

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

CLASS REPRESENTATION

KIMBERLY E. FERRON,

Plaintiff,  
vs.

Case 0:20-cv-62136-RAR

KRAFT HEINZ FOODS COMPANY,

Defendant.

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**CLASS ACTION SETTLEMENT AGREEMENT**

This Class Action Settlement Agreement is entered into as of this 9th day of December, 2020, by and among Plaintiff Kimberly E. Ferron, individually and on behalf of the Settlement Class Members, on the one hand, and Defendant Kraft Heinz Foods Company (“Kraft” or “Defendant”), on the other hand. Plaintiff and Defendant shall each individually be referred to herein as a “Party” and collectively as the “Parties.” Capitalized terms used herein are defined in Section II of this Settlement or indicated in parentheses elsewhere in this Agreement. Subject to the Court’s approval, the Parties hereby stipulate and agree that, in consideration for the promises and covenants set forth in the Settlement and upon the entry by the Court of a Final Approval Order and the occurrence of the Effective Date, the Action shall be settled and compromised upon the terms and conditions contained herein.

**I. RECITALS**

**1.1** Plaintiff filed a Class Action Complaint on July 24, 2020 against Defendant, individually and on behalf of a class of Persons who purchased the Products during the Class Period. Plaintiff alleges in the Class Action Complaint that Defendant deceptively and unlawfully labeled, packaged, and marketed the Products as containing enough coffee such that the Products

make a range of cups of coffee depending on the brewing instructions that are followed. According to Plaintiff, contrary to this representation, the Products do not contain enough ground coffee to make the stated number of cups when following the brewing instructions on the Product label. Plaintiff filed the operative First Amended Class Action Complaint on December 1, 2020.

**1.2** The operative First Amended Class Action Complaint alleged claims for violations of the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”), a Florida consumer protection law set forth in Section 501.201, *Florida Statutes, et seq.*, as well as all similar state consumer fraud statutes, and for breach of express warranty.

**1.3** Plaintiff’s counsel has analyzed and evaluated the merits of all Parties’ contentions and this Settlement as it affects all Parties and the Settlement Class Members. After taking into account the foregoing, along with the risks and costs of further litigation, Plaintiff and Plaintiff’s counsel are satisfied that the terms and conditions of this Agreement are fair, reasonable, adequate, and equitable, and that a settlement of the Action and the prompt provision of effective relief to the Settlement Class are in the best interests of the Settlement Class Members.

**1.4** Defendant has denied, and continues to deny, all material allegations of the Class Action Complaint, including that the Products were deceptively and unlawfully labeled, packaged, and marketed, or that any consumer suffered any harm or injury as a result of his or her purchase of the Products. Without admitting the truth of any allegations made in the Action, or any liability with respect thereto, Defendant has concluded that it is desirable that the claims against it be settled and dismissed on the terms reflected in this Agreement to resolve costly and burdensome litigation and to avoid further expense, inconvenience, and interference with ongoing business operations.

**1.5** Defendant hereby consents, solely for the purposes of the settlement set forth herein, to the certification of the Settlement Class and appointment of Class Counsel as counsel

for the Settlement Class and Plaintiff as representative of the Settlement Class; provided, however, that if this Agreement fails to receive Court approval or otherwise fails to be executed, including but not limited to, the judgment not becoming final, then Defendant retains all rights it had immediately preceding its execution of this Agreement to object to the propriety of class certification in all other contexts and for all other purposes, and the Action will continue as if the Settlement Class had never been certified. The fact that Defendant conditionally consented herein to certification of the Settlement Class shall not be used against Defendant by any Party or non-party for any purpose in this Action or any other action, litigation, lawsuit, or proceeding of any kind whatsoever. The Parties agree, subject to approval by the Court, that the Action between Plaintiff, on the one hand, and Defendant, on the other hand, shall be fully and finally compromised, settled, and released on the terms and conditions set forth in this Agreement.

**1.6** This Agreement is contingent upon the issuance by the Court of both preliminary approval and final approval. Should the Court not issue preliminary approval and/or final approval, Defendant does not waive, and instead expressly reserves, all rights to defend the Action.

**1.7** This Agreement reflects a compromise between the Parties and shall in no event be construed as or be deemed an admission or concession by any Party of the truth, or lack thereof, of any allegation or the validity, or lack thereof, of any purported claim or defense asserted in any of the pleadings or filings in the Action, or of any fault on the part of Defendant, and all such allegations are expressly denied. Nothing in this Agreement shall constitute an admission of liability or be used as evidence of liability by or against any Party hereto.

