law School (J.D., 2012), where she served as a general associate for the Journal of Law and Public Policy. Prior to joining the firm, Ms. Tang gained experience by interning at the Federal Trade Commission, the New York Attorney General's Office Labor Bureau, the Ithaca City Attorney's Office, and the Avon Global Center for Women and Justice.

Ms. Tang has applied for admission to the New York Bar.



TODD HENDERSON

Todd H. Henderson is an associate in the New York office of Faruqi & Faruqi, LLP and concentrates his practice in the area of shareholder derivative litigation.

Mr. Henderson graduated from Cornell University (B.A. in American Studies, College of Arts and Sciences, 2007) and from Brooklyn Law School (J.D., Certificate in Business Law, 2012). While at Brooklyn Law School, Mr. Henderson was an Associate Managing Editor of the Brooklyn Journal of International Law. His note, "The English Premier League's Home Grown Player Rule Under the Law of the European Union" was published in the Fall 2011 edition of the Brooklyn Journal of International Law.

Prior to joining the firm, Mr. Henderson gained experience as a paralegal for the Internal Revenue Service, Office of Chief Counsel, and through internships for a securities and consumer class action firm, the New York State Division of Human Rights, United States Postal Service Law Department, the Brooklyn Consumer Counseling and Bankruptcy Clinic, and the New York City Human Resources Administration, Office of Legal Affairs.

Mr. Henderson has applied for admission to the New York Bar.

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 OAKLAND DIVISION

4
5 In re: ALEXIA FOODS, INC.
6 LITIGATION

Case No 11-cv-06119-PJH

7 **[PROPOSED] ORDER GRANTING**
8 **PRELIMINARY APPROVAL OF CLASS**
9 **ACTION SETTLEMENT AND PROVISIONAL**
10 **CLASS CERTIFICATION**

11 **Hearing Information**

Date: July 10, 2013

Time: 9:00 a.m.

Courtroom: Courtroom 3, 3rd Floor

Judge: Hon. Phyllis J. Hamilton

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28 **[PROPOSED] ORDER GRANTING PRELIMINARY**
APPROVAL OF CLASS ACTION SETTLEMENT

1 Plaintiffs Leandro Vicuña (“Vicuna”), Pere Kyle (“Kyle”), and David Eckstein
 2 (“Eckstein,” collectively “Plaintiffs”), having filed a motion for an order preliminarily approving
 3 the settlement reflected in the Stipulation of Settlement (“Agreement”) entered into by Plaintiffs
 4 and Defendant ConAgra Foods, Inc. (“ConAgra” or “Defendant”); that said motion having come
 5 on for a hearing before the above-entitled Court; the Court having reviewed and considered all
 6 documents, evidence and arguments of counsel presented in support of said motion; the Court
 7 being fully advised of the premises and good cause appearing therefore, the Court enters its order
 8 and, subject to final determination by the Court as to the fairness, reasonableness and adequacy
 9 of the settlement, finds and orders as follows:

10 **IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:**

11 1. For settlement purposes only, pursuant to Federal Rule of Civil Procedure 23, the
 12 Court hereby conditionally certifies the following class (“Settlement Class”)¹: “All residents of
 13 the United States of America who, at any time between December 6, 2007, and [Preliminary
 14 Approval Date], purchased any of the referenced Alexia Products (i.e. “Sauté Reds,” “Mashed
 15 Potatoes Yukon Gold Potatoes & Sea Salt,” “Mashed Potatoes Red Potatoes with Garlic &
 16 Parmesan,” “Waffle Fries,” “Harvest Sauté,” “Italian Sauté,” “Sauté Sweets,” and “Potato
 17 Bites”).” Excluded from this definition are (a) ConAgra, (b) all of ConAgra’s past and present
 18 respective parents, subsidiaries, divisions, affiliates, persons and entities directly or indirectly
 19 under its or their control in the past or in the present, (c) ConAgra’s respective assignors,
 20 predecessors, successors and assigns; and the past or present partners, shareholders, managers,
 21 members, directors, officers, employees, agents, attorneys, insurers, accountants,
 22 (d) representatives of any and all of the foregoing, and (e) any government entities.

