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16 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
17 COUNTY OF SANTA CLARA

19 Kelly Romero and Richard H. Joseph, on  
20 behalf of themselves and all others similarly  
21 situated,  
22 Plaintiffs,  
23 v.  
24 Loacker USA, Inc., a Delaware corporation,  
25 Defendant.  
26

Case No. 1-14-CV-274434  
**STIPULATION OF CLASS ACTION  
SETTLEMENT**

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5 *Attorneys for Plaintiffs and the Putative Class*

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1 The undersigned parties (collectively, the “Parties,” and each separately a “Party”) to the  
2 above-captioned action, by and through their attorneys of record, hereby enter into the following  
3 Stipulation of Class Action Settlement (the “Agreement”), subject to and expressly conditioned  
4 upon the approval of this Court as required by applicable law.

5 This Agreement, including its attached Exhibits, is entered into by and among Plaintiffs  
6 Kelly Romero and Richard H. Joseph, for themselves and each of the Settlement Class Members  
7 (defined below), and Defendant Loacker USA, Inc. Capitalized terms are defined in Section II or  
8 as indicated in parentheses elsewhere in the Agreement. Subject to and expressly conditioned upon  
9 Court approval as required by applicable law including the California Rules of Court, and as  
10 provided herein, the Parties hereby stipulate and agree that, in consideration of the promises and  
11 covenants in this Agreement, and conditioned upon the entry by the Court of a Final Order  
12 Approving this Settlement, upon the Court’s entry of a Final Judgment thereon, and upon the  
13 occurrence of the Effective Date, this action shall be settled and compromised upon the following  
14 terms and conditions. If the Court does not approve this settlement then this stipulation and all acts  
15 taken in furtherance of it, shall not prejudice the Parties, who shall be returned to their *status quo*  
16 *ante*.

17 **I. RECITALS**

18 A. Plaintiffs filed a Complaint on behalf of a putative class in the Superior Court of the State  
19 of California, County of Santa Clara, entitled *Kelly Romero and Richard H. Joseph v. Loacker*  
20 *USA, Inc.*, Case No. 1-14-CV-274434, alleging that certain packaged wafer products sold by  
21 Loacker USA, Inc. were misbranded “All Natural” because they contain one or more of the  
22 following ingredients: cocoa processed with alkali, sodium acid pyrophosphate, soy lecithin,  
23 sodium hydrogen carbonate, dextrose, glucose syrup, milk powders, coffee powders, fruit  
24 powders, sugar, and coconut oil. On this basis, Plaintiffs brought causes of action for violations of  
25 the Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 et seq. (the “UCL”), the False  
26 Advertising Law, Cal. Bus. & Prof. Code §§ 17500 et seq. (the “FAL”), and the Consumers Legal  
27 Remedies Act, Cal. Civ. Code §§ 1750 et seq. (the “CLRA”), common law fraud, breach of  
28 contract, breach of warranty, and unjust enrichment (the “Action”).

1 B. Locker USA, Inc. and the Released Parties (as defined herein) deny any and all  
2 wrongdoing and all liability arising out of or relating to any of the conduct, statements, acts or  
3 omissions alleged in the Action (and believe that there are meritorious defenses and legal  
4 challenges to the merits of Plaintiffs' claims, and to class certification), but Locker USA, Inc.  
5 considers it desirable that all claims against it in this Action be settled on the terms set forth in this  
6 Agreement in order to avoid further expense, inconvenience, and delay; to dispose of the  
7 protracted Action; and to put to rest all controversy concerning all claims which have been or any  
8 related claims which may have been asserted in the Action.

9 C. The Parties have engaged in certain written discovery including, but not limited to, special  
10 interrogatories and document demands. Plaintiffs' counsel have reviewed substantial  
11 documentation, including but not limited to data sheets for the allegedly synthetic ingredients  
12 containing information about their production processes, have consulted with experts in the area of  
13 food science, damages, and consumer marketing, have conducted preliminary consumer surveys  
14 and interviewed Settlement Class Members, and have reviewed sales data.

15 D. The Parties participated in a full-day mediation before the Honorable Edward A. Infante  
16 (Ret.), continued to negotiate after the mediation, and then came to an agreement in principle.

17 E. The Parties have worked diligently to agree upon the remaining terms of the settlement and  
18 memorialize them in this Agreement.

19 F. Plaintiffs are members of the Settlement Class alleged in the Action.

20 G. Plaintiffs and the Settlement Class are represented by CounselOne, P.C. and the Law  
21 Offices of Scott E. Brown ("Class Counsel").

22 H. Class Counsel have conducted a thorough investigation into the facts and law relating to  
23 the Action and has analyzed and evaluated the merits of the Parties' contentions. Class Counsel  
24 also evaluated the risks, delay and difficulties and uncertainties involved in certifying a class and  
25 in establishing liability, and in the event of liability, a right to recovery in excess of that offered by  
26 this settlement, and has determined that the Action could be protracted and expensive, and that its  
27 outcome, including the potential for class certification, liability, and damages, is uncertain. Class  
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1 Counsel are satisfied that the terms and conditions of this Agreement are fair, reasonable, adequate  
2 and equitable, and that a settlement of this Action on the terms proposed in this Agreement is in  
3 the best interests of the Settlement Class.

4 I. Plaintiffs and Loacker USA, Inc. intend by this Agreement to settle, compromise, resolve,  
5 release all allegations and claims for damages and/or other relief, except claims for bodily injuries  
6 that have been or could have been brought against Loacker USA, Inc. or the Released Parties, or  
7 any of them, based on the facts that were or could have been alleged in the Action (or in any other  
8 action filed, litigation pending, or any claim pursued by any person or entity who is a member of  
9 the Settlement Class) related to the labeling, packaging, sale, distribution, supply, marketing or  
10 advertising of the Products.

11 NOW, THEREFORE, this Agreement is entered into by and among the Parties, by and  
12 through their respective counsel and representatives, and the Parties agree that: upon the Court's  
13 approval of the settlement reflected by this Agreement, and the Court's entry of final judgment  
14 thereon, substantially in the form of the [Proposed] Final Judgment and [Proposed] Order  
15 Approving Settlement attached hereto as Exhibit 1, all claims made in the Action shall be finally  
16 resolved as to the class, as finally constituted, on the following terms and conditions:

17 **II. DEFINITIONS**

18 A. As used in this Agreement and the Exhibits hereto, in addition to any definitions elsewhere  
19 in this Agreement, the following terms shall have these meanings:

20 1. "Award" means the class relief obtained by Settlement Class Members pursuant to  
21 Section III.C of this Agreement.

22 2. "Attorneys' Fees and Expenses" means such funds as may be awarded by the Court to  
23 Plaintiffs' Counsel in this Action, as described more particularly in Section III.H of this  
24 Agreement.

25 3. "Authorized Claimant" means a member of the Settlement Class who timely submits a  
26 valid Claim Form in accordance with the terms of this Agreement.

27 4. "Claim" means a request for relief pursuant to Sections III.C and D of this Agreement  
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1 submitted by a Settlement Class Member in accordance with the terms of this Agreement.

2 5. "Claim Form" means the form to be submitted to the Administrator by Settlement  
3 Class Members seeking payment pursuant to this Agreement. The proposed Claim Form is subject  
4 to Court approval and attached hereto as Exhibit 2.

5 6. "Claims Bar Date," which shall be sixty (60) days after the Notice Date, means the date  
6 by which all Claim Forms must be postmarked or received by the Administrator to be considered  
7 timely. The Claims Bar Date shall be clearly set forth in the Court orders granting preliminary and  
8 final approval of the settlement, the Class Notice, on the settlement website, and the front page of  
9 the Claim Form.

10 7. "Class Action Settlement Administrator" (sometimes herein, "Administrator") means  
11 CPT Group, Inc. ("CPT") or such other administrator as may be acceptable to the Parties and  
12 appointed by the Court.

13 8. "Class Notice" means the notice to be disseminated to Settlement Class Members  
14 informing them about this Agreement, the process for its potential approval, and their rights in  
15 connection with this Agreement and that process. Long and short forms of proposed Class Notice  
16 acceptable to the Parties but subject to Court approval and modification are attached as Exhibits 3  
17 and 4 hereto.

18 9. "Class Representatives" means Plaintiffs Kelly Romero and Richard H. Joseph.

19 10. "Complaint" means the Complaint filed in this Action by Plaintiffs on December 12,  
20 2014.

21 11. "Court" means the Superior Court of the State of California, County of Santa Clara, the  
22 Honorable Peter H. Kirwan, presiding.

23 12. "Defendant" means Locker USA, Inc. and all related entities, including those involved  
24 in any way with U.S. sales of the Products, including but not limited to Locker USA Holding,  
25 Inc., A. Locker AG/SpA, Bozen Bauleasing SpA, and each of their parents, subsidiaries,  
26 affiliates, agents, officers, directors, attorneys, insurers, beneficiaries, shareholders, debtors,  
27 creditors, employees, predecessors, successors and assigns.

1           13. “Disputed Label” shall mean any and all labels with the representation “All Natural”  
2 associated with the Loacker “Quadratini” and sandwich packaged wafer Products.

3           14. “Effective Date” means the date on which all of the conditions of settlement have been  
4 satisfied, as discussed in Section III.K.

5           15. “Final Approval Hearing” means the hearing to be conducted by the Court on such date  
6 as the Court may order to determine the fairness, adequacy and reasonableness of the proposed  
7 settlement in accordance with applicable law.

8           16. “Final Approval Order” means the court order granting final approval of the proposed  
9 settlement pursuant to applicable law. The Final Approval Order shall be substantially in the form  
10 of Exhibit 1 and shall conform to Section III.I, or be in some other form approved by the Court  
11 and the Parties, and shall: find the Agreement fair, adequate, and reasonable; confirm the  
12 certification of the Settlement Class for settlement purposes only; and make such other findings  
13 and determinations as are necessary and appropriate to implement this Agreement.

14           17. “Labeling” means the display of written, printed or graphic matter upon the packaging  
15 of the Products, as well as written, printed or graphic matter designed for use in the promotion,  
16 distribution or sale of the Products, including but not limited to information found on Loacker’s  
17 website, which supplements, describes, explains, and/or promotes the Products.

18           18. “Class Counsel” means CounselOne, P.C., and the Law Offices of Scott E. Brown.

19           19. “Defense Counsel” means Nancy Gray, Esq. and Ray E. Gallo, Esq.

20           20. “Motion for Preliminary Approval of Settlement” means the motion and all supporting  
21 papers, to be filed by Plaintiffs, seeking Preliminary Approval of this Agreement.

22           21. “Notice Date” means thirty (30) calendar days after the Court enters its Preliminary  
23 Approval Order.

24           22. “Opt Out Date” means the Claims Bar Date, which in addition to being the last date  
25 upon which a submitted claim is timely shall also be the last day that an Exclusion Request is  
26 timely.

27           23. “Objection Date” means the Claims Bar Date, which shall also be the last date that an  
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1 objection to the proposed settlement is timely.

2 24. "Plaintiffs" means Plaintiffs Kelly Romero and Richard H. Joseph.

3 25. "Preliminary Approval Order" means the order to be entered by the Court, substantially  
4 in the form of Exhibit 5 and conforming to Sections III.B herein, but subject to such changes as  
5 the Court may require without objection from the Parties or either of them: conditionally  
6 certifying the Settlement Class; preliminarily approving the settlement; setting the date of the  
7 Final Approval Hearing; provisionally appointing Counsel One, P.C. the Law Offices of Scott E.  
8 Brown as counsel for the Settlement Class; approving the notice program, Class Notice, and Claim  
9 Form; and setting the Claims Bar Date, Opt Out and Objection Dates, and Notice Date.

10 26. "Products" means Loacker Quadratini packaged wafers, in all sizes and flavors, and  
11 sandwich packaged wafers, in all sizes and flavors.

12 27. "Proof of Purchase" means receipts, Quadratini and sandwich packaging, or other  
13 documentation from a third-party commercial source reasonably establishing the Settlement Class  
14 Member's fact and date of purchase during the Settlement Class Period of the Products.  
15 Packaging, including bar codes or UPCs, shall constitute Proof of Purchase only if the Product(s)  
16 claimed by the Settlement Class Member can be identified from the Packaging submitted.

17 28. "Released Claim" means, with the exception of claims for bodily injuries, all claims,  
18 rights, demands, suits, obligations, actions, and causes of action of every kind and nature  
19 whatsoever that Releasing Parties have or may have against Released Parties resulting from or  
20 arising in connection with the Labeling, packaging, sale, distribution, supply, marketing, or  
21 advertising of the Products based on the facts alleged in the Action. Without limiting the  
22 foregoing, Released Claims, include assigned claims, Unknown Claims, asserted and un-asserted  
23 claims, and latent claims that are, have been, could reasonably have been, or in the future might  
24 reasonably be asserted under any body of law by a Releasing Party in any forum, on any legal or  
25 equitable theory seeking any relief, against any of the Released Parties, and arising from, or in any  
26 way relating to, the Labeling, packaging, sale, distribution, supply, marketing, or advertising,  
27 regardless of medium, of the Products purchased from March 6, 2010 through the Notice Date,  
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1 including but not limited to any claim based on the facts alleged in the Action.

2         29. “Released Party” means Locker USA, Inc. and all its affiliates, subsidiaries, parent  
3 companies, shareholders, officers, and directors, including but not limited to Locker USA  
4 Holding, Inc., A. Locker AG/SpA, and Bozen Bauleasing SpA, and further means and includes  
5 all persons, legal and natural, that made, manufactured, tested, inspected, audited, certified,  
6 purchased, distributed, supplied, shipped, gave, licensed, transported, donated, marketed,  
7 advertised, promoted, packaged, labeled, sold or offered for sale any Product, or contributed,  
8 assisted, or facilitated any of the foregoing with respect to any Product, and including all of their  
9 respective predecessors, successors, assigns, parents, subsidiaries, divisions, departments, and  
10 affiliates, and all of their past, present and future officers, directors, employees, shareholders,  
11 partners, principals, agents, servants, successors, attorneys, insurers, representatives, licensees,  
12 licensors, customers, shareholders, debtors, creditors, subrogees and assigns. To the extent a  
13 Released Party is not a Party to this Agreement, all such Released Parties are intended third party  
14 beneficiaries of this Agreement, of any Final Approval Order entered hereon, and any final  
15 judgment entered hereon.