## **II. DEFINITIONS**

As used in this Agreement and the attached exhibits (which are an integral part of the Settlement and of this Agreement and are incorporated in their entirety by reference), the following

terms shall have the meanings set forth below unless this Settlement specifically provides otherwise. Other capitalized terms in this Agreement but not defined in this section shall have the meanings ascribed to them elsewhere in this Agreement.

**2.1** “Action” means the class action lawsuit styled as *Kimberly E. Ferron v. Kraft Heinz Foods Company*, Case No. 0:20-cv-62136-RAR, United States District Court for the Southern District of Florida.

**2.2** “Administration Expenses” means reasonable fees and expenses incurred by the Settlement Administrator for all tasks the Settlement Administrator and any third parties perform in furtherance of the notice and administration of the Settlement and to secure performance as set forth in this Agreement.

**2.3** “Agreement” means this Class Action Settlement Agreement containing all terms, conditions, and exhibits which constitute the entire agreement between the Parties relating to the subject matter hereof.

**2.4** “Application” means any application to be filed by Class Counsel in this Action by which they will seek an award of attorneys’ fees and/or reimbursement of costs and expenses they incurred prosecuting the Action.

**2.5** “Attorneys’ Fees and Costs Award” means such funds to be awarded by the Court based on the Settlement described herein to compensate Class Counsel, as described more particularly in Section VII of this Agreement.

**2.6** “Benefit” means the benefit to the Settlement Class as consideration for the Released Claims and a dismissal with prejudice of the Action. Benefit means the cash payment available to a Claimant who files a Valid Claim under this Agreement. Benefit also includes the Programmatic Relief set forth in Section 5.1. The specific cash Benefit paid to the Settlement Class

is subject to review, validation, and adjustments by the Settlement Administrator based upon the terms and conditions of this Agreement.

**2.7** “Benefit Payments” are issued for a Valid Claim as determined by the Settlement Administrator and in accordance with this Agreement.

**2.8** “Challenged Language” means the representation on the label of the Products regarding the number of cups that could potentially be made from the contents of the container when following the label’s measurement and brewing instructions. For example, the 26.8-ounce Maxwell House Master Blend can of ground coffee states that it “Makes 180 to 210 suggested strength servings” when following the label’s measurement and brewing instructions.

**2.9** “Claim” means a request for relief pursuant to this Settlement submitted by a Settlement Class Member on a Claim Form filed with the Settlement Administrator in accordance with the terms of this Agreement.

**2.10** “Claim Form” means the proposed Claim Form in substantially the same form attached hereto as **Exhibit “A,”** to be used by Settlement Class Members to make a Claim under the Settlement, which form is to be approved by the Court and to be posted online in accordance with Section VI of this Agreement.

**2.11** “Claim Period” means the period of time during which a Settlement Class Member must submit a Claim Form to be eligible to receive a monetary Benefit as part of the Settlement, which shall end at the Claims Deadline. The Claim Period shall be eighty-five (85) days and the beginning and end dates shall be agreed between the Parties and Settlement Administrator in order to ensure constitutionally adequate notice.

**2.12** “Claimant” means a Settlement Class Member who files a Claim seeking the monetary portion of the Benefit under this Agreement.

**2.13** “Claims Deadline” means the date by which a Claim Form must be returned via mail and received by the Settlement Administrator, or, if submitted online, electronically submitted by 11:59 p.m. Central Time, to be considered timely. All Claims received or electronically submitted on or before the Claims Deadline shall be timely, and all Claims received or electronically submitted after the Claims Deadline shall be untimely and barred from entitlement to any monetary Benefit. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order as well as in the Settlement Notice and the Claim Form.

**2.14** “Class Counsel” means the following: (i) Law Office of L. DeWayne Layfield, PLLC; (ii) Southern Atlantic Law Group, PLLC; and (iii) Law Office of Howard W. Rubinstein, P.A.

**2.15** “Class Notice” means the Publication Notice, Media Plan, and Settlement Notice all in substantially the same form as set forth in Exhibit B attached hereto.

**2.16** “Class Period” means the period of time commencing August 27, 2015 and ending on the date of Preliminary Approval of the Settlement by the Court.