23 2. The Court conditionally certifies the proposed Settlement Class, and finds that the
 24 requirements of Fed. R. Civ. P. 23(a) are satisfied, for settlement purposes only, as follows:

25 a. Pursuant to Fed. R. Civ. P. 23(a)(1), the members of the Settlement Class are so

26
 27 ¹ Subject to the exclusions set forth in Section 5.3 of the Agreement.

1 numerous that joinder of all members is impracticable.

2 b. Pursuant to Fed. R. Civ. P. 23(a)(2) and 23(c)(1)(B), the Court determines that
3 there are common issues of law and fact for the Settlement Class.

4 c. Pursuant to Fed. R. Civ. P. 23(a)(3), the claims of the Class Representatives
5 (defined herein) are typical of the claims of the Settlement Class that they
6 represent.

7 d. Pursuant to Fed. R. Civ. P. 23(a)(4), the Class Representatives will fairly and
8 adequately protect and represent the interests of all members of the Settlement
9 Class. The interests of the Class Representatives are not antagonistic to those of
10 the Settlement Class. The Class Representatives are represented by counsel who
11 are experienced and competent in the prosecution of complex class action
12 litigation.

13 3. The Court further finds that the requirements of Fed. R. Civ. P. 23(b)(3) are
14 satisfied, as follows:

15 a. Questions of law and fact common to the members of the Settlement Class
16 predominate over questions that may affect only individual members; and

17 b. A class action is superior to all other available methods for the fair and efficient
18 adjudication of this controversy.

19 4. The Court appoints Plaintiffs Vicuna, Kyle, and Eckstein as class representatives
20 (“Class Representatives”) for the Settlement Class.

21 5. The Court preliminarily finds that the following counsel fairly and adequately
22 represent the interests of the Settlement Class and hereby appoints Roland Tellis and Mark Pifko
23 of Baron & Budd, P.C., and Nadeem Faruqi of Faruqi & Faruqi, LLP, as counsel for the
24 Settlement Class pursuant to Fed. R. Civ. P. 23(g).

6. The settlement was the result of the parties' good-faith negotiations. The settlement was entered into by experienced counsel and only after extensive arm's-length negotiations. The Settlement Agreement is not the result of collusion.

7. The Settlement falls well within the range of reason. The Settlement has no obvious deficiencies.

8. The Court finds that the Agreement and the settlement set forth therein are preliminarily approved as fair, reasonable and adequate as to all potential Settlement Class² members.

9. The Court approves, as to form and content (or as may be amended by the Court), the Class Notice, Short Form Notice and Media Plan attached as Exhibits B, C and D to the Agreement. The Court finds that the dissemination of the Class Notice, as directed by this Order, constitutes the best notice practicable under the circumstances and provides sufficient notice to all members of the Settlement Class. The contents of the Class Notice and the manner of its dissemination satisfy the requirements of state and federal due process. The Court authorizes the parties to make minor revisions to the Class Notice as they may jointly deem necessary or appropriate, without necessity of further Court action or approval.

10. The Rust Consulting firm is hereby appointed to administer the notice procedure, process the claims, objections, and opt-outs.

11. A final approval hearing shall be held by this Court to consider and finally determine:

- a. Whether the Agreement should be finally approved as fair, reasonable, and adequate;
- b. Whether to approve Plaintiffs' Counsel's Fee and Expense Application, as provided in paragraph 3.1 of the Agreement; and
- c. The merits of any objections to the Agreement and the settlement set forth therein,

² All capitalized and defined terms shall have the meaning ascribed to them in the Settlement Agreement.

1 or any of its terms.