16         30. “Releasing Party” means each Plaintiff, each Settlement Class Member, and all persons  
17 claiming by or through each Settlement Class Member, including but not limited to spouses,  
18 children, wards, heirs, devisees, legatees, beneficiaries, invitees, employees, associates, co-  
19 owners, attorneys, insurers, agents, administrators, predecessors, successors, assignees,  
20 representatives of any kind, shareholders, partners, directors, or affiliates.

21         31. “Exclusion Request” means the written communication that must be submitted to the  
22 Administrator and postmarked on or before the Opt Out Date by a Settlement Class Member who  
23 wishes to be excluded from the Settlement Class.

24         32. “Settlement Administration Expenses” means the cost of Class Notice, the expenses  
25 incurred by the Administrator assisting with the implementation of this Agreement, which shall  
26 primarily result from administering the notice program and processing all Claims made by  
27 Settlement Class Members, and such other expenses, if any, as may reasonably be incurred to  
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1 effectuate this Agreement for the benefit of the Settlement Class, which amount shall not exceed  
2 \$250,000.00.

3 33. "Settlement Class" and "Settlement Class Member(s)" each means all consumers in the  
4 United States who, during the Settlement Class Period, made retail purchases of one of more of  
5 the Products that were labeled "All Natural" and contained one or more of the following  
6 ingredients: cocoa processed with alkali, sodium acid pyrophosphate, soy lecithin, sodium  
7 hydrogen carbonate, glucose syrup, dextrose, milk powders, coffee powders, fruit powders, sugar,  
8 and coconut oil. Specifically excluded from the Settlement Class are: (a) Locker USA, Inc. and  
9 its employees, principals, officers, directors, agents, affiliated entities, legal representatives,  
10 successors and assigns; (b) the judges to whom this action has been or is assigned and any  
11 members of their immediate families; and (c) all consumers who have filed a timely Exclusion  
12 Request from the Settlement Class.

13 34. "Settlement Class Period" means March 6, 2010 through the date of Preliminary  
14 Approval.

15 35. "Settlement Consideration" means the consideration exchanged by and between  
16 Locker USA, Inc. and the Settlement Class, as set forth in this Agreement.

17 36. "Settlement Website" means the website to be created for this settlement to publish to  
18 the class information about the litigation and the settlement, relevant documents and electronic and  
19 printable forms relating to the settlement, including the Claim Form which can be submitted  
20 online or printed and mailed.

21 37. "Unknown Claims" means any all Released Claims that a Settlement Class Member, or  
22 anyone acting on behalf of or in their interest, does not know or suspect to exist against any of the  
23 Released Parties which, if known, might have affected his or her decision to enter into or to be  
24 bound by the terms of this Agreement. The Plaintiffs and Settlement Class Members acknowledge  
25 that they may hereafter discover facts in addition to or different from those that they now know or  
26 believe to be true concerning the subject matter of this Agreement, but nevertheless fully, finally,  
27 and forever settle and release any and all Released Claims, known or unknown, suspected or  
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1 unsuspected, contingent or non-contingent, which now exist, may hereafter exist, or heretofore  
2 have existed which arise from, or in any way relate to, the Labeling, packaging, sale, distribution,  
3 supply, marketing, or advertising, regardless of medium, of any Product based on the facts alleged  
4 in the Action, without regard to subsequent discovery or existence of such different or additional  
5 facts concerning each of the Released Parties.

### 6 **III. Terms and Conditions**

#### 7 A. Conditional Class Certification For Settlement Purposes Only

8 1. For the sole and limited purpose of settlement only, the Parties stipulate to and request  
9 that the Court certify the Settlement Class, which stipulation is contingent upon the occurrence of  
10 the Effective Date. Should the Effective Date not occur, this Agreement and any certification  
11 based upon it shall be void and will not constitute, be construed as, or be admissible in evidence  
12 as, an admission of any kind or be used for any purpose in the Action or in any other pending or  
13 future action.

14 2. This Agreement is for settlement purposes only, and neither the fact of this Agreement  
15 nor any provision contained in it or its Exhibits, nor any action taken under or in furtherance of  
16 this Agreement, shall constitute, be construed as, or be admissible in evidence as an admission of:  
17 (a) the truth or validity of any allegation, claim, or defense; (b) any wrongdoing, fault, violation of  
18 law, or liability of any kind on the part of any Party, Released Party, Settlement Class Member or  
19 their respective counsel; (c) the appropriateness of class certification. Upon any failure of this  
20 agreement to result in a final judgment in the Action for any reason, the Parties shall be returned to  
21 their *status quo ante*, without prejudice of any kind, including but not limited to prejudice relating  
22 to the viability of any claim or defense, of the propriety of class certification.

23 3. Subject to Court approval and for settlement purposes only, Defendants agree that  
24 Plaintiffs Kelly Romero and Richard H. Joseph may be appointed Class Representatives and  
25 Counsel One, P.C., and the Law Offices of Scott E. Brown may be appointed Class Counsel.

#### 26 B. Required Events and Cooperation By The Parties

27 1. Preliminary Approval. The Parties and their respective counsel agree that Plaintiffs  
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1 shall seek Preliminary and Final Approval of this Agreement, and entry of judgment hereon. As  
2 soon as practicable after execution of this Agreement, Plaintiffs shall file a Motion for Preliminary  
3 Approval of this Agreement, including all the attached Exhibits, with an order substantially in the  
4 form of Exhibit 5 but subject to such changes as the Court may direct. In conformance with and  
5 subject to applicable law, the Preliminary Approval Order shall:

- 6 a. Determine preliminarily that this proposed Settlement falls within the range of  
7 reasonableness meriting possible final approval and dissemination of Class Notice;
- 8 b. Determine preliminarily that the Class Representatives are members of the  
9 Settlement Class and that, for purposes of the settlement, they satisfy the requirements of  
10 typicality and adequacy, and provisionally appoint them as the representatives of the Settlement  
11 Class;
- 12 c. Determine preliminarily that the Settlement Class meets all applicable requirements  
13 of Code of Civil Procedure section 382, and conditionally certify the Settlement Class for  
14 settlement purposes only;
- 15 d. Provisionally appoint Class Counsel;
- 16 e. Schedule the Final Approval Hearing to: (i) determine finally whether the  
17 Settlement Class satisfies the applicable requirements of Code of Civil Procedure section 382 and  
18 should be finally certified for settlement purposes only; (ii) hear, review, and rule on objections, if  
19 any, regarding this Agreement; (iii) finally appoint Class Counsel and Class Representatives; (iv)  
20 consider Class Counsel's application for Attorneys' Fees and Expenses and the propriety of Class  
21 Counsel's application for incentive awards to the Class Representatives, consistent with the  
22 stipulation of the Parties set forth herein; (v) determine the validity of any Exclusion Requests and  
23 exclude from the Settlement Class those persons who validly and timely opt out.
- 24 f. Set a briefing schedule for the Final Approval Hearing;
- 25 g. Approve the proposed Class Notice and notice program and schedule, or an  
26 alternative program deemed superior by the Court and acceptable to all Parties hereto;
- 27 h. Appoint the Class Action Settlement Administrator;
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1 i. Direct Loacker USA, Inc., the Administrator, or their designee(s) to cause the Class  
2 Notice to be disseminated in the manner set forth in the Preliminary Approval Order;

3 j. Determine that the proposed Class Notice and the notice program: (i) meets the  
4 requirements of Code of Civil Procedure section 382 and due process; (ii) is the best notice  
5 practicable; (iii) is reasonably calculated, under the circumstances, to apprise Settlement Class  
6 Members of the pendency of the Action and their right to object to the proposed settlement or opt  
7 out of the Settlement Class; and (iv) is reasonable, adequate, sufficient, and constitutes the best  
8 notice practicable.

9 k. Determine that the proposed Class Notice and the notice program: (i) meets the  
10 requirements of Code of Civil Procedure section 382 and due process; (ii) is the best notice  
11 practicable; (iii) is reasonably calculated, under the circumstances, to apprise Settlement Class  
12 Members of the pendency of the Action and their right to object to the proposed settlement or opt  
13 out of the Settlement Class; and (iv) is reasonable, adequate, sufficient, and constitutes the best  
14 notice practicable.

15 l. Require each Settlement Class Member who wishes to opt out of the Settlement  
16 Class to submit a timely written Exclusion Request, on or before the Opt Out Date, in the manner  
17 specified in Section III.F.2;

18 m. Provide that any Settlement Class Member who does not submit a timely written  
19 Exclusion Request will be bound by all proceedings, orders, and judgments in the Action;

20 n. Require any Settlement Class Member who wishes to object to the fairness,  
21 reasonableness or adequacy of this Agreement or to the requested award of Attorneys' Fees and  
22 Expenses to:

23 (i) provide the name, address, telephone number, and e-mail address of the  
24 objecting Settlement Class Member and, if represented by counsel, the name, address, telephone  
25 number, and e-mail address of his/her counsel;

26 (ii) specifically identify all objections, as well as the specific reasons, if any,  
27 for each objection, including all legal support the Settlement Class Member wishes to bring to the  
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1 Court 's attention and all evidence the Settlement Class Member wishes to introduce in support of  
2 his or her objection;

3 (iii) provide Proof of Purchase of a Product or a statement, sworn to under  
4 penalty of perjury, attesting to the fact that he or she purchased one or more Products during the  
5 Settlement Class Period;

6 (iv) state whether the Settlement Class Member intends to appear at the Final  
7 Approval Hearing, either with or without counsel; and

8 (v) provide a detailed list of any other objections submitted by the Settlement  
9 Class Member, or his/her counsel, to any class actions submitted in any court, whether state or  
10 otherwise, in the United States in the previous five (5) years; or if the Settlement Class Member or  
11 his/her counsel has not objected to any other class action settlement in any court in the United  
12 States in the previous five (5) years, he/she shall affirmatively state so in the written materials  
13 provided in connection with the objection to this Settlement; and

14 (vi) Require that any Settlement Class Member who wishes to submit a Claim  
15 pursuant to Sections III.C and/or D herein submit that Claim in writing on or before the Claims  
16 Bar Date in the manner set forth in Section III.D herein.

17 2. *Cooperation.* The Parties represent that each intends to implement the terms of this  
18 Agreement. The Parties shall, in good faith, cooperate and assist with and undertake all reasonable  
19 actions and steps reasonably required to accomplish all required events on the schedule set by the  
20 Court, and shall use reasonable efforts to implement all terms and conditions of this Agreement. In  
21 the event the Court does not preliminarily or finally approve this Agreement the form first  
22 submitted to the Court, the Parties further agree to continue to cooperate and negotiate in good  
23 faith in an attempt to address any deficiencies raised by the Court in an expeditious manner.

#### 24 C. Settlement Consideration

25 1. *Use of Disputed Labels.* Locker USA, Inc. represents that labels bearing the  
26 representation that the Products are “All Natural” or “natural” are no longer being used and/or  
27 agrees that such labels will not be used on the Products in the future unless the Products are  
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1 reformulated or there is a change in the law such that the use of "All Natural" or "natural" on the  
2 Products is appropriate. Locker USA, Inc. also represents that it has removed all statements from  
3 its website(s) representing that the Products are "All Natural" or "natural" and/or that its  
4 website(s) will not make such representations with respect to the Products in the future unless the  
5 Products are or have been reformulated or there is a change in the law such that such  
6 representations are appropriate. The collective costs incurred by Locker USA, Inc. in  
7 implementing the labeling changes and the subsequent value to the Settlement Class resulting  
8 therefrom are approximately \$118,500. This value was calculated by Locker USA, Inc. based on  
9 actual costs of developing new labels, developing new tooling for printing the new labels,  
10 relabeling previously labeled products, and does not include additional costs, such as those  
11 changing the communication materials, website, and selling materials. This value was agreed upon  
12 between the Parties at mediation before the Honorable Edward A. Infante (Ret.), a former  
13 magistrate judge of the United States District Court for the Northern District of California and a  
14 respected and experienced class action mediator.

15       2. *Total Financial Commitment.* Locker USA, Inc. shall pay no less and no more than  
16 One Million Two Hundred Thousand United States Dollars (\$1,200,000) (the "Settlement  
17 Amount"). The Settlement Amount shall include all costs associated with the settlement (exclusive  
18 of the costs of implementing labeling changes as described in Section III.C.1. above), including  
19 notice costs, claims adjudication costs, court ordered Attorneys' Fees and Expenses, Plaintiffs'  
20 incentive awards, Settlement Administration Expenses incurred, and cash refunds to Settlement  
21 Class Members. The amount available for cash refunds shall be determined pursuant to Section  
22 III.C.3.

23       3. *Monetary Relief for Settlement Class Members.* Settlement Class Members who: (a)  
24 execute and submit a valid Claim Form on or before the Claims Bar Date; (b) attest under penalty  
25 of perjury that they purchased one of more of the Products labeled "All Natural" during the  
26 Settlement Class Period; and (c) provide all required proof or documentation, and comply with all  
27 other conditions and requirements specified herein, may receive a cash refund, as detailed below.  
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1 a. *Qualified Settlement Fund.* No later than ten (10) days after the Effective Date,  
2 Locker USA, Inc. shall pay into a Qualified Settlement Fund administered by CPT \$1,200,000.00  
3 (the “Cash Settlement Fund”).

4 b. *Recovery With Proof of Purchase.* Settlement Class Members shall be entitled to a  
5 refund for every product for which they submit a valid and adequate Proof of Purchase. Locker  
6 USA, Inc. shall have the right, but not the obligation, to inspect submitted Proofs of Purchase and  
7 evaluate their validity and adequacy. Notwithstanding the foregoing, the Administrator shall have  
8 the authority to make all final determination as to the validity and adequacy of any Proof of  
9 Purchase and the validity of all Claims.

10 c. *Recovery Without Proof of Purchase.* Settlement Class Members also may submit  
11 Claims for refunds for a maximum of five (5) Products (packages) in total for which they do not  
12 have Proof of Purchase by submitting an approved Claim Form certifying said purchases under  
13 penalty of perjury.

14 d. *Value of Cash Refund.* The refund per Product purchased shall be \$3.29.

15 e. *Cash Settlement Fund: Insufficient Funds.* If the total amount of valid and eligible  
16 Claims exceeds the remainder of \$1,200,000.00 after deducting court-ordered Attorneys’ Fees and  
17 Expenses, Plaintiffs’ incentive awards, and Settlement Administration Expenses, then each  
18 Authorized Claimant’s Award shall be proportionately reduced based on the available funds.