**2.17** “Class Representative” means Kimberly Ferron.

**2.18** “Court” means the United States District Court for the Southern District of Florida.

**2.19** “Defendant” has the meaning set forth in the first paragraph of this Agreement.

**2.20** “Defendant’s Counsel” means Jenner & Block LLP, and Kenny Nachwalter, P.A.

**2.21** “Effective Date” means the fifth business day after the *last* of the following dates: (a) all Parties and their counsel, Defendant’s Counsel and Class Counsel, have executed this Agreement; (b) the Court has entered the Final Approval Order; and (c) the date on which time to appeal or to seek permission to appeal from the Court’s approval of this Agreement has expired or, if appealed, approval of this Agreement has been affirmed in its entirety by the court of last

resort to which such appeal has been taken and such affirmance is no longer subject to further appeal or review, or upon the denial of a writ of certiorari to review the order and final judgment from any court making the Final Approval Order a final, non-appealable judgment.

**2.22** “Fairness Hearing” and/or “Final Approval Hearing” means the final hearing to be conducted by the Court on such date as the Court may order to determine the fairness, adequacy, and reasonableness of the Settlement in accordance with applicable jurisprudence, to be held after notice has been provided to the Settlement Class in accordance with this Agreement, and where the Court will: (a) determine whether to grant final approval to the certification of the Settlement Class; (b) determine whether to designate Plaintiff as the representatives of the Settlement Class; (c) determine whether to designate Class Counsel as counsel for the Settlement Class; (d) determine whether to grant final approval to the Settlement; (e) rule on the Application; and (f) consider whether to enter the Final Approval Order.

**2.23** “Final Approval Order” means an order, to be entered by the Court, providing, among other things, certification of the class, final approval of the Settlement and approval of this Agreement, dismissal of the Action with prejudice as to the Class Representative and Settlement Class Members’ claims against Defendant, and entry of final judgment with respect thereto.

**2.24** “Household” means all Persons who share a single physical address. For all Persons who are a legal entity such as a corporation, partnership, business organization or association, or any other type of legal entity, there can be only one physical address used even if such Person has multiple offices.

**2.25** “Labeling” means all written, printed, or graphic matter appearing upon the packaging of any Product, as well as all written, printed, or graphic matter used in the distribution or sale of any Product, including, without limitation, all information, representations, instructions,

and pictorial content published or appearing in advertising, promotions, commercials, displays, print media, websites, social media, television, and all other media platforms and outlets, describing, explaining, and/or promoting any Product.

**2.26** “Media Plan” means the notice plan, in substantially the same form attached hereto as part of **Exhibit “B,”** developed by the Settlement Administrator to notify the Settlement Class of the Settlement Notice and to command the Settlement Class Members’ attention to their rights under the Settlement. This Plan shall also provide for provision of all CAFA required notices.

**2.27** “Motion for Preliminary Approval of Settlement” means the motion, to be filed by Plaintiff, seeking entry by the Court of the Preliminary Approval Order, and includes all supporting papers.

**2.28** “Notice Date” means the date on which the Settlement Administrator begins disseminating the Settlement Notice consistent with the Preliminary Approval Order. The Notice Date shall be no fewer than seventy (70) days before the Final Approval Hearing.

**2.29** “Objection” means an objection properly filed with the Court in conformance with the terms of the Preliminary Approval Order by a member of the Settlement Class, objecting to any aspect of the Settlement.

**2.30** “Objection Deadline” means sixty (60) days after the Notice Date.

**2.31** “Opt-Out” means a request by a member of the Settlement Class to be excluded from the Settlement Class by following the procedures set forth in the Preliminary Approval Order and the Class Notice.

**2.32** “Opt-Out Deadline” means sixty (60) days after the Notice Date.

**2.33** “Parties” has the meaning set forth in the first paragraph of this Agreement.

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

**2.35** “Plaintiff” means Kimberly Ferron.

**2.36** “Plaintiff’s Counsel” means the following: (i) Law Office of L. DeWayne Layfield, PLLC; (ii) Southern Atlantic Law Group, PLLC; (iv) Law Office of Howard W. Rubinstein, P.A.; (iv) Carlson Lynch LLP; (v) Bursor & Fisher, P.A.; and (vi) Faruqi & Faruqi, LLP.

**2.37** “Preliminary Approval Order” means an order, in substantially the same form of the Proposed Preliminary Approval Order attached hereto as **Exhibit “D,”** to be entered by the Court granting, among other things, preliminary approval of the Settlement.