2 The final approval hearing described in this paragraph may be postponed, adjourned, or
3 continued by order of the Court without further notice to the Settlement Class.

4 12. Any members of the Settlement Class who do not request exclusion, and who
5 object to approval of the proposed settlement in compliance with the requirements of the
6 Agreement, may appear at the final approval hearing in person or through counsel to show cause
7 why the proposed settlement should not be approved as fair, reasonable, and adequate.

8 13. Any member of the Settlement Class who desires exclusion therefrom must mail,
9 by the date set forth in the Class Notice, the information required in the Class Notice completed
10 to the addresses set forth in the Class Notice. All persons who properly submit a completed
11 request for exclusion shall not be Settlement Class Members and shall have no rights with
12 respect to the settlement.

13 14. If the Agreement is finally approved, the Court shall enter a Settlement Order and
14 Judgment approving the Agreement. Said Settlement Order and Judgment shall be fully binding
15 with respect to all members of the Settlement Class who did not request exclusion by the date set
16 in the Class Notice, in accordance with the terms of the Class Notice and the Agreement.

17 15. All discovery, pretrial deadlines and other pretrial proceedings in this Action are
18 stayed and suspended until further order of this Court, except as otherwise agreed to by the
19 parties or as may be necessary to implement the Agreement or this Order.

20 16. In the event that the proposed settlement as provided in the Agreement is not
21 approved by the Court, or entry of a Settlement Order and Judgment as provided in the
22 Agreement does not occur for any reason, then the Agreement, all drafts, negotiations,
23 discussions, and documentation relating thereto, and all orders entered by the Court in
24 connection therewith shall become null and void. In such event, the Agreement and all
25 negotiations and proceedings relating thereto shall be withdrawn without prejudice to the rights
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1 of any and all parties thereto, who shall be restored to their respective positions as of the date of
2 the execution of the Agreement.

3 17. The Agreement is not a concession or admission and shall not be used or
4 construed against Plaintiffs, Defendant or any of the Released Persons as an admission or
5 indication with respect to any claim of any fault or omission by Plaintiffs, Defendant or any of
6 the Released Persons. No act performed or document executed pursuant to or in furtherance of
7 the settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence
8 of, the validity of any released claim or of any wrongdoing or liability of Defendant; or (ii) is
9 or may be deemed to be or may be used as an admission of, or evidence of, any fault or
10 omission of Defendant in any civil, criminal or administrative proceeding in any court,
11 administrative agency or other tribunal. Nothing in this order shall be relied upon, cited as,
12 constitute evidence of, or constitute an admission that class or collective action certification is or
13 may be appropriate in any other action.

14 18. The dates of performance of this order are as follows:

- 15 a. The Class Notices shall be disseminated in accordance with the provisions of
16 Section IV of the Agreement. The parties shall use their best efforts to complete
17 such dissemination by _____, 2013.
- 18 b. Requests for exclusion must be received by _____, 2013.
- 19 c. Online submissions of Claim Forms must be completed, and mailed Claim Forms
20 must be postmarked, no later than _____, 2013.
- 21 d. Objections to the settlement must be postmarked no later than _____, 2013.
- 22 e. Plaintiffs' Counsel shall prepare and file with the Court a joint list of class
23 members who have filed timely requests for exclusion by _____, 2013.
- 24 f. Plaintiffs' Counsel shall file and serve papers in support of final approval of the
25 Settlement, responding to any objections or motion to intervene, and requesting
26 attorneys' fees, costs and expenses by _____, 2013.

g. Defendant shall file papers, if any, in support of final approval of the settlement and responding to any objections or motions to intervene by _____, 2013.

h. The final approval hearing shall be held on _____, 2013, at __:__ a.m.

19. The Court retains jurisdiction to consider all further applications arising out of the proposed settlement.

IT IS SO ORDERED.

DATED: _____, 2013

Hon. Phyllis J. Hamilton
Judge, United States District Court
In and For the Northern District of California