19 f. *Cash Settlement Fund: Excess Funds.* If the total amount of valid and eligible  
20 Claims is less than the remainder of \$1,200,000.00 after deducting court-ordered Attorneys’ Fees  
21 and Expenses, Plaintiffs’ incentive awards, and Settlement Administration Expenses incurred to  
22 date, then each Authorized Claimant’s Award shall be proportionately increased based on the  
23 available funds up to a total of three times the otherwise allowed claim value.

24 4. *The Residual Fund.* All value remaining of Locker USA, Inc.’s total financial  
25 commitment of \$1,200,000.00, *see* Section III.C.2, 120 days after the check issuance date shall  
26 comprise the “Residual Fund,” and such value shall be distributed in accordance with this Section.

27 a. *Stale Date.* All checks issued to Settlement Class Members under this Agreement  
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1 shall state that they must be cashed within 120 days from the date issued or they will become void.

2           b. *Checks Not Cashed or Returned as Undeliverable and Residual Fund.* The value of  
3 all checks that are not cashed within 120 days from the date issued or that are returned to the  
4 Administrator as undeliverable after mailing to the Authorized Claimant at the address provided  
5 by the Authorized Claimant on the Claim Form, will cease to be the property of those Authorized  
6 Claimants and the value of those checks shall be added to the Residual Fund and distributed in  
7 accordance with this Section. After the stale date, the Administrator shall identify to Locker  
8 USA, Inc.'s Counsel and Class Counsel the checks returned as undeliverable or not cashed within  
9 120 days of the date issued and of the total value to be added to the Residual Fund. The Parties  
10 agree that that the Residual Fund shall be distributed as *cy pres* to an appropriate charity consistent  
11 with applicable law. Concurrently with the filing of Plaintiffs' motion for final approval of the  
12 proposed settlement, Class Counsel shall move the court for approval of a suitable *cy pres*  
13 recipient.

14           5. *How to Submit Claims.* Class Members may submit their completed and signed (either  
15 by hand or electronically) Claim Forms to the Administrator by mail or online, postmarked or  
16 submitted online on or before the Claims Bar Date. All Claims shall be submitted under penalty of  
17 perjury. Submission of multiple Claim Forms from the same mailing address will be subject to  
18 audit by the Administrator for validity.

19           D. Claims Bar Date, Claim Forms, and Administration

20           1. *The Claims Bar Date.* The Claims Bar Date shall be sixty (60) days following the  
21 Notice Date, or such other date as the Court deems appropriate and is acceptable to the Parties. All  
22 Claims must be submitted via a Claim Form and received by the Administrator, or postmarked, by  
23 the Claims Bar Date. The Claims Bar Date shall be clearly set forth in the Class Notice, on the  
24 Claim Form, and on the website established by the Administrator. Settlement Class Members who  
25 do not timely submit a completed Claim Form may not be eligible for an Award.

26           2. *Claim Form Requirements.* Claim Forms must be signed by the Class Member (either  
27 by hand or electronically) under penalty of perjury. Claim Forms may be submitted online through  
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1 the settlement website established by the Administrator. Claim Forms will also be made available  
2 by mail and for downloading from the website maintained by the Administrator and, at Class  
3 Counsel's sole cost and discretion, may be made available on the websites of Class Counsel. The  
4 Claim Form shall be approved by the Court and substantially in the form attached as Exhibit 2 and  
5 must include the following information and/or affirmations:

6 a. Settlement Class Member's name, residence address, mailing address if different,  
7 e-mail address, and telephone number;

8 b. identification of the Product(s), and quantity of each, that the Settlement Class  
9 Member purchased during the Settlement Class Period and for which the Claim is made;

10 c. an attestation, under penalty of perjury, that the Products were purchased during the  
11 Settlement Class Period;

12 d. an attestation, under penalty of perjury, that the purchased Products were labeled  
13 "All Natural" when purchased; and

14 e. if the Settlement Class Member wishes to receive a cash refund for more than five  
15 (5) Products, Proof of Purchase for every Product purchased in excess of the first five Products  
16 claimed.

17 3. *Retention of Administrator.* The Court may appoint and the Parties shall retain the  
18 Administrator to help implement the terms of this Agreement.

19 a. *Approval & Payment of Administrator.* The Parties agree that the Administrator  
20 shall be an agent of the Court and shall be subject to the Court's supervision and direction as  
21 circumstances may require. Subject to the terms set forth in Section III.C, Loacker USA, Inc. will  
22 pay the Administrator the Settlement Administration Expenses actually incurred not to exceed  
23 \$250,000.00 whether or not this Agreement is finally approved.

24 b. *Duties of Class Action Settlement Administrator.* The Administrator will administer  
25 the notice program and claims process, and oversee the distribution of Awards to Settlement Class  
26 Members in accordance with the term of this Agreement, orders of the Court, and in consultation  
27 with the Parties, Class Counsel, and Loacker USA, Inc.'s Counsel. Without limitation, the  
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1 Administrator shall: (i) receive and maintain all Settlement Class Member correspondence,  
2 Exclusion Requests, and objections, and maintain a list of all Settlement Class Members  
3 requesting exclusion and a list of all Settlement Class Members objecting (which lists shall be  
4 filed with the Court by Class Counsel, along with copies of all objections, before the Final  
5 Approval hearing); (ii) establish and maintain a settlement website in accordance with Section  
6 III.D.3.e; (iii) maintain records of all Claims submitted until at least 180 days after the last refund  
7 check is issued; (iv) submit to Defense Counsel and Class Counsel for comment and mutual  
8 approval before its dissemination to the public all mass communications and correspondence  
9 intended for widespread dissemination to the public, including to potential Settlement Class  
10 Members and/or claimants regardless of form (including, but not limited to, settlement website  
11 content, FAQs, mass emails, and toll-free telephone line scripts). The Administrator also shall,  
12 without limitation: (v) work with the Parties to implement the notice program if and as required;  
13 (vi) serve as escrow holder and escrow agent for the Qualified Settlement Fund; (vii) accurately  
14 and neutrally describe, and shall train and instruct its employees and agents to accurately and  
15 neutrally describe, the provisions of this Agreement in communications with Settlement Class  
16 Members; and (viii) provide such evidence and cooperation as the Parties may reasonably request  
17 in executing the settlement. All records maintained by the Administrator shall be made available  
18 upon request to Class Counsel and Locker USA, Inc. The Administrator shall adjudicate Claims  
19 in a cost effective and timely manner. And, upon request by Defense Counsel or Class Counsel,  
20 the Administrator shall provide reports totaling the number of Claims submitted and the number  
21 and type of Products claimed, and such other information as reasonably requested by counsel.

22           c. *Claims Determinations.* Adequate and customary procedures and standards will be  
23 used by the Administrator to prevent the payment of fraudulent Claims and to pay only valid and  
24 eligible Claims. Subject to consultation with Class Counsel and Defense Counsel, the  
25 Administrator shall make all determinations concerning the eligibility and amount of payment for  
26 submitted Claims, and shall send a notice of rejection to Settlement Class Members and any other  
27 claimants whose Claims have been rejected in whole or in part. Claims determinations and all  
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1 other written communications shall be sent by email wherever the claimant has provided an email  
2 address, and otherwise by mail. If a claimant disagrees with the determination, the claimant may  
3 write to the Administrator requesting reconsideration and the Administrator shall reconsider the  
4 determination, which process shall include consultation with Class Counsel and Defense Counsel.  
5 The Parties shall meet and confer regarding resolution of all disputed Claims and, if unable to  
6 agree, the Administrator shall make the final determination.

7           d. *Payment of Awards.* The Administrator shall send Awards to Settlement Class  
8 Members who submitted valid and eligible Claims or, as applicable, a written communication  
9 explaining the rejection of the Claim.

10           e. *Settlement Website To Be Maintained by Administrator.* The Administrator shall  
11 cause a website to be created containing claims information and relevant documents, including but  
12 not limited to all applicable deadlines, the complaint filed herein, this Agreement, the Class  
13 Notice, a downloadable Claim Form, a means to submit Claims online, all papers filed by the  
14 Parties regarding and/or supporting this Agreement, orders of the Court pertaining to this  
15 Agreement, a toll-free telephone number, and addresses to contact the Administrator by e-mail and  
16 U.S. mail. The Parties shall agree upon a set of frequently asked questions and answers to be used  
17 by the Administrator when responding to Settlement Class Members' inquiries and posted it on  
18 the Administrator's website. The Parties shall use reasonable efforts to agree on all information  
19 and documents to be posted on this website and no information shall be posted or provided on the  
20 website without the Parties' express approval. The website shall be rendered inactive 150 days  
21 after the check issuance date. Settlement Administration Expenses include the costs associated  
22 with maintenance of this website.

23           f. *Toll-Free Telephone Number To Be Maintained by Administrator.* The  
24 Administrator shall cause a toll-free telephone number to be created for Settlement Class Members  
25 to receive information about this Agreement. The Parties shall also create a protocol for the  
26 Administrator to refer Settlement Class Member inquiries to Class Counsel. The toll-free  
27 telephone number shall be rendered inactive 150 days after the check issuance date. Settlement  
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1 Administration Expenses include the costs associated with maintenance of this toll-free telephone  
2 number.

3 E. Notice to the Settlement Class

4 1. *Notice Date.* No later than 30 days after the entry of the Preliminary Approval Order,  
5 or such other date as the Court may order (“Notice Date”), the Administrator shall cause the Class  
6 Notice to be disseminated to potential Settlement Class Members as follows:

7 2. *Form & Content of Notice Program.* The notice program shall conform to applicable  
8 requirements of the California Code of Civil Procedure, the United States and California  
9 Constitutions (including the Due Process Clause), and any other applicable law, and shall  
10 otherwise be in the manner and form agreed upon by the Parties and approved by the Court. The  
11 notice program shall include the following forms of notice:

12 a. *Long Form Notice.* The Class Notice, otherwise referred to as the “Long Form  
13 Notice,” shall be in substantially the form of the attached Exhibit 3, subject to such changes as  
14 may be required by the Court and agreeable to the Parties, and shall be posted on the Settlement  
15 Website. The Long Form Notice shall:

16 (i) include a short, plain statement of the background of the Action, and the  
17 definition of the Settlement Class;

18 (ii) summarize the proposed settlement and relief as set forth in this  
19 Agreement;

20 (iii) inform Settlement Class Members that, if they do not exclude themselves  
21 from the Settlement Class, they may be eligible to receive relief under the proposed settlement and  
22 will be bound by the terms of this Agreement even if they have objected to the proposed  
23 settlement and even if they have any other claim, lawsuit or proceeding pending against Locker  
24 USA, Inc., if the proposed settlement becomes the final judgment of the court;

25 (iv) describe the procedures for participating in the settlement, identify all  
26 applicable deadlines, and advise Settlement Class Members of their rights, including their right to  
27 file a Claim, to receive an Award under the settlement, to opt-out of the class, and to object to the  
28

1 settlement;

2 (v) explain the scope of the Release, and the impact of the proposed settlement  
3 on any existing lawsuit or other proceeding;

4 (vi) state that any Award to Settlement Class Members under the settlement is  
5 contingent on the Court's final approval of the proposed settlement;

6 (vii) identify Class Counsel and state the amount sought in Attorney' Fees and  
7 Expenses;

8 (viii) explain that neither counsel for the Parties, nor the Administrator, may  
9 advise on the tax consequences of participating or not participating in the settlement;

10 (ix) explain the procedures for opting out of the settlement including the  
11 applicable deadline for opting out as well as the consequences of opting out, and specifying that  
12 so-called "mass" or "class" opt outs shall not be allowed; and

13 (x) explain the procedures for objecting to the settlement including the  
14 applicable deadline for objecting.

15 b. *Short Form Notice*: The Administrator shall cause to be published in accordance  
16 with the terms set forth below a shortened form of the Class Notice (the "Short Form Notice").  
17 The Short Form Notice shall be in substantially the form attached as Exhibit 4, subject to such  
18 changes as the Court may require that are agreeable to the Parties, and shall, at a minimum,  
19 include a summary of the proposed settlement (including the class definition), the deadlines for  
20 submitting a claim, opt-out, and/or objection, the web address of the settlement website and the  
21 toll-free telephone number for the Administrator, and a concise explanation of the right to  
22 participate, object and/or opt out of the Settlement Class and the implications of each.

23 3. *Publication of Short Form Notice*. Beginning no later than the Notice Date, the  
24 Administrator will cause the Short Form Notice to be published as set forth below:

25 a. *Print Publication*: The Administrator shall cause the Short Form Notice to be  
26 published at least once in a 1/3-page advertisement in *People Magazine* and at least once in a 1/8-  
27 page advertisement in *National Geographic*.

28

1           b. *Internet Banner Ad Publication*: The Administrator shall cause the Short Form  
2 Notice to be published on the Internet through banner ads on certain websites likely to reach  
3 Settlement Class Members, as determined by the Settlement Administrator, and subject to the  
4 Parties' approval. The banner ads will provide a link to the Settlement Website and contact  
5 information for the Administrator.

6           4. *Administrator's Attestation of Compliance*. The Class Action Settlement Administrator  
7 shall provide the Court with documentation showing and a declaration attesting that Class Notice  
8 was disseminated pursuant to the notice program.

9           F. Objections And Requests For Exclusion

10           1. Objections.

11           a. Any Settlement Class Member who intends to object to the settlement must do so on  
12 or before the Objection Date. To object, the Settlement Class Member must file with the  
13 Administrator, and provide a copy to Class Counsel and Defense Counsel, a document that:

14                   (i) provides the name, physical address, mailing address if different, telephone  
15 number, and e-mail address of the objecting Settlement Class Member and, if represented by  
16 counsel, the name, address, telephone number, and e-mail address of his/her counsel;

17                   (ii) specifically identifies all objections, as well as the specific reasons, if any,  
18 for each objection, including all legal support the Settlement Class Member wishes to bring to the  
19 Court's attention and all evidence the Settlement Class Member wishes to introduce in support of  
20 his or her objection;

21                   (iii) provides Proof of Purchase of a Product or a statement, under penalty of  
22 perjury, that he or she purchased one or more of the Products during the Settlement Class Period;

23                   (iv) states whether the Settlement Class Member intends to appear at the Final  
24 Approval Hearing, either with or without counsel and identifies any counsel, who shall also before  
25 the Objection Date file a Notice of Appearance before the court on behalf of the objector, and any  
26 attorney representing an objector shall file an appearance in the Action on or before the Objection  
27 Date or within one business day of retention, whichever is later; and  
28

1 (v) provides a detailed list of any other objections submitted by the Settlement  
2 Class Member, or his/her counsel, to any class actions submitted in any court, whether state or  
3 otherwise, in the United States in the previous five (5) years; or if the Settlement Class Member or  
4 his/her counsel has not objected to any other class action settlement in any court in the United  
5 States in the previous five (5) years, he/she shall affirmatively state so in the written materials  
6 provided in connection with the objection to this Settlement

7 b. Any Settlement Class Member who fails to timely file and serve a written objection  
8 and notice of his or her intent to appear at the Final Approval Hearing pursuant to this Section shall  
9 not be permitted to object to the approval of the settlement at the Final Approval Hearing and shall  
10 be foreclosed from seeking review of the settlement or the terms of this Agreement by appeal or  
11 other means, unless given special permission by the Court.