**2.38** “Product” and/or “Products” means all ground coffee products sold in cans, bricks, jars, or similar containers or any other packaging under the Maxwell House and Yuban brands, including but not limited to the products listed on **Exhibit “C.”**

**2.39** “Programmatic Relief” means the relief as set forth in detail in paragraph 5.1 below.

**2.40** “Proof of Purchase” means a receipt or purchase record from a Released Party or other documentation from a third-party commercial source reasonably establishing the fact and date of purchase of the applicable Product during the Class Period in the United States.

**2.41** “Proposed Preliminary Approval Order” means the order attached hereto as Exhibit “D.”

**2.42** “Publication Notice” means the proposed short form notice, in substantially the same form attached as part of Exhibit “B” hereto as well as attached to the Proposed Preliminary Approval Order, to be approved by the Court and to be published in accordance with Section VI of this Agreement.

**2.43** “Released Claims” are those claims defined in paragraph 12.2 of this Agreement.

**2.44** “Released Parties” means all manufacturers, distributors, retailers, sellers, and resellers of any Products, including Kraft Heinz Foods Company, together with each of the foregoing Persons’ direct and indirect parent companies (including but not limited to The Kraft Heinz Company), predecessor entities, successor entities, related companies, direct and indirect subsidiaries, divisions, holding entities, past and present affiliates and banners, franchisees, distributors, wholesalers, retailers, advertising and production agencies, licensors, and agents, including all current and former officers, directors, managers, members, partners, owners, employees, shareholders, consultants, attorneys, legal representatives, insurers, agents, assigns, and other equity interest holders of any of the foregoing, and their heirs, executors, administrators, and assigns.

**2.45** “Releases” means all releases identified in Section XII of this Agreement.

**2.46** “Releasing Parties” means Plaintiff, the Class Representative, all Settlement Class Members, and any Person claiming by or through him/her/it, including any Person claiming to be his/her/its spouse, parent, child, heir, guardian, associate, co-owner, agent, insurer, administrator, devisee, predecessor, successor, assignee, equity interest holders or representatives of any kind (other than Plaintiff’s Counsel), shareholder, partner, member, director, employee or affiliate, and their heirs, executors, administrators, and assigns.

**2.47** “Settlement” means the settlement into which the Parties have entered to resolve the Action. The terms of the Settlement are as set forth in this Agreement and attached exhibits.

**2.48** “Settlement Administrator” means Heffler Claims Group and notice of the Settlement shall be issued via publication with a settlement website where Settlement Class Members may read the detailed Class Notice to learn of their rights and procedures to Opt-Out or object. The Settlement Administrator will develop a detailed notice and media plan that meets

constitutional due process requirements. Additionally, the Settlement Administrator will administer the Claims processing and may request additional information to validate suspicious or potentially fraudulent Claim Forms.

**2.49** “Settlement Class” means, for purposes of the Settlement only, Defendant’s agreement to the certification of a Settlement Class that includes: All Persons who purchased any Products in the United States during the Class Period. Excluded from the Settlement Class are the following: (a) Persons who purchased or acquired any Products for resale; (b) the Released Parties; (c) all Persons who file a timely and valid Opt-Out; (d) Plaintiff’s Counsel and Defendant’s Counsel; (e) federal, state, and local governments (including all agencies and subdivisions, but excluding employees not otherwise excluded hereunder); and (f) the judicial officers and courtroom staff overseeing the Action.

**2.50** “Settlement Class Members” means all Persons who are members of the Settlement Class.

**2.51** “Settlement Fund” means the total maximum amount that Defendants have agreed to make available—which shall not exceed sixteen million dollars and zero cents (\$16,000,000.00)—to cover the cash portion of the Benefit paid to Settlement Class Members, Administration Expenses, and the Attorneys’ Fees and Cost Award. It is expressly agreed that in no event shall Defendants be liable or responsible for any fees, costs or any other obligation beyond the maximum Settlement Fund amount.

**2.52** “Settlement Notice” means a long form notice substantially in the same form attached as part of Exhibit “B” hereto and attached to the Proposed Preliminary Approval Order, to be approved by the Court and to be disseminated in accordance with Section VI of this Agreement.