12 c. Settlement Class Members who opt out of the settlement as provided below will not  
13 be included in the Settlement Class and may not object to the settlement.

14 2. Requests for Exclusion.

15 a. Any Settlement Class Member may request to be excluded (or “opt out”) from the  
16 Settlement Class. A Settlement Class Member who wishes to opt out of the Settlement Class must  
17 do so no later than the Opt Out Date. To opt out, a Settlement Class Member must complete and  
18 mail to the Administrator an Exclusion Request that is received or postmarked no later than the Opt  
19 Out Date. The Exclusion Request must: (i) be personally signed by the Settlement Class Member  
20 requesting exclusion; (ii) explicitly state that the Settlement Class Member wishes to be excluded  
21 from the Settlement Class; and (iii) include a statement that the requesting person is a member of  
22 the Settlement Class. So-called “mass” or “class” opt outs shall not be allowed.

23 b. All Settlement Class Members, as the class is constituted after the validation of any  
24 and all exclusion requests, will be deemed to be Settlement Class Members for all purposes under  
25 this Agreement and, upon the Effective Date, will be bound by its terms, regardless of whether they  
26 file a Claim or receive any relief, file an objection, or have pending, or subsequently initiate, any  
27 litigation, arbitration or other proceeding against any of the Released Parties relating to the  
28

1 Released Claims.

2 c. Any Settlement Class Member who timely and properly requests to be excluded  
3 from the Settlement Class shall not: (i) be bound by any orders or judgments entered in the Action  
4 relating to the settlement; (ii) be entitled to relief under, or be affected by, this Agreement; (iii) gain  
5 any rights by virtue of this Agreement; or (iv) be entitled to object to any aspect of this Agreement.

6 d. The Administrator shall provide Class Counsel and Defense Counsel with a final list  
7 of all timely Exclusion Requests received by the Administrator promptly after the Claims Bar Date,  
8 and Class Counsel shall promptly file the same with the Court for incorporation into the Court's  
9 final approval, which shall finally certify the class and exclude those individuals, if any, from the  
10 class.

11 G. Releases

12 1. This Agreement shall be the sole and exclusive remedy for any and all Released Claims  
13 of all Releasing Parties against all Released Parties. No Released Party shall be subject to liability  
14 or expense of any kind to any Releasing Party with respect to any Released Claim. Upon entry of  
15 the Final Judgment on this Settlement, all Releasing Parties shall be deemed to have released and  
16 forever discharged all Released Parties of and from all liability for all Released Claims, and shall be  
17 permanently barred and enjoined from initiating, asserting, and/or prosecuting any Released Claim  
18 against any Released Party.

19 2. Upon entry of the Final Judgment on this Settlement, and by operation of that Final  
20 Judgment all Settlement Class Members shall have, fully, finally, and forever expressly released,  
21 relinquished, and discharged all Released Claims against all Released Parties. In connection with  
22 the Released Claims, each Releasing Party shall be deemed as of entry of the Final Judgment and  
23 Order Approving Settlement to have waived and relinquished, with respect to the Released Claims,  
24 any and all provisions, rights, and benefits conferred by Section 1542 of the California Civil Code  
25 and any and all similar provisions, rights, and benefits conferred by any law of any state or territory  
26 of the United States or principle of common law that is similar, comparable, or equivalent to  
27 Section 1542 of the California Civil Code, which provides:  
28

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

8                   H. Class Counsel's Fees and Costs and Plaintiffs' Incentive Awards

9                   1. Class Counsel may make, and Locker USA, Inc. agrees not to oppose, an application  
10                  for the award of Attorneys' Fees and Expenses in this Action not to exceed a total of \$400,000 for  
11                  both fees and \$25,000 in reasonable, actual out-of-pocket expenses. Class Counsel agrees that they  
12                  shall not request or accept any fees or costs above these amounts from any source. Any difference  
13                  between the amount of Attorneys' Fees and Expenses requested and the amount approved by the  
14                  Court will be made available for distribution to Authorized Claimants as provided in Section III.C.3  
15                  above. Class Counsel shall file and serve their Motion for Attorneys' Fees and Expenses and  
16                  Plaintiffs' Incentive Awards no later than two weeks before the Claims Bar Date.

17                  2. Locker USA, Inc. agrees not to oppose an application by Class Counsel for an  
18                  incentive award of up to \$2,500 for each Class Representative. Any difference between the amount  
19                  of incentive awards requested and the amount approved by the Court will be made available for  
20                  distribution to Authorized Claimants as provided in Section III.C.3 above.

21                  3. If the Court approves Class Counsel's applications for the award of Attorneys' Fees and  
22                  Expenses and incentive awards, such awards shall be paid, in the amounts awarded, within five (5)  
23                  days after the Effective Date by CPT from the Qualified Settlement Fund.

24                  4. Class Counsel understands and acknowledges that, subject to this cap, the amount they  
25                  receive in fees and expenses is in the discretion of the Court and subject to Class Counsel's  
26                  application and demonstration as to what fee is appropriate. Class Counsel understands,  
27                  acknowledges, and agrees that this Agreement is not conditional upon their satisfaction with the  
28                  fees and expenses the Court awards. Plaintiffs acknowledge that their right to incentive awards is in

1 the discretion of the Court. The amount of the awards, or any of them, shall have no effect on the  
2 validity or enforceability of this Agreement.

3 5. Class Counsel shall not be responsible to indemnify and hold harmless Locker USA,  
4 Inc. and the Released Parties for any attorneys' fees and/or expenses claimed by or awarded to  
5 counsel for any objector to the settlement.

6 I. Final Judgment and Final Approval Order

7 1. This Agreement is subject to and conditioned upon the issuance by the Court of a final  
8 Order Approving Settlement that finally certifies the Settlement Class for the purposes of settlement  
9 only, grants final approval of the settlement, and provides the relief specified herein, which relief  
10 shall be subject to the terms and conditions of this Agreement and the Parties' performance of their  
11 continuing rights and obligations hereunder. This Agreement is further subject to and conditioned  
12 upon the entry of judgment on that Order Approving Settlement. The Order and Judgment shall be  
13 in substantially the forms attached hereto as Exhibit 1, or such other form and format as the Court  
14 may direct, and shall:

- 15 a. Confirm the final certification, for settlement purposes only, of the Settlement Class;  
16 b. Confirm the compliance of the Settlement Class with the applicable requirements of  
17 Code of Civil Procedure section 382, including confirmation of the adequacy of the representation  
18 of the Class Representatives as representatives of the Settlement Class;  
19 c. Confirm that the notice program complied in all respects with the requirements of  
20 due process and Code of Civil Procedure section 382 by providing due, adequate, and sufficient  
21 notice to the Settlement Class;  
22 d. Determine that this Agreement is entered into in good faith, is reasonable, fair and  
23 adequate, and is in the best interest of the Settlement Class;  
24 e. Enter final judgment on the settlement, with each side to bear its own fees and costs  
25 except as specifically otherwise provided in this Agreement and the Court's Final Approval order  
26 setting forth the attorneys' fees, expenses and the incentive awards to be paid by CPT from the  
27 Qualified Settlement Fund;  
28

1 f. Enter judgment on the settlement, Releasing all Released Parties from all Released  
2 Claims that all Releasing Parties have, had, or may have in the future;

3 g. Bar and enjoin all Releasing Parties from asserting and/or pursuing against any  
4 Released Party any Released Claim; and

5 h. Retain the Court's continuing and exclusive jurisdiction over the Parties to this  
6 Agreement, including all Settlement Class Members, to construe and enforce this Agreement and  
7 the Court's judgment thereon in accordance with its terms for the mutual benefit of the Parties.

8 J. Representations and Warranties

9 1. Locker USA, Inc. represents and warrants: (a) that it has the requisite corporate power  
10 and authority to execute, deliver and perform this Agreement and to consummate the transactions  
11 contemplated hereby; (b) that the execution, delivery and performance of this Agreement and the  
12 consummation by it of the actions contemplated herein have been duly authorized by all necessary  
13 corporate action on the part of Locker USA, Inc.; and (c) that this Agreement has been duly and  
14 validly executed and delivered by Locker USA, Inc. and constitutes its legal, valid and binding  
15 obligation.

16 2. Plaintiffs represent and warrant that they are entering into this Agreement on behalf of  
17 themselves individually and as representatives of the Settlement Class Members and the Releasing  
18 Parties, of their own free will and without the receipt of any consideration other than what is  
19 provided in this Agreement and authorized by the Court. Plaintiffs represent and warrant that they  
20 reviewed the terms of this Agreement in consultation with Class Counsel and believe the terms to  
21 be fair, reasonable, and adequate as to all Settlement Class Members.

22 3. The Parties warrant and represent that no promise, inducement or consideration for the  
23 settlement has been made, except those set forth herein. No consideration, amount or sum paid,  
24 accredited, offered or expended by Locker USA, Inc. in its performance of this Agreement and the  
25 settlement constitutes a fine, penalty, punitive damages or other form of assessment for any claim  
26 against it.

27 K. Conditions Of Settlement, Effect Of Disapproval, Cancellation, Termination, Or  
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1 Withdrawal

2 1. The Effective Date of this Agreement shall be the first date after which all of the  
3 following events and conditions have been met or have occurred:

4 a. The Court has preliminarily approved the proposed settlement and ordered that  
5 notice be given;

6 b. The Court has entered an order finally approving the settlement which shall include  
7 the award of Attorneys' Fees and Expenses and the award of incentive fees, if any, to be paid from  
8 the Qualified Settlement Fund upon the Effective Date, and entered final judgment thereon; and

9 c. If no objections are filed or objections are filed and later withdrawn, the Court has  
10 entered judgment on the settlement per the Final Approval Order; or, if objections are filed but  
11 judgment is entered, the time to appeal the Court's judgment has expired; or if an appeal from the  
12 judgment is filed, the date that any and all appeals have been exhausted, and the Court's judgment  
13 is therefore final and not appealable.

14 2. If all of the conditions specified above are not met, then this Agreement shall be  
15 canceled and terminated unless the Parties agree in writing to proceed with this Agreement.

16 3. In addition, either Party may terminate this Agreement by providing written notice to the  
17 other Party and the Court within ten (10) days of the occurrence of any of the following:

18 a. The preliminary or final approval of this Agreement is not obtained without  
19 substantial modification, which modification the Parties did not agree to and which modification  
20 the terminating Party deems in good faith to be material (*e.g.*, because it significantly increases the  
21 costs of the settlement or deprives the terminating party of an expressly stated benefit of the  
22 settlement); or

23 b. The Final Judgment entered on this settlement is reversed, vacated, or modified in  
24 any material respect by any court, including a Court of Appeal, except that it is expressly agreed by  
25 the Parties that any modification of the Court's award of Attorneys' Fees and Expenses or of  
26 incentive awards shall not be grounds to terminate this Agreement provided the modified award  
27 does not exceed the amount specified in Section III.H of this Agreement.  
28

1           4. Loacker USA, Inc. may unilaterally withdraw from and terminate this Agreement up to  
2 fifteen (15) days before the Final Approval Hearing if any of the following events occur:

3           a. Any attorney general, or any federal or state agency, regulator, or authority institutes  
4 a proceeding against any of the Released Parties arising out of or otherwise related to the Released  
5 Claims and any of the terms or conditions of this Agreement; or

6           b. Any attorney general, or any federal or state agency, regulator, or authority: (i)  
7 objects to any aspect or term of this Agreement; or (ii) requires any material modification to this  
8 Agreement, including, without limitation, an expansion of the scope of the relief provided by this  
9 Agreement that Loacker USA, Inc. in its sole discretion deems material.

10           5. If this Agreement is not approved by the Court after good faith efforts to remedy any  
11 deficiencies raised by the Court, or if the settlement set forth in this Agreement is terminated or  
12 fails to become effective in accordance with its terms, then: (i) the Parties shall be restored to their  
13 respective pre-settlement positions in the Action, including with regard to all agreements  
14 concerning tolling and similar agreements, and this entire Agreement shall be null and void, shall  
15 have no further force and effect with respect to any Party in the Action, and shall not be offered in  
16 evidence or used in any litigation for any purpose, including the existence, certification, or  
17 maintenance of any purported class or Loacker USA, Inc.'s liability with respect to the claims that  
18 are, were, or could have been asserted in the Action. And, (ii) this Agreement and all negotiations,  
19 proceedings, documents prepared, and statements made in connection with it and/or in furtherance  
20 of it shall be without prejudice to the Parties, and shall not be deemed or construed to be an  
21 admission or confession by any Party of any fact, matter, or proposition of law, and shall not be  
22 used in any manner for any purpose, and all Parties to the Action shall stand in the same position as  
23 if this Agreement had not been negotiated, made, or filed with the Court.

24           6. If this settlement terminates, the terminating Party shall cause the Administrator to post  
25 information regarding the termination on the website established for the settlement.

26           7. If this settlement terminates, all Parties shall be restored to their respective positions as  
27 of immediately prior to the date of execution of this Agreement, *i.e.*, their *status quo ante*.  
28

1           8. Notwithstanding any contrary provision herein, upon termination, Sections III.A(1, 2),  
2 D(3.a), K(5-7) herein shall survive and bind the Parties, but this Agreement shall otherwise be null  
3 and void.

4           L. Miscellaneous Provisions

5           1. *Entire Agreement.* This Agreement, including all the Exhibits hereto, states the Parties'  
6 entire Agreement regarding to the proposed settlement. It supersedes all previous negotiations,  
7 discussions, agreements, representations, communications, and understandings among the Parties  
8 with respect to its subject matter. This Agreement may not be changed, modified, or amended  
9 except in a writing signed by all Parties and, where required, approved by the Court. The Parties  
10 contemplate that certain of the Exhibits to this Agreement relating to the notice program may be  
11 modified by subsequent agreement of Locker USA, Inc. and Class Counsel, or by the order or  
12 request of the Court before publication to the Settlement Class, subject to the approval or  
13 acquiescence of the Parties.

14           2. *Governing Law.* The Agreement shall be construed under and governed by the laws of  
15 the United States and of the State of California, applied without regard to laws applicable to choice  
16 of law.

17           3. *Execution in Counterparts.* This Agreement may be executed by the Parties in one or  
18 more counterparts, each of which shall be deemed an original but all of which together shall  
19 constitute one and the same instrument. Facsimile signatures, electronic signatures, and signatures  
20 scanned and sent by e-mail shall be effective as original signatures.

21           4. *Notices.* Any notice, instruction, application for Court approval or application for Court  
22 orders sought in connection with the settlement and this Agreement or other document to be given  
23 by any Party to any other Party shall be in writing and by email to the party's attorneys' email  
24 address(es) of record. Notice to Settlement Class Members or their counsel shall be sent by U.S.  
25 mail to the mailing address provided by the Settlement Class Member, if any, or to his or her  
26 attorney of record, if applicable.

27           5. *Publicity.* Locker USA, Inc., Plaintiffs, the Class Representatives, and Class Counsel  
28

1 shall not cause any aspect of the Action or the terms of this Agreement not otherwise available in  
2 the public record to be reported to the public or any media or news reporting outlet. Any statement  
3 to the public or any media or news reporting outlet shall be made only in response to an inquiry  
4 initiated by the media and not arranged by any party, and shall be limited to information available  
5 in the public record and documents publicly filed. Regardless of the form or formality of a  
6 communication or statement to the media or other person or entity, neither Party nor their counsel  
7 shall disparage the other. Notwithstanding these obligations, Loacker USA, Inc. may make such  
8 disclosures regarding the Action and terms of this settlement as it deems necessary to its auditors or  
9 as otherwise required by state or federal law.

10         6. *Good Faith.* The Parties and their undersigned counsel will undertake their best efforts  
11 and cooperate to effectuate the prompt approval and implementation of this Agreement. The Parties  
12 shall act in good faith and not engage in any conduct that will or may frustrate the purpose of this  
13 Agreement, nor interfere with the class notice or the Court’s authority to control communications  
14 with the class once certified, such as soliciting opt-outs, objectors, or appeals. The Parties further  
15 agree, subject to Court approval, to reasonable extensions of time to carry out any of the provisions  
16 of this Agreement.

17         7. *Protective Orders.* Any and all orders, agreements and designations regarding the  
18 confidentiality of documents and information (“Protective Orders”) remain in effect, and the Parties  
19 and their counsel remain bound to comply with the Protective Orders except as modified herein.  
20 The Parties agree to destroy or return to the producing party all documents and information  
21 produced in the Action that were designated as “Confidential” or “Attorneys' Eyes Only” pursuant  
22 to the protective orders and/or confidentiality agreements previously entered in the Action within  
23 thirty (30) days of the Effective Date. Notwithstanding this provision, Class Counsel and Defense  
24 Counsel are entitled to retain an archival copy of all pleadings, motion papers, legal memoranda,  
25 correspondence or attorney work product, even if such materials contain information designated  
26 "Confidential" or "Attorneys' Eyes Only." All such archival copies otherwise remain subject to the  
27 protective orders and/or confidentiality agreements.  
28

1           8. *Binding on Successors.* The Agreement shall bind and inure to the benefit of the Parties,  
2 the Settlement Class, and the Released Parties and each and all of their agents, attorneys,  
3 employees, heirs, successors, assigns, executors, legal representatives, and upon all other persons  
4 claiming any interest in the subject matter through any of the Parties, including any Settlement  
5 Class Member.

6           9. *Arm's-Length Negotiations.* The terms and conditions of and the drafting of the  
7 provisions of this Agreement resulted from arm's-length negotiation, with consideration by, and  
8 participation of, the Parties and their counsel, and with and after the intermediation of The  
9 Honorable Edward A. Infante (Ret.) over the course of a day at JAMS and meaningful follow-on  
10 negotiations thereafter. This settlement resulted from a mediator's proposal that led to this  
11 Agreement. Counsel for Parties actively participated in the negotiation and drafting of this  
12 agreement. This Agreement shall not be construed against any Party on the basis that the Party was  
13 the drafter or participated in the drafting.

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

16           11. *Variance.* In the event of any variance between the terms of this Agreement and any of  
17 the Exhibits, the terms of this Agreement shall control and supersede the Exhibit(s).

18           12. *Exhibits.* All Exhibits to this Agreement are material and integral parts hereof, and are  
19 incorporated by reference.

20           13. *Taxes.* No opinion concerning the tax consequences of the settlement to any Settlement  
21 Class Member is given or will be given by Locker USA, Inc., Defense Counsel, Class Counsel, or  
22 Plaintiffs' Counsel; nor is any Party or their counsel providing any representation or guarantee  
23 respecting the tax consequences of the settlement as to any Settlement Class Member. The long  
24 form of the Class Notice will direct Settlement Class Members to consult their own tax advisors  
25 regarding the tax consequences of the settlement and any tax reporting obligations with respect  
26 thereto. Each Settlement Class Member is responsible for his/her tax reporting and other obligations  
27 respecting the settlement, if any.  
28

1           14. *Agreement Constitutes A Complete Defense.* To the extent permitted by law any  
2 judgment entered on this Agreement may be pleaded as a full and complete defense to and shall be  
3 a sufficient basis to enjoin any action, suit, or other proceeding that may be instituted, prosecuted,  
4 or attempted in breach of or contrary to this Agreement. Furthermore, and notwithstanding  
5 provisions in this Agreement to the contrary, Defendant may file this Agreement or the Final  
6 Judgment and Order Approving Settlement in any action or proceeding that may be brought against  
7 any Released Person to support a defense or counterclaim based on principles of *res judicata*,  
8 collateral estoppel, release, good faith settlement, judgment bar, reduction or any other theory of  
9 claim preclusion or issue preclusion or similar defense or counterclaim.

10           15. *Retention of Jurisdiction.* The Parties agree that the Court shall retain exclusive and  
11 continuing jurisdiction over the Parties, Settlement Class Members, and the Administrator to  
12 interpret and enforce the terms, conditions, and obligations under this Agreement. Should either of  
13 the Parties seek to enforce any of the terms of this Agreement, the prevailing party shall be entitled  
14 to seek reasonable attorneys' fees and costs incurred for such enforcement.

15           16. *Severability.* If any one or more of the provisions in this Agreement shall for any reason  
16 be held to be invalid, illegal, or unenforceable in any respect before final Judgment is entered  
17 hereon, such invalidity, illegality, or unenforceability shall not affect other provisions if Defense  
18 Counsel and Class Counsel, on behalf of the Parties, mutually elect to proceed, in writing, as if such  
19 invalid, illegal, or unenforceable provision had never been included in this Agreement.

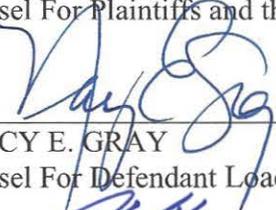
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IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed on its behalf by its duly authorized counsel of record, all as of the day set forth below.

Stipulated and agreed to this 6th day of August, 2015.

By:   
ANTHONY J. ORSHANSKY  
JUSTIN KACHADOORIAN  
COUNSELONE, PC  
Counsel For Plaintiffs and the Putative Class

By:   
NANCY E. GRAY  
Counsel For Defendant Locker USA, Inc.

By:   
RAY E. GALLO  
Counsel For Defendant Locker USA, Inc.

**EXHIBIT 1**

**[PROPOSED] FINAL JUDGMENT AND [PROPOSED] ORDER  
APPROVING SETTLEMENT**

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA**

KELLY ROMERO and RICHARD H.  
JOSEPH on behalf of themselves and all  
others similarly situated,

Plaintiffs,

v.

LOACKER USA, INC., a Delaware  
corporation,

Defendant.

Case No. 1-14-CV-274434

Assigned to Department 1  
Hon. Peter H. Kirwan

**[PROPOSED] FINAL JUDGMENT AND  
ORDER APPROVING SETTLEMENT**

The Motion for Final Approval of Class Action Settlement, Approval of Attorneys' Fees Request and Costs, and Approval of Class Representative Incentives came before this Court on \_\_\_\_\_, 2015. The above captioned Action is a class action brought by Plaintiffs Kelly Romero and Richard H. Joseph (hereinafter "Plaintiffs") against Defendant Loacker USA, Inc. ("Defendant") (collectively the "Parties"). Plaintiffs allege that, among other things, Defendant sold packaged wafer cookies that were improperly labeled as "All Natural" in violation of the Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 et seq. (the "UCL"), the False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 et seq. (the "FAL"), and the Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 et seq. (the "CLRA"), as well as common law fraud, breach of contract, breach of warranty, and unjust enrichment. Defendant denies any and all

1 alleged wrongdoing and denies any liability to the Plaintiffs or to the members of the putative  
2 class. Defendant contends its products are properly labeled.

3 On \_\_\_\_\_, 2015, this Court entered an Order Granting Preliminary Approval of  
4 Settlement, resulting in certification of a provisional Settlement Class pursuant to Rule 3.769(a)  
5 of the California Rules of Court. The Preliminary Approval Order further directed the Parties to  
6 provide notice to the Settlement Class, which informed absent class members of: (a) the proposed  
7 settlement, and the settlement's key terms; (b) the date, time, and location of the Final Approval  
8 Hearing; (c) the right of any Settlement Class Member to object to the proposed Settlement, and  
9 an explanation of the procedures to exercise that right; (d) the right of any Settlement Class  
10 Member to exclude themselves from the proposed settlement, and an explanation of the  
11 procedures to exercise that right; and (e) an explanation of the procedures for Settlement Class  
12 Members to participate in the proposed settlement.

13 The Court, upon Class Notice having been given as required, and having considered the  
14 Stipulation of Class Action Settlement (“Settlement Agreement”) and Exhibits thereto, as well as  
15 all papers filed herein, hereby ORDERS, ADJUDGES, AND DECREES AS FOLLOWS:

16 1. The Settlement Agreement, including the definitions contained therein, is  
17 incorporated by reference into, and is a part of, this Final Judgment and Order Approving  
18 Settlement. All capitalized terms used herein shall have the same meanings as set forth in the  
19 Settlement Agreement unless set forth differently herein.

20 2. The Court has personal jurisdiction over the Parties and the Settlement Class  
21 Members, and it has subject matter jurisdiction to approve the Settlement Agreement, including  
22 all exhibits thereto, and enter this Final Judgment and Order Approving the Settlement.

23 3. The Court hereby finally certifies, for settlement purposes only, a Settlement Class  
24 defined as all consumers in the United States who, during the Settlement Class Period, made retail  
25 purchases of one of more of the Products that were labeled “All Natural” and contained one or  
26 more of the following ingredients: cocoa processed with alkali, sodium acid pyrophosphate, soy  
27 lecithin, sodium hydrogen carbonate, glucose syrup, dextrose, milk powders, coffee powders,  
28 fruit powders, sugar, and coconut oil. Specifically excluded from the Settlement Class are: (a)

1 Loacker USA, Inc. and its employees, principals, officers, directors, agents, affiliated entities,  
2 legal representatives, successors and assigns; (b) the judges to whom this action has been or is  
3 assigned and any members of their immediate families; and (c) all consumers who have filed a  
4 timely Exclusion Request from the Settlement Class. The complete list of consumers who have  
5 timely excluded themselves from the settlement is attached hereto as Exhibit A.

6 4. The Class Notice provided to the Settlement Class conforms with the requirements  
7 of California Code of Civil Procedure section 382, California Civil Code section 1781, California  
8 Rules of Court 3.766 and 3.769, the California and United States Constitutions, and any other  
9 applicable law, and constitutes the best notice practicable under the circumstances, and by  
10 providing due and adequate notice of the proceedings and of the matters set forth therein to the  
11 other Settlement Class Members. The notice fully satisfied the requirements of due process.

12 5. The Court finds the settlement was entered into in good faith, that the settlement is  
13 fair, reasonable, and adequate, and that the settlement satisfies the standards and applicable  
14 requirements for final approval of this class action settlement under California law, including the  
15 provisions of California Code of Civil Procedure section 382 and California Rules of Court, Rule  
16 3.769.

17 6. Upon entry of this Order, compensation to Authorized Claimants shall be effected  
18 pursuant to the terms of the Settlement Agreement.

19 7. In addition to any recovery that Plaintiffs may receive under the settlement, and in  
20 recognition of the Plaintiffs' efforts on behalf of the Settlement Class, the Court hereby approves  
21 the payment of an incentive award to each Plaintiff, in the amount of \$2,500.

22 8. The Court approves the payment of attorneys' fees to Class Counsel in the sum of  
23 \$400,000, and the reimbursement of litigation expenses in the sum of \$25,000.

24 9. The Court approves the payment of Settlement Administration Expenses in the  
25 amount of up to \$250,000.

26 10. In accordance with California Rule of Court 3.771(b), notice of this Judgment  
27 shall be given to all Settlement Class Members on the Settlement Website.

28 11. Upon the Effective Date, and in accordance with the terms of the Settlement

1 Agreement, the Plaintiffs and all members of the Settlement Class shall have, by operation of this  
2 Order and Judgment, fully, finally, and forever released, relinquished, and discharged Defendant  
3 and Released Parties from all claims as defined by the terms of the settlement, whether or not  
4 such Settlement Class Members executed and delivered Claim Forms.

5 12. Upon the Effective Date, all members of the Settlement Class shall be and are  
6 hereby permanently barred and enjoined from the institution or prosecution of any and all of the  
7 claims released under the terms of the Settlement.

8 13. Upon completion of administration of the settlement, the Parties shall file a  
9 declaration stating that the claims have been paid and the terms of the settlement have been  
10 completed.

11 14. This Judgment is intended to be a final disposition of the above-captioned action in  
12 its entirety, and is intended to be immediately appealable upon entry.

13 15. This Court shall retain jurisdiction with respect to all matters related to the  
14 administration and consummation of the settlement, and any and all claims, asserted in, arising  
15 out of, or related to the subject matter of the lawsuit, including but not limited to all matters  
16 related to the settlement and the determination of controversies related thereto.