**2.53** “Settlement Website” means the website to be created for this Settlement that will include information about the Action, the Settlement, and relevant documents and electronic and printable forms relating to the Settlement, including the Claim Form which can be submitted online or printed and mailed, and which Settlement Class Members can visit to read or request additional information regarding the Settlement. The Settlement Website shall be [www.groundcoffeessettlement.com](http://www.groundcoffeessettlement.com) or another domain name to be agreed upon by the Parties.

**2.54** “Tier” means the category a Settlement Class Member elects and is qualified under which to receive payment of a Benefit.

**2.55** “Unit” means a stock keeping unit of any Product.

**2.56** “Valid Claim” means a Claim Form submitted by a Settlement Class Member that is (a) submitted in accordance with the directions accompanying the Claim Form and the provisions of the Settlement; (b) on the initial submission, accurately, fully, and truthfully completed and executed, with all of the information required by the Claim Form, by a Settlement Class Member; (c) signed physically or by e-signature by a Settlement Class Member personally, subject to the penalty of perjury; (d) if returned via mail received on or before the Claims Deadline, or, if submitted online, is received by 11:59 p.m., Central Time, on the Claims Deadline; and (e) determined to be valid by the Settlement Administrator. Capitalized terms in this Agreement not defined in this Section II shall have the meanings ascribed to them elsewhere in this Agreement.

### **III. CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS**

**3.1** This Agreement is for settlement purposes only, and neither the fact of, nor any provision contained in, this Agreement, nor any action taken hereunder, shall constitute or be construed as an admission of: (a) the validity of any claim or allegation or of any defense asserted

in the Action; or (b) any wrongdoing, fault, violation of law, or liability on the part of any Party, Released Party, Settlement Class Member, or their respective counsel.

**3.2** For further clarity, the Parties will agree to certification of the Settlement Class as described above solely for the purposes of the Settlement. The Parties' stipulation to the certification of the Settlement Class is for purposes of this Agreement only. The Parties' agreement to the certification of the Settlement Class solely for the purpose of this Agreement does not, and shall not, constitute, in this or any other proceeding, an admission by any of the Defendant or any of the other Released Parties of any kind or any determination that certification of a class for trial or other litigation purposes in the Action or any other separate action is, or would be, appropriate. If the Settlement is not granted a Final Approval Order or this Agreement is otherwise terminated or rendered null and void, the certification of the Settlement Class shall be automatically vacated and shall not constitute evidence or any determination that the requirements for certification of a class for trial or other litigation purposes in the Action or any other action are satisfied; in such circumstances, the Parties agree that Defendant have reserved all rights to challenge certification of any class or subclass for trial or other litigation purposes in the Action or in any other action on all available grounds as if no class had been certified in the Action for purposes of the Settlement.

**3.3** For the purpose of implementing this Agreement, and for no other purpose, the Parties stipulate to the conditional certification of the Settlement Class in this Action as set forth in the Proposed Preliminary Approval Order. If for any reason this Agreement should fail to become effective, the Parties' agreement to certification of the Settlement Class provided for in this Section III, or to any other class or subclass, shall be null and void, and the Parties, and the Released Parties, shall return to their respective positions in the Action before this Agreement was executed.

#### **IV. REQUIRED EVENTS**

As soon as practicable after the execution of this Agreement, but no later than ten (10) days after execution of this Agreement, Plaintiff shall file in the Action this Agreement and a motion seeking entry of the Preliminary Approval Order, which Preliminary Approval Order shall by its terms accomplish all the following:

**4.1** Preliminarily approve the Settlement and this Agreement as fair and reasonable to the Settlement Class;

**4.2** Conditionally certify the Settlement Class for the purpose of effecting the Settlement;

**4.3** Designate Plaintiff as the Class Representative of the Settlement Class;

**4.4** Designate Class Counsel as counsel for the Settlement Class;

**4.5** Approve the Settlement Administrator and instruct the Settlement Administrator to perform the following functions in accordance with the terms of this Agreement, the Preliminary Approval Order, and the Final Approval Order:

- a. Process Opt-Out requests in accordance with Section IX of this Agreement;
- b. Process Objections in accordance with Section IX of this Agreement;
- c. Process Claim Forms in accordance with Section VI of this Agreement;
- d. Before disseminating the Settlement Notice, establish the Settlement Website, which Settlement Class Members can visit to read and obtain additional information regarding the Settlement and to submit Claim Forms; and
- e. Set up and operate a toll-free automated interactive voice response system through which Settlement Class Members can access Settlement information.

**4.6** Approve the form, contents, and method of notice to be given to the Settlement Class as set forth in Section VI of this Agreement, and direct Defendant to provide, and cause to be provided, such notice and to file with the Court a declaration of compliance with those notice requirements, as set forth in Section VI of this Agreement.

**V. SETTLEMENT CONSIDERATION AND PROCEDURES FOR PROVIDING BENEFITS TO SETTLEMENT CLASS MEMBERS**

**5.1 Programmatic Relief**

For a period (the “Restricted Period”) beginning on the twelve-month anniversary of the order granting preliminary approval of the Settlement (the “PAO Date”) and ending on the three-year anniversary of the PAO Date, Defendant, as manufacturer of the Products, shall either: (1) remove the Challenged Language from the Labeling of the Products (referred to herein as “Option 1”); or (2) revise the Challenged Language to list a range of suggested strength servings based on the ratio of one tablespoon per serving at the lower end of the range to the ratio of eight tablespoons per ten servings at the upper end of the range (referred to herein as “Option 2”). For the avoidance of doubt, Defendant shall have the option to select Option 1 or Option 2 with respect to each individual variety or stock-keeping unit (“SKU”) of the Products, may elect Option 1 with respect to certain Products and Option 2 with respect to other Products, and may change the labeling of any given Product during the Restricted Period so long as the labeling complies with the requirements of either Option 1 or Option 2.

If Option 1 is selected for any given Product, Defendant shall ensure that the Challenged Language is removed from the Labeling of that Product during the Restricted Period.

If Option 2 is selected for any given Product, Defendant may state that each Product “Makes approximately [or about or up to] \_\_\_\_ to [or –] \_\_\_\_ suggested strength servings [or 6 fl oz. cups].” The lower end of the range shall be equivalent to the number of suggested strength

servings based on a ratio of one tablespoon per serving, and the upper end of the range shall be equivalent to the number of suggested strength servings based upon a ratio of eight tablespoons per ten servings. Defendant will verify through testing results from a reputable third-party laboratory the number of suggested strength servings for the lower and upper ends of the ranges to be listed on each Product's label. The Parties recognize that the number of coffee servings available in a container vary depending on density, grind, and other factors, and they agree that the number of servings in any given package will experience minor fluctuations consistent with the Maximum Allowable Variations for Packages Labeled by Weight, as determined by the National Institute of Standards & Technology of the United States Department of Commerce.

For the avoidance of doubt, the Released Parties, including Defendant, (i) shall be permitted to sell existing Product inventory and Products manufactured prior to the commencement of the Restricted Period (the "Specified Inventory") in the ordinary course of business and (ii) shall not be required to withdraw, destroy, or recall any Products included in the Specified Inventory in connection with the Programmatic Relief described herein. If, after Defendant has effectuated the label change contemplated under Option 1 or Option 2, Class Counsel or any Settlement Class Member believes that the Labeling of any Product does not comply with this section, they shall provide written notice to Defendant of the specific facts and circumstances of any alleged non-compliance and discuss in good faith with Defendant appropriate changes, if any, to the then-existing Labeling; to the extent agreed, Defendant will then have 120 days from the date of such agreement to bring its practices into compliance with this Section 5.1 and will not be deemed to be in breach of this Agreement if it does so within such 120-day period. If no agreement is reached, Class Counsel or any Class Member may apply to the Court to enforce the Agreement.

## **5.2 Monetary Benefit Available to Settlement Class Members**

Subject to the rights, terms, and conditions of this Agreement, Defendant will pay or cause to be paid Valid Claims based on which of the following two Tiers the Settlement Class Member elects and for which the Settlement Class Member qualifies:

- a) Tier 1. Settlement Class Members who elect to fill out the Claim Form section for Tier 1 and who do not have valid Proof of Purchase may recover \$.80 per Unit purchased, up to a maximum of 6 Units per Household; or
- b) Tier 2. Settlement Class Members who elect to fill out the Claim Form section for Tier 2 and who provide valid Proof(s) of Purchase may recover \$.80 per Unit purchased for the number of Units for which a valid Proof of Purchase has been provided, up to a maximum reimbursement of twenty-five dollars (\$25.00) per Household.

For the avoidance of doubt, a Settlement Class Member may file a single Claim only, electing either Tier 1 or Tier 2 per Household.

## **5.3 No Unclaimed Property Rights**

Defendant guarantees to pay the monetary Benefit as determined by the Settlement Administrator pursuant to the terms and conditions of this Agreement. Notwithstanding anything to the contrary, Defendant shall pay Valid Claims only. This Agreement does not create any vested property interest or unclaimed property rights for Settlement Class Members who do not file Valid Claims.

## **VI. PROCEDURES FOR PROVIDING BENEFIT TO SETTLEMENT CLASS MEMBERS**

**6.1** Plaintiff shall request that the Court approve Heffler Claims Group as the Settlement Administrator. The Settlement Administrator shall, subject to the supervision of the

Court, administer the relief provided by this Agreement by processing Claim Forms in a rational, responsive, cost effective, and timely manner. The Settlement Administrator shall maintain reasonably detailed records of its activities under this Agreement. The Settlement Administrator shall maintain all such records as are required by applicable law in accordance with its normal business practices and such records will be made available to Class Counsel, Defendant's Counsel, the Parties, and their representatives, promptly upon request.

**6.2** At the election of the Settlement Class Members, the Settlement Administrator shall accept Claim Forms submitted in paper via first class mail or online at the Settlement Website. If mailed, Claim Forms mailed must be received on or before the Claims Deadline, or, if electronically submitted, Claim Forms must be submitted online no later than 11:59 p.m. Central Time of the Claims Deadline. Claim Forms received or submitted online after that date will not be Valid Claims. The Settlement Administrator will track Claim Forms with unique security identifiers or control numbers issued to Persons who seek to file a Claim. For Claim Forms that are submitted online, the Settlement Class Member shall have the opportunity to upload a Proof of Purchase image file (e.g., jpg, tif, pdf), to preview and confirm information entered in the Claim Form prior to submitting the Claim, and to print a page immediately after the Claim Form has been submitted showing the information entered, the names of image file(s) uploaded, and the date and time the Claim Form was submitted.

**6.3** On the Claim Form, the Settlement Administrator shall validate that the Settlement Class Member has completed all sections of the Claim Form completely and certified the truth and accuracy of the following information under the penalty of perjury, including by signing the Claim Form physically or by e-signature, or the Claim will not be considered a Valid Claim by the Settlement Administrator:

- a) The Settlement Class Member's name and mailing address;
- b) The Settlement Class Member's email address (unless the Settlement Class Member requests a Claim Form by mail, in which case an email address is optional);
- c) The name of the Products purchased, the number of Units purchased during the Class Period, the approximate dates of purchase, and the store where purchased;
- d) That the claimed purchases were not made for purposes of resale; and
- e) A security code or control number provided by the Settlement Administrator.

**6.4** The Settlement Administrator shall be responsible for, among other things, providing notice as set forth in the Media Plan, processing Claim Forms, and administering the Settlement Website, Opt-Out process, and Settlement claims process described herein (including receiving and maintaining on behalf of the Court and the Parties any Settlement Class Member correspondence regarding requests for Opt-Out). The Settlement Administrator will use adequate and customary procedures and standards to prevent the payment of fraudulent claims and to pay only Valid Claims. The Settlement Administrator and Parties shall have the right to audit claims, and the Settlement Administrator may request additional information from Claimants including by cross examination. The Settlement Administrator will approve Valid Claims and issue payment based upon the terms and conditions of this Agreement or may reject Claims which are not Valid Claims or evidence waste, fraud, or abuse. The determination of validity of Claims shall occur within sixty (60) days of the end of the Claim Period. The Settlement Administrator shall approve or deny all Claims, and its decision shall be final, binding, and non-appealable by the Party or by Settlement Class Members. None of Plaintiff, Defendant, Class Counsel nor Defendant's Counsel, shall have any liability whatsoever for any act or omission of the Settlement Administrator.