17 IT IS SO ORDERED.

18  
19 Dated: \_\_\_\_\_

\_\_\_\_\_  
20 Hon. Peter H. Kirwan  
21 Judge of the Superior Court  
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**EXHIBIT 2**  
**CLAIM FORM**

## CLAIM FORM

**Romero, et al. v. Loacker USA, Inc.**  
Superior Court of the State of California, County of Santa Clara  
Case No. 1-14-CV-274434

**YOUR CLAIM FORM MUST BE POSTMARKED OR COMPLETED ELECTRONICALLY  
ON THE SETTLEMENT WEBSITE NO LATER THAN [MONTH DAY, YEAR].**

Please read the full Notice (available at [www.\[settlementwebsite\].com](http://www.[settlementwebsite].com)) carefully before filling out this Claim Form.

To be eligible to receive any money from the settlement obtained in this class action, you must either: (1) complete this Claim Form and mail it postmarked on or before [60 days from Notice Date] to: \_\_\_\_\_; or (2) submit your Claim Form online at [www.\[settlementwebsite\].com](http://www.[settlementwebsite].com) on or before [60 days from Notice Date]. Failure to submit your completed Claim Form on time by U.S. Mail (properly addressed) or to fill out an online Claim Form by the deadline will result in the rejection of your Claim and you will not receive any money from this settlement.

### PART 1: CLAIMANT INFORMATION

Claimant Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Daytime Phone Number: (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Evening Phone Number: (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Email Address: \_\_\_\_\_

### PART 2: PURCHASE INFORMATION

State each type of Quadratini wafer product you purchased in the United States between March 6, 2010, and [Notice Date] and the quantity you purchased:

QUADRATINI WAFER PRODUCT PURCHASED		QUANTITY
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
	<b>TOTAL:</b>	

If you are claiming that you purchased more than five (5) Quadratini wafer products, you must attach Proofs(s) of Purchase such as receipts, wrappers, or other documentation. Failure to include Proof of Purchase for claims in excess of 5 products and/or the submission of false or fraudulent claims may result in your claim being rejected in its entirety.

### PART 3: SIGNATURE

I declare under penalty of perjury under the laws of the United States that between March 6, 2010, and [Notice Date] I purchased the Quadratini wafer products in the quantities identified above and that each of these products was labeled “All Natural” when purchased.

Signature: \_\_\_\_\_ Date (mm/dd/yyyy): \_\_\_\_\_

**EXHIBIT 3**  
**LONG-FORM NOTICE**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA**

*Loacker USA, Inc. Class Action Settlement, Case No. 1-14-cv-274434*

**NOTICE OF CLASS ACTION AND PROPOSED SETTLEMENT**

**TO:** All consumers in the United States who, at any time from March 6, 2010 to **<date of preliminary approval>**, purchased Loacker Quadratini wafer products in all sizes and flavors that were labeled “All Natural” or “natural.”

**IF YOU ARE A MEMBER OF THIS CLASS OF PERSONS, YOU SHOULD READ THIS NOTICE CAREFULLY BECAUSE IT WILL AFFECT YOUR LEGAL RIGHTS AND OBLIGATIONS.**

A settlement has been proposed in a class action pending in the Superior Court of the State of California for the County of Santa Clara (“Court”) titled *Romero, et al. v. Loacker USA, Inc.*, Case No. 1-14-cv-274434. If the Court gives final approval to the settlement, Loacker USA, Inc. (“Loacker”) will provide cash refunds to each Settlement Class Members (defined below) who properly and timely completes a Claim Form and will make changes to its labels and website.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>		
<b>SUBMIT A CLAIM FORM</b>	This is the only way to be eligible to receive a refund. Visit the settlement website located at <a href="http://www.[settlementwebsite].com">www.[settlementwebsite].com</a> to submit or obtain a Claim Form.	Deadline: <b>[Month Day, Year]</b>
<b>EXCLUDE YOURSELF</b>	If you exclude yourself from the settlement, you will not receive compensation under the settlement. Excluding yourself is the only option that allows you to bring or maintain your own lawsuit against Loacker regarding the allegations in the action ever again.	Deadline: <b>[Month Day, Year]</b>
<b>OBJECT</b>	You may write to the Court about why you object to (don’t like) the settlement and think it should not be approved. Submitting an objection does not exclude you from the settlement.	Deadline: <b>[Month Day, Year]</b>
<b>GO TO THE “FINAL APPROVAL HEARING”</b>	The Court will hold a “Final Approval Hearing” to consider the settlement, the request for plaintiffs’ attorneys’ fees and costs of the lawyers who brought the action, and the class representatives’ request for service awards for bringing the action.  You may, but are not required to, speak at the Final Approval Hearing about any objection you submit to the settlement. If you intend to speak at the Final Approval Hearing, you must state your intent to appear. If you are represented by you own attorney, he	Hearing Date: <b>[Month Day, Year at [Time]</b>

## YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

	or she must timely file and serve a “Notice of Appearance.”	
<b>DO NOTHING</b>	You will not receive any compensation under the settlement. You will also give up your right to object to the settlement and you will be not be able to be part of any other lawsuit about the legal claims in this case.	N/A

- These rights and options—**and the deadlines to exercise them**—are explained in more detail below.
- The Court in charge of this action has preliminarily approved the settlement and must decide whether to give final approval to the settlement. The relief provided to Settlement Class Members will be provided only if the Court gives final approval to the settlement and, if there are any appeals, after the appeals are resolved in favor of the settlement. ***Please be patient.***

## WHAT THIS NOTICE CONTAINS

### BACKGROUND INFORMATION ..... ##

1. Why is there a notice?
2. What is this lawsuit about?
3. Why is this a class action?
4. Why is there a settlement?
5. What products are included in the settlement?
6. How do I know if I am part of the settlement?
7. What if I’m still not sure if I am included?

### THE PROPOSED SETTLEMENT..... ##

8. What are the terms of the settlement?
9. What relief does the settlement provide to the Settlement Class Members?

### HOW TO SUBMIT A CLAIM FORM..... ##

10. How can I submit a claim form?
11. When will I receive compensation?

### THE LAWYERS IN THIS CASE AND THE CLASS REPRESENTATIVES ..... ##

12. Do I have a lawyer in this case?
13. How will the lawyers be paid?
14. Will the Class Representatives receive any compensation for their efforts in bringing this action?

**DISMISSAL OF ACTION AND RELEASE OF ALL CLAIMS..... ##**

- 15. What am I giving up to obtain relief under the settlement?

**HOW TO EXCLUDE YOURSELF FROM THE SETTLEMENT ..... ##**

- 16. How do I exclude myself from the settlement?

**HOW TO OBJECT TO THE SETTLEMENT..... ##**

- 17. How do I tell the Court that I do not like the settlement?
- 18. What is the difference between excluding myself and objecting to the settlement?

**FINAL APPROVAL HEARING..... ##**

- 19. What is the Final Approval Hearing?
- 20. When and where is the Final Approval Hearing?
- 21. May I speak at the hearing?

**GETTING MORE INFORMATION..... ##**

- 22. How do I get more information?
- 23. What if my address or other information has changed or changes after I submit a claim form?

**1. Why is there a notice?**

You have a right to know about a proposed settlement of a class action and about your options before the Court decides whether to approve the settlement.

The Court in charge of the case is the Superior Court of the State of California for the County of Santa Clara (the “Court”), and the case is called *Romero, et al. v. Loacker USA, Inc.*, Case No. 1-14-cv-274434. The people who sued are called the Plaintiffs, and the company they sued, Loacker USA, Inc. (“Loacker”), is called the Defendant.

**2. What is this lawsuit about?**

The lawsuit claims that the Defendant violated certain laws by labeling and advertising its Quadratini wafers products as “All Natural” and “natural” when they contain allegedly synthetic, artificial, highly processed ingredients, chemical preservatives, and artificial flavors, including cocoa processed with alkali, sodium acid pyrophosphate, soy lecithin, and sodium hydrogen carbonate, glucose syrup, dextrose, milk powders, coffee powders, fruit powders, sugar, and coconut oil.

The Defendant denies that it falsely advertised or marketed its products, denies all claims made against it, denies that it violated any laws, denies that its labeling is false or misleading, and denies that consumers have suffered any damages or that they have been harmed in any way.

**This Notice does not express the Court’s opinion regarding the merits or lack of merits of the claims of the Plaintiffs in the action.**

### **3. *Why is this a class action?***

In a class action lawsuit, one or more people called “Class Representatives” sue on behalf of other people who have similar claims. For purposes of this proposed settlement, one court will resolve the issues for all Settlement Class Members, except for those people who properly exclude themselves from the Settlement Class, as explained in Section 16 below.

### **4. *Why is there a settlement?***

The Class Representatives have made claims against the Defendant. The Defendant denies that it has done anything wrong or illegal and admits no liability. The Court has not decided that the Class Representatives or the Defendant should win this action. Instead, both sides agreed to a settlement. That way, they avoid the risks and costs of further proceedings, and the Settlement Class Members whose claims are approved by the Settlement Administrator will receive relief now rather than years from now, if at all.

Lawyers representing the proposed class (“Class Counsel”) view the settlement as fair, reasonable, and adequate, and in the best interest of the Settlement Class Members. Class Counsel has investigated the alleged claims, including, among other things, consulting with experts, reviewing documentation provided by the Defendant, and communicating with Settlement Class Members. The parties have participated in mediation with the Honorable Edward A. Infante (Ret.) and continued to negotiate after the mediation before reaching an agreement.

### **5. *What products are included in the settlement?***

Loacker Quadratini packaged wafers, in all sizes and flavors, and sandwich packaged wafers, in all sizes and flavors that were labeled “All Natural” or “natural.”

### **6. *How do I know if I am part of the settlement?***

The Court has decided that everyone who fits the following description is a “Settlement Class Member” for purposes of the proposed settlement:

All consumers in the United States who, at any time from March 6, 2010, through **<date of preliminary approval>**, made retail purchases of one of more Loacker Quadratini wafer products in all sizes and flavors that were labeled “All Natural” or “natural” but contained one or more of the following ingredients: cocoa processed with alkali, sodium acid pyrophosphate, soy lecithin, and sodium hydrogen carbonate, glucose syrup, dextrose, milk powders, coffee powders, fruit powders, sugar, and coconut oil.

Specifically excluded from the Settlement Class are: (a) Loacker USA, Inc. and its employees, principals, officers, directors, agents, affiliated entities, legal representatives, successors and assigns; (b) the judges to whom this action has been or is assigned and any members of their immediate families; and (c) all consumers who have submitted a timely request for exclusion from the Settlement Class.

### **7. *What if I'm still not sure if I am included?***

If you are still not sure whether you are included, you can contact the Settlement Administrator by calling 1-800-XXX-XXXX or write to the Settlement Administrator at the following address: [Address; State; ZIP].

### **8. *What are the terms of the settlement?***

If the settlement is approved, the Defendant will establish a settlement fund of \$1,200,000 ("Cash Settlement Fund"). After deducting a service payment of up to \$2,500 for each Class Representative (see Question 14), a payment of up to \$400,000 for attorneys' fees and up to \$25,000 in expenses (see Question 13), and a payment of up to \$250,000 for settlement administration costs, the Cash Settlement Fund will be used to make payments to Settlement Class Members who timely submit valid Claim Forms (see Question 10). The amount of money you receive, may ultimately be increased or decreased depending on the number of other claimants that are submitted and the value of those claims. Any amount remaining in the settlement fund after the satisfaction of all claims will be donated to an appropriate charity.

Additionally, the Defendant has agreed that labels bearing the representation that the challenged Quadratini products are "All Natural" or "natural" is no longer being used. The Defendant also agreed to remove all statements from its website(s) representing that its Quadratini products are "All Natural" or "natural." The collective costs incurred by the Defendant in implementing these labeling changes and the subsequent value to the Settlement Class resulting from those changes is approximately \$118,500.

### **9. *What can I get from the settlement?***

If you submit a valid Claim Form by the deadline, you can get a refund from the Cash Settlement Fund (see Question 8). Settlement Class Members are eligible for a \$3.29 refund for every product for which they submit a valid and adequate Proof of Purchase. Proof of Purchase means receipts, Quadratini and sandwich packaging, or other documentation from a third-party commercial source reasonably establishing the fact and date of purchase during the Settlement Class Period of the Products. Packaging, including bar codes or UPCs, will constitute Proof of Purchase only if the products claimed by the Settlement Class Member can be identified from the packaging submitted. Settlement Class Members who do not have Proof of Purchase are eligible for a \$3.29 refund for each product they purchased up to a maximum of five (5) products.

This notice is not tax advice. Class Counsel do not provide tax or financial advice, and Settlement Class Members are advised to seek independent professional advice as to the tax or financial consequences of any recovery they receive.

### **10. *How can I submit a claim?***

To request compensation, you must send in a Claim Form. A Claim Form is available by clicking [HERE](#) or on the Internet at the website [www.\[settlementwebsite\].com](http://www.[settlementwebsite].com). You may complete the Claim Form electronically using the settlement website, or you may send your Claim Form by United States First-Class Mail to the Settlement Administrator at the address provided below:

*Loacker USA, Inc. Class Action Settlement*  
c/o [Settlement Administrator]

[Address]  
[City, State ZIP]

Please read the instructions on the Claim Form carefully, fill out the form, and submit it on or before 11:59 p.m. (Pacific) on [Month Day, Year].

**YOU MUST SUBMIT YOUR CLAIM NO LATER THAN [MONTH DAY, YEAR] OR YOU WILL NOT HAVE THE OPPORTUNITY TO RECEIVE ANY MONEY UNDER THE SETTLEMENT BUT YOU WILL NEVERTHELESS BE BOUND BY THE RELEASE OF CLAIMS SET OUT IN SECTION 15 BELOW.**

***11. When will I receive compensation?***

Payments will be mailed to Settlement Class Members who send in valid Claim Forms on time after the Court grants “final approval” to the settlement and after any appeals are resolved. If the Court approves the settlement after a hearing on \_\_\_\_\_, there may be appeals. It’s always uncertain whether these appeals can be resolved, and resolving them can take time. Please be patient.

***12. Do I have a lawyer in this case?***

The Court has ordered that CounselOne, PC and the Law Office of Scott E. Brown (“Class Counsel”) will represent the interests of all Settlement Class Members. You will not be separately charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

***13. How will the lawyers be paid?***

Class Counsel will request up to approximately one-third of the total Cash Settlement Fund for their attorneys’ fees, plus up to \$25,000 as reimbursement for the actual expenses of litigation. The Court will make the final decision as to the amounts to be paid to Class Counsel.

***14. Will the Class Representatives receive any compensation for their efforts in bringing this action?***

The Class Representatives will request a service award (also known as an “incentive” award) of up to \$2,500 each for their services as a class representatives and their efforts in bringing the action. The Court will make the final decision as to the amount to be paid to the Class Representatives.

***15. What am I giving up to obtain relief under the Settlement?***

Unless you exclude yourself from the Settlement, you can’t sue the Defendant, continue to sue, or be part of any other lawsuit against the Defendant about the legal issues in this case. You will also be bound by all of the decisions made by the Court. The Release is described more fully in the Settlement Agreement and describes exactly the legal claims that you give up if you stay in the Settlement Class. The Settlement Agreement is available at [www.\\_\\_\\_\\_\\_.com](http://www._____.com).

**16. How do I exclude myself from the settlement?**

You may exclude yourself from the Settlement Class and the settlement. If you want to be excluded, you must send a letter via United States First Class Mail stating: **(a)** the name and case number of the action, i.e., “*Romero, et al. v. Loacker USA, Inc.*, Superior Court of the State of California for the County of Santa Clara, Case No. 1-14-CV-274434”; **(b)** your full name, address, email address, and telephone number; **(c)** a statement that you are a member of the Settlement Class; **(d)** an explicit statement that you do not wish to participate in the settlement; and **(e)** your signature, postmarked no later than [Month Day, Year] to the Settlement Administrator at:

*Loacker USA, Inc. Class Action Settlement*  
c/o [Settlement Administrator]  
[Address]  
[City, State ZIP]

Neither you nor an attorney representing you may submit exclusion requests on behalf of other Settlement Class Members, i.e., so-called “mass” or “class” opt-outs are not allowed. If you timely request exclusion from the Settlement Class, you will be excluded from the Settlement Class, you will not be bound by the judgment entered in the action, and you will not be precluded from prosecuting at your own expense any timely, individual claim against the Defendant based on the conduct complained of in the action. If you do not exclude yourself from the settlement, then you will be bound by its terms.

**17. How do I tell the Court that I do not like the settlement?**

At the date, time, and location stated in Section 20 below, the Court will hold a Final Approval Hearing to determine if the settlement is fair, reasonable, and adequate, and to also consider Class Counsel’s request for an award of attorneys’ fees and costs and service awards to the Class Representatives.

If you have not submitted a timely request for exclusion and wish to object to the fairness, reasonableness, or adequacy of the settlement or to the requested award of attorneys’ fees and cost or service awards, then you must send such objection to the Settlement Administrator, Class Counsel, and the Defendant’s Counsel at the addresses set forth below by United States First-Class Mail no later than (*that is*, postmarked by) [Month Day, Year].

<b>ADMINISTRATOR</b>	<b>CLASS COUNSEL</b>	<b>LOACKER’S COUNSEL</b>
[SETTLEMENT ADMINISTRATOR] [ADDRESS] [CITY, STATE ZIP]	ANTHONY J. ORSHANSKY JUSTIN KACHADOORIAN COUNSELONE, PC 9301 WILSHIRE BLVD., SUITE 650 BEVERLY HILLS, CA 90210	NANCY E. GRAY GRAY & ASSOCIATES, P.C. 1990 SOUTH BUNDY DRIVE, SUITE 390 LOS ANGELES, CALIFORNIA 90025

If you decide to object, your written objection must include a title or caption that identifies it as

“Objection to Class Settlement in *Romero, et al. v. Loacker USA, Inc.*, Superior Court for the State of California for the County of Santa Clara, case number 1-14-CV-274434,” and must include all of the following:

- Your name, residence address (or mailing address if different), telephone number, and email address;
- The name, address, email address, and telephone number of your lawyer, if you have one;
- The specific reasons you object to the settlement, including all legal support and evidence in support of your objection;
- Proof of Purchase of a qualifying product or a statement, under penalty of perjury, that you purchased one or more qualifying products during the relevant time period;
- A statement of whether you intend to appear at the Final Approval Hearing;
- A statement of your membership in the Class, including all information required by the Claim Form;
- A detailed list of any objections you or your lawyer have made to any class action settlement submitted to any court in the United States in the previous five years, or a statement that you have not objected to any class action settlement in any court in the United States in the previous five (5) years; and
- Your signature and, if you have one, your lawyer’s signature.

You may, but need not, submit and serve your objection through counsel of your choice. If you do make your objection through an attorney, you will be responsible for your personal attorney’s fees and costs. If you want your attorney to appear on your behalf at the Final Approval Hearing, he or she must file and serve a Notice of Appearance postmarked no later than [Month Day, Year] or within one day of retention, whichever is later;

**IF YOU DO NOT TIMELY MAKE YOUR OBJECTION, YOU WILL BE DEEMED TO HAVE WAIVED ALL OBJECTIONS AND WILL NOT BE ENTITLED TO SPEAK AT THE FINAL APPROVAL HEARING.**

#### ***18. What is the difference between excluding myself and objecting to the Settlement?***

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

## FINAL APPROVAL HEARING

### *19. What is the Final Approval Hearing?*

The Court has preliminarily approved the settlement and will hold a hearing to decide whether to give final approval to the settlement. The purpose of the Final Approval Hearing will be for the Court to determine whether the settlement should be approved as fair, reasonable, and adequate, and in the best interests of the Settlement Class; to consider the award of attorneys' fees and expenses to Class Counsel; and to consider the request for service awards to each of the Class Representatives.

### *20. When and where is the Final Approval Hearing?*

On [Month Day, Year at Time], a hearing will be held on the fairness of the proposed Settlement. At the hearing, the Court will be available to hear any objections and arguments concerning the fairness of the proposed settlement. The hearing will take place before the Honorable Peter H. Kirwan in Department 1, Complex Civil Litigation, 2nd Floor of the Superior Court of the State of California for the County of Santa Clara located at 191 North First Street in San Jose.

The hearing may be postponed to a different date or time or location without notice. Please check [www.\[settlementwebsite\].com](http://www.[settlementwebsite].com) for any updates about the settlement generally or the Final Approval Hearing specifically. If the date or time of the Final Approval Hearing changes, an update to the Settlement website will be the only way you will be informed of the change.

### *21. May I speak at the hearing?*

At that hearing, the Court will be available to hear any objections and arguments concerning the fairness of the settlement.

You may attend, but you do not have to. As described above in Section 17 **Error! Reference source not found.**, you may speak at the Final Approval Hearing only if (a) you have timely served and submitted an objection, and (b) stated that you intend to appear at the Final Approval Hearing or your own attorney has timely submitted and served a Notice of Appearance.

If you have requested exclusion from the settlement, however, you may not speak at the Final Approval Hearing.

### *22. How do I get more information?*

To see a copy of the Settlement Agreement, the Court's Preliminary Approval Order, Class Counsel's application for attorneys' fees and costs, and the complaint filed in the action, please visit the settlement website located at [www.\[settlementwebsite\].com](http://www.[settlementwebsite].com). Alternatively, you may contact the Settlement Administrator at the postal mailing address: [Address; City; State; ZIP].

This description of the action is general and does not cover all of the issues and proceedings that have occurred. In order to see the complete file you should visit the Clerk's office at the

[Courthouse Name] located at [Courthouse Address], [Phone Number]. The Clerk will tell you how to obtain the file for inspection and copying at your own expense.

**23. *What if my address or other information has changed or changes after I submit a claim form?***

It is your responsibility to inform the Settlement Administrator of your updated information. You may do so at the address below:

*Loacker USA, Inc. Class Action*  
c/o [Settlement Administrator]  
[Address]  
[City, State ZIP]

\*\*\*\*\*  
\*\*\*\*\*

**DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO THE CLERK OF THE COURT OR THE JUDGE.**

**EXHIBIT 4**  
**SHORT-FORM NOTICE**

**IF YOU PURCHASED ONE OR MORE LOACKER QUADRATINI WAFER PRODUCTS AT ANY TIME FROM MARCH 6, 2010 TO <DATE OF PRELIMINARY APPROVAL>, YOU MAY BE ENTITLED TO COMPENSATION FROM A CLASS ACTION SETTLEMENT.**

**What is the purpose of this notice?** A settlement has been proposed in a class action pending in the Superior Court of the State of California for the County of Santa Clara (“Court”) titled *Romero, et al. v. Loacker USA, Inc.*, Case No. 1-14-cv-274434. If the Court gives final approval to the settlement, Loacker will offer refunds to each class member (defined below) who properly and timely completes a Claim Form. The purpose of this notice is to inform you of the action and the settlement so that you may decide what steps to take in relation to it.

**What is the lawsuit about?** The lawsuit claims that the Loacker violated certain laws by labeling and advertising its Quadratini wafer products as “All Natural” and “natural” when they contain allegedly synthetic, artificial, and highly processed ingredients, including chemical preservatives and artificial flavors. Loacker denies that it falsely advertised or marketed its products, denies all claims made against it, denies that it violated any laws, and denies that its labeling is false or misleading. **No court has decided which side is right. Both sides agreed to settle the case.**

**Am I a class member?** Class members include all persons in the United States who, at any time from March 6, 2010, through <date of preliminary approval>, made retail purchases of one or more Loacker Quadratini wafer products in all sizes and flavors that were labeled “All Natural” or “natural” and contained one or more of the following ingredients: cocoa processed with alkali, sodium acid pyrophosphate, soy lecithin, and sodium hydrogen carbonate, glucose syrup, dextrose, milk powders, coffee powders, fruit powders, sugar, and coconut oil.

**What relief does the settlement provide?** In exchange for a release of claims from each class member that doesn’t opt out, Loacker will create a cash settlement fund in the amount of \$1,200,000. This amount is inclusive of all payments to class members who submit timely and valid claims, as well as Court-approved attorneys’ fees and costs, service payments to the class representatives, and settlement administration costs. Class members with proof of purchase may receive a refund of \$3.29 for each qualifying product they purchased. Class members without proof of purchase may receive a refund of \$3.29 for each qualifying product they purchased up to a maximum of five (5) products. The amount of money class members receive may ultimately be increased or decreased depending on the number of other claims that are submitted and the value of those claims.

As part of the settlement Loacker has also agreed to remove the words “All Natural” or “natural” from its labels and statements made on its website(s) representing that its Quadratini products are “All Natural” or “natural.”

**How do I submit a claim?** To receive compensation under this settlement you must timely complete a valid Claim Form. A Claim Form is available on the Internet at the Settlement Website [www.\[settlementwebsite\].com](http://www.[settlementwebsite].com). The deadline to submit a Claim Form is [Month] [Day], [Year].

**What are my other options?** If you don’t want to be legally bound by the settlement, you must exclude yourself by [Month] [Day], [Year], or you won’t be able to sue Loacker over the legal claims in the lawsuit. If you exclude yourself, you cannot receive compensation from this settlement. If you stay in the settlement, you may object to it by [Month] [Day], [Year]. A detailed notice available at the website below explains how to exclude yourself or object. The Court will hold a hearing on [Month] [Day], [Year], at [time] to consider whether to approve the Settlement

and a request by the lawyers representing class members for attorneys' fees and costs, and for the named plaintiffs' request for incentive awards for their services. You may ask to appear at the hearing, but you don't have to.

**More information?** For complete information about the Settlement and its terms, to view the Settlement Agreement, related Court documents and Claim Form, and to learn more about how to exercise your various options under the settlement, visit [www.\[settlementwebsite\].com](http://www.[settlementwebsite].com). You may also write to the Settlement Administrator at: [Address; City; State; ZIP].

**EXHIBIT 5**

**[PROPOSED] PRELIMINARY APPROVAL ORDER**

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA**

KELLY ROMERO and RICHARD H. JOSEPH on behalf of themselves and all others similarly situated,  
  
Plaintiffs,

v.

LOACKER USA, INC., a Delaware corporation,  
  
Defendant.

Case No. 1-14-CV-274434  
  
Assigned to Department 1  
Hon. Peter H. Kirwan

**[PROPOSED] ORDER GRANTING  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT AND DIRECTING  
DISSEMINATION OF CLASS NOTICE**

This matter having been brought before the Court on the joint motion of KELLY ROMERO and RICHARD H. JOSEPH (collectively "Plaintiffs" or "Named Plaintiffs"), through their attorneys, pursuant to California Rule of Court 3.769 and other applicable rules and laws, to request an Order granting preliminary approval of a class action settlement and directing the dissemination of notice to the class (the "Order"); the Court having reviewed the Plaintiffs' submissions, having held a hearing on \_\_\_\_\_, 2015, and having found that Plaintiffs are entitled to the relief they seek, and for good cause shown:

IT IS HEREBY ORDERED that Plaintiffs' motion is GRANTED, and it is further ORDERED as follows:

1           1.       The proposed Stipulation of Class Action Settlement dated August 6, 2015 (the  
2 "Settlement Agreement"), submitted with the motion and filed with the Court, is preliminarily  
3 approved as being within the range of potential final approval.

4           2.       The Settlement Agreement, including the definitions contained therein, is  
5 incorporated by reference into, and is a part of, this Preliminary Approval Order. All capitalized  
6 terms used herein shall have the same meanings as set forth in the Settlement Agreement unless  
7 set forth differently herein.

8           3.       Based upon the submissions to the Court and attachments and exhibits thereto, the  
9 Court conditionally makes the following findings solely for settlement purposes only, subject to  
10 final approval at the Final Approval Hearing:

11           a.       The members of the Settlement Class are so numerous as to make joinder  
12 impracticable;

13           b.       There are questions of law and fact common to the Settlement Class, and such  
14 questions predominate over any questions affecting only individual Settlement Class Members;

15           c.       The named plaintiffs' claims and the defenses thereto are typical of the claims of  
16 Settlement Class Members and the defenses thereto;

17           d.       The named plaintiffs and Class Counsel can protect and have fairly and adequately  
18 protected the interests of the Settlement Class Members; and

19           e.       A class action is superior to all other available methods for fairly and efficiently  
20 resolving the matter and provides substantial benefits to the Settlement Class Members.