**6.5** The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. The Settlement Administrator shall promptly provide Class Counsel and Defendant's Counsel with information concerning notice, administration, and implementation of the Settlement. Should the Court request or should it be reasonably advisable to do so, the Parties, in conjunction with the Settlement Administrator, shall submit a timely report to the Court summarizing the work performed by the Settlement Administrator. Without limiting the foregoing, the Settlement Administrator shall:

- a) Prepare and deliver the required Class Action Fairness Act Notice to all required recipients including federal recipients and all required state officials.
- b) Promptly forward upon request to Defendant's Counsel and Class Counsel, copies of all documents and other materials relating to the administration of the Settlement;
- c) Receive requests from Settlement Class Members to Opt-Out from the Settlement Class and promptly provide to Class Counsel and Defendant's Counsel a copy thereof upon receipt. If the Settlement Administrator receives any Opt-Out requests from Settlement Class Members after the Opt-Out Deadline, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Defendant's Counsel;
- d) Provide reports and summaries, as requested, to Class Counsel and Defendant's Counsel, including, without limitation, reports regarding the number of Claim Forms received and the identity of the Settlement Class Members;
- e) Employ reasonable procedures to screen Claim Forms for waste, fraud, and abuse and shall reject a Claim Form, or any part of a Claim for a payment reflected therein,

where the Settlement Administrator determines that there is evidence of waste, fraud, or abuse. The Settlement Administrator will review each Claim Form based upon the initial submission by the Settlement Class Member and ensure that each is complete, properly substantiated and, based on the substantiation, determine the appropriate monetary Benefit to be paid, if any, in accordance with the terms of this Agreement (the Settlement Administrator is empowered to pay Valid Claims only);

- f) Prepare a declaration attesting to compliance with the Class Notice requirements set forth below and identifying all Opt-Outs and/or objectors. Such declaration shall be provided to Defendant's Counsel and Class Counsel for filing with the Court no later than seven (7) days prior to the Final Approval Hearing; and
- g) Issue Benefit Payments. Defendant are obligated to pay Valid Claims only. All Benefit Payments issued by check pursuant to the Settlement shall bear in the legend that they expire if not negotiated within sixty (60) days of their date of issue. To the extent that a Benefit Payment issued to a Settlement Class Member is not negotiated within sixty (60) days after the date of issue, the payment will be void. 180 days after the void date the Settlement Administrator will close the Settlement fund account and any money that has not been distributed because of uncashed checks or unclaimed funds shall be returned to Defendants.

**6.6** The Settlement Administrator shall serve notices under the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, within the timelines specified by 28 U.S.C. § 1715(b). Class Counsel and/or Defendant's Counsel will provide the Court with confirmation of service on or before the date of the Final Approval Hearing.

6.7 Defendants shall not be required to fund the Settlement or provide any funds to the Settlement Administrator ahead of the deadlines set forth herein, so long as the Settlement Administrator has sufficient time to make payments as set forth herein. Any amount remaining in the Settlement Fund after payment of monetary Benefits to Settlement Class Members, Administration Expenses, and the Attorneys' Fees and Costs Award shall remain the property of Defendant.

**VII. CLASS COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEY'S FEES, REIMBURSEMENT OF COSTS**

7.1 Defendant has agreed to pay, as an Attorneys' Fees and Costs Award to Class Counsel, the amount of three million nine hundred thousand dollars (\$3,900,000) in the aggregate, which will cover the attorneys' fees and costs awarded by the Court to Class Counsel for all the past, present, and future attorneys' fees, costs (including court costs), expenses, and disbursements incurred by them and their experts, staff, and consultants in connection with the Action. Class Counsel agrees that they will not file any request with the Court seeking an Attorneys' Fees and Costs Award that is greater than \$3,900,000 in the aggregate. Neither Defendant nor Defendant's Counsel shall have any responsibility for, or interest in, or liability whatsoever with respect to allocation among Class Counsel, and/or any other person who may assert some claim thereto, of any Attorneys' Fees and Costs Award that the Court may make.

7.2 Court approval of the Attorneys' Fees and Costs Award will not be a condition of the Settlement. If the Court denies, in whole or part, Class Counsel's Application for Attorneys' Fees and Costs Award, the remainder of the terms of this Agreement shall remain in effect. In addition, no interest will accrue on such amounts at any time. Neither Class Counsel nor Plaintiff will request nor will they accept any award inconsistent with these terms in paragraph 7.1 or paragraph 7.2.

7.3 Defendant agrees that it will not object to the amount of Class Counsel's Application for an Attorneys' Fees and Costs Award up to the amounts set forth in paragraph 7.1. Defendant shall deposit the sums awarded and approved by the Court in an account established and maintained by the Settlement Administrator no later than ten (10) business days following the earlier of (i) the Effective Date or (ii) such date that Class Counsel provides payment security in a form agreed by Class Counsel and Defendant in its sole discretion (which security shall provide for recovery of all fees and