21           4.       Accordingly, solely for purposes of this settlement only, the Court preliminarily  
22 approves the named plaintiffs as representatives of the Settlement Class, and conditionally  
23 certifies a Settlement Class defined as follows:

24           All consumers in the United States who, during the Settlement Class Period, made retail  
25 purchases of one of more of the Products that were labeled "All Natural" and contained  
26 one or more of the following ingredients: cocoa processed with alkali, sodium acid  
27 pyrophosphate, soy lecithin, sodium hydrogen carbonate, glucose syrup, dextrose, milk  
28 powders, coffee powders, fruit powders, sugar, and coconut oil. Specifically excluded

1 from the Settlement Class are: (a) Loacker USA, Inc. and its employees, principals,  
2 officers, directors, agents, affiliated entities, legal representatives, successors and assigns;  
3 (b) the judges to whom this action has been or is assigned and any members of their  
4 immediate families; and (c) all consumers who have filed a timely Exclusion Request  
5 from the Settlement Class.

6 5. This matter is conditionally certified as a class action solely for settlement  
7 purposes only under California Code of Civil Procedure Section 382, California Civil Code  
8 Section 1781, and California Rules of Court, Chapter 6, Rules 3.767 *et seq.*, and/or other laws as  
9 applicable. If the settlement does not receive final approval, Loacker USA, Inc. retains the right  
10 to assert that this action may not be certified as a class action for liability purposes.

11 6. Solely for purposes of implementing the Stipulation and for purposes of  
12 settlement, the Court preliminarily appoints CounselOne, P.C., and the Law Offices of Scott E.  
13 Brown as Class Counsel.

14 7. The Court finds that the Settlement Agreement falls within the range of possible  
15 approval such that it warrants notice thereof and further orders notice of the settlement to be  
16 disseminated to the Settlement Class Members in the manner set forth herein and in the  
17 Agreement.

18 8. The Court hereby approves the appointment of CPT Group, Inc. (“CPT”) as the  
19 Settlement Administrator for the purposes of disseminating the Class/Website Notice and Claim  
20 Form (substantially in the form of Exhibits 2, 3 and 4 of the Settlement Agreement and as  
21 submitted to the Court), which are hereby approved, and for purposes of administering the terms  
22 of the settlement as set forth in the Settlement Agreement.

23 9. By no later than thirty (30) days after the Preliminary Approval Order (“Notice  
24 Date”), the Settlement Administrator shall commence disseminating the Claim Form and Class  
25 Notice pursuant to the notice plan set forth in the Settlement Agreement.

26  
27 10. To receive an Award, Settlement Class Members must submit valid Claims Forms  
28 either online or via mail postmarked no later sixty (60) days after the Notice Date (“Claims Bar

1 Date”).

2 11. Any Settlement Class Member may object to the fairness, reasonableness or  
3 adequacy of the proposed settlement. Each Settlement Class Member who wishes to object to any  
4 term of this settlement must do so in accordance with the terms of the Settlement Agreement.  
5 Any such objection must be signed by the Settlement Class Member and submitted to CPT no  
6 later than sixty (60) days after the Notice Date, and also served on Class Counsel and Defense  
7 Counsel. Any such objection must include all of the information set forth in the Class/Website  
8 Notice including: (a) the Settlement Class Member's full name, address and telephone number,  
9 and if represented by counsel, their counsel 's name, address and telephone number so that  
10 counsel may be contacted by Class Counsel, the Court, or the Settlement Administrator, as  
11 necessary; (b) Proof of Purchase or a statement, sworn to under penalty of perjury, attesting to the  
12 fact that he or she purchased one or more Products during the Settlement Class Period; (c) copies  
13 of any materials that will be submitted to the Court or presented at the Final Approval Hearing;  
14 (d) a written statement of all grounds for the objection accompanied by any legal support for such  
15 an objection; (e) a statement of whether the Settlement Class Member or his or her counsel  
16 intends to appear at the Final Approval Hearing; and (f) if the Settlement Class Member intends  
17 to appear at the Final Approval Hearing through counsel, such counsel's name, address and  
18 telephone number. Any attorney hired by a Settlement Class Member for the purpose of  
19 objecting to any aspect of the settlement will be at the Settlement Class Member's sole expense.  
20 Any objection that fails to satisfy the above requirements, or that is not properly and timely  
21 submitted, shall be deemed ineffective, will be disregarded by the Court (absent further order),  
22 shall be deemed to have been waived, and the Settlement Class Member asserting such objection  
23 shall be bound by the final determination of the Court and shall be foreclosed from seeking any  
24 adjudication or review of this settlement by appeal or otherwise.

25 12. Any person included within the definition of the Settlement Class who wishes to  
26 be excluded from the Settlement Class must do so in writing by mailing a written request for  
27 exclusion from the settlement to CPT at the address set forth in the Class/Website Notice. Such  
28 requests must be postmarked no later than sixty (60) days after the Notice Date. The request

1 must: (a) be signed by the Settlement Class Member; (b) include the Settlement Class Member's  
2 full name, address and telephone number; (c) clearly express the Settlement Class Member's  
3 desire to be excluded (or to "opt out") from the Settlement Class; and (d) if represented by  
4 counsel, also include counsel's name, address and telephone number so that counsel may be  
5 contacted by Class Counsel, the Court, or the Settlement Administrator, as necessary. Any person  
6 within the Settlement Class who wishes to be excluded from the Settlement Class can opt out  
7 only for him/herself. No person may opt out for any other person or group of persons, nor can  
8 any person within the Settlement Class authorize any other person to opt out on his or her behalf.  
9 Any request for exclusion that fails to satisfy the above requirements, or that has not been timely  
10 sent, will be deemed ineffective, and any person included within the Settlement Class who does  
11 not properly and timely submit a request for exclusion shall be deemed to have waived all rights  
12 to opt out and shall be deemed a Settlement Class Member for all purposes.

13       13.     The Court finds that the manner of dissemination and content of the Class/Website  
14 Notice as specified in detail in the Settlement Agreement and this Order (i) is the best notice  
15 practicable, (ii) is reasonably calculated, under the circumstances, to apprise Settlement Class  
16 Members of the pendency of the lawsuits and of their right to object to or to exclude themselves  
17 from the proposed settlement, (iii) is reasonable and constitutes due, adequate and sufficient  
18 notice to all persons entitled to receive notice, and (iv) meets the requirements of applicable law.  
19 In accordance with the terms of the Settlement Agreement, costs incurred in connection with the  
20 preparation and dissemination of notices to the Settlement Class shall be paid by Locker USA,  
21 Inc.

22       14.     The Claim Form substantially in the form of Exhibit 2 to the Settlement  
23 Agreement and the Class Notices substantially in the form of Exhibits 3 and 4 to the Settlement  
24 Agreement shall be posted on the Settlement Website, no later than thirty (30) days after the entry  
25 of the Preliminary Approval Order. A copy of the Settlement Agreement shall be made available  
26 to the public through the Settlement Website or by calling a toll-free number to be established by  
27 the Settlement Administrator.

28       15.     The Court hereby directs the Settlement Administrator to promptly establish and

1 staff a dedicated toll-free telephone number that Settlement Class Members can call to obtain  
2 information regarding the settlement, and in the event the settlement becomes final, to have the  
3 toll-free number remain in operation until 150 days after the check issuance date; (c) establish a  
4 post office box in the name of the Settlement Administrator to be used for receiving Exclusion  
5 Requests, objections, notices of intention to appear and any other communications in accordance  
6 with the Settlement Agreement to remain in effect in the event the settlement becomes final until  
7 the end of the Redemption Period.

8           16.     The Court hereby directs CPT to promptly furnish Class Counsel and Defense  
9 Counsel with copies of any and all written Exclusion Requests, objections, notices of intention to  
10 appear or other written communications received from Settlement Class Members.

11           17.     The Court further orders CPT to provide the Opt-Out List to Class Counsel and  
12 Defense Counsel no later than seven (7) business days after the completion of the Opt Out Date,  
13 and then file with the Court the Opt-Out List with an affidavit attesting to the completeness and  
14 accuracy thereof no later than sixteen (16) court days before the Final Approval Hearing.

15           18.     A final hearing (the "Final Approval Hearing") shall be held before this Court on  
16 \_\_\_\_\_ at \_\_\_ a.m., to determine whether: (a) the claims in the Action meet each of  
17 the prerequisites for class certification for settlement purposes and may properly be maintained  
18 as a class action on behalf of the Settlement Class for settlement purposes; (b) the Court should  
19 finally approve the Settlement Agreement and all terms contained therein as fair, reasonable,  
20 adequate, and in the best interests of the Settlement Class in light of any timely and valid  
21 objections presented by Settlement Class Members and the parties' responses to any such  
22 objections; (c) the Court should enter final judgment in accordance and consistent with the terms  
23 of the Settlement Agreement by entering an Order substantially in the form of Exhibit 1 to the  
24 Agreement ("Final Judgment and Order of Dismissal"); and (d) to approve the application for the  
25 Attorneys' Fee Award to Class Counsel and Class Representative Incentive Awards in a manner  
26 consistent with the Settlement Agreement. The Final Approval Hearing may be postponed,  
27 adjourned or continued by further Order of this Court, without further notice to the Settlement  
28 Class.

1           19.     Class Counsel shall file and serve papers in support of final approval of the  
2 settlement, including the provision for payment of the Attorneys' Fee Award and Named  
3 Plaintiffs' Incentive Awards no later than fourteen (14) days before the Claims Bar Date. Any  
4 responses by the Parties to any objections that may be timely and validly submitted shall be filed  
5 no later than seven (7) days in advance of the Final Approval Hearing.

6           20.     If the Court ultimately grants final approval of the settlement, the Court shall enter  
7 a Final Judgment and Order Approving Settlement, substantially in the form of Exhibit 1 to the  
8 Settlement Agreement that will:

9                 a.     Confirm the final certification, for settlement purposes only, of the Settlement  
10 Class;

11                b.     Confirm the compliance of the Settlement Class with the applicable requirements  
12 of Code of Civil Procedure section 382, including confirmation of the adequacy of the  
13 representation of the Class Representatives as representatives of the Settlement Class;

14                c.     Confirm that the notice program complied in all respects with the requirements of  
15 due process and Code of Civil Procedure section 382 by providing due, adequate, and sufficient  
16 notice to the Settlement Class;

17                d.     Determine that this Agreement is entered into in good faith, is reasonable, fair and  
18 adequate, and is in the best interest of the Settlement Class;

19                e.     Enter final judgment on the settlement, with each side to bear its own fees and  
20 costs except as specifically otherwise provided in this Agreement and the Court's Final Approval  
21 order setting forth the attorneys' fees, expenses and the incentive awards to be paid by CPT from  
22 the Qualified Settlement Fund;

23                f.     Enter judgment on the settlement, Releasing all Released Parties from all Released  
24 Claims that all Releasing Parties have, had, or may have in the future;

25                g.     Bar and enjoin all Releasing Parties from asserting and/or pursuing against any  
26 Released Party any Released Claim; and

27                h.     Retain the Court's continuing and exclusive jurisdiction over the Parties to this  
28 Agreement, including all Settlement Class Members, to construe and enforce this Agreement and

1 the Court's judgment thereon in accordance with its terms for the mutual benefit of the Parties.

2         21. In the event that the proposed settlement is not approved by this Court, or entry of  
3 the Final Order and Judgment does not occur for any reason, or any approval is successfully  
4 appealed, then the Settlement Agreement, all drafts, negotiations, discussions, and documentation  
5 relating thereto, and all orders entered by this Court in connection therewith shall become null  
6 and void without further order. In such event, the Settlement Agreement and all negotiations and  
7 proceedings relating thereto shall be withdrawn and of no further force and effect without  
8 prejudice to the rights of the parties, who shall be restored to their respective positions as of the  
9 date of the execution of the Settlement Agreement.

10         22. The Settlement Administrator is hereby ordered no later than sixteen (16) court  
11 days before the Final Approval Hearing to file the following documents and information with the  
12 Court, with an affidavit attesting to completeness and accuracy thereof: (a) proof of mailing of  
13 the Class Notice and Claim Form; and (b) proof of posting of the Class Notice and Claim Form  
14 on the Settlement Website.

15         23. By this Order, all Settlement Class Members, unless and until they have timely  
16 excluded themselves from the Settlement Class in accordance with the procedures set forth in this  
17 Order, are hereby preliminarily enjoined (i) from filing, commencing, prosecuting, intervening in  
18 or participating as plaintiff, claimant or class member in any other lawsuit or administrative,  
19 regulatory, arbitration or other proceeding in any jurisdiction based on, relating to or arising out  
20 of the claims and causes of action or the facts and circumstances giving rise to the Complaint  
21 and/or the Released Claims; (ii) from filing, commencing or prosecuting a lawsuit or  
22 administrative, regulatory, arbitration or other proceeding as a class action on behalf of any  
23 Settlement Class Members who have not timely excluded themselves (including by seeking to  
24 amend a pending complaint to include class allegations or seeking class certification in a pending  
25 action), based on, relating to or arising out of the claims and causes of action or the facts and  
26 circumstances giving rise to the Complaint and/or the Released Claims; and (iii) from attempting  
27 to solicit other Settlement Class Members from excluding themselves from this settlement.

28         24. The Court adopts the following schedule of events to effectuate the settlement of

1 this action:

Event	Deadline
Notice Date (commence publication of Class Notice in <i>National Geographic</i> , <i>People Magazine</i> , and through Internet banner ads)	No later than September 28, 2015 (assuming the Court grants preliminary approval on August 28, 2016, the date of the hearing)
Deadline for submitting Claim Forms	No later than November 30, 2015 (which is 60 days after the Notice Date)
Deadline for requesting exclusion from the Settlement Class	No later than November 30, 2015 (which is 60 days after the Notice Date)
Deadline for objecting to the Agreement or serving notice of appearance at Fairness Hearing	No later than November 30, 2015 (which is 60 days after the Notice Date)
Deadline for filing Plaintiffs' Motion for Attorneys' Fees, Expenses, and Class Representative Incentive Payments	No later than November 16, 2015 (which is two weeks before the Claims Bar Date)
Deadline for filing Motion for Final Approval of the Settlement Agreement	December 15, 2015 (which is 16 court days before the Final Approval Hearing)
Final Approval Hearing (Motions for Final Approval and Attorneys' Fees, Expenses, and Incentive Payments)	January 8, 2016, at 9:00 a.m.

19  
20 IT IS SO ORDERED.

21  
22 Dated: \_\_\_\_\_

23 \_\_\_\_\_  
24 Hon. Peter H. Kirwan  
25 Judge of the Superior Court  
26  
27  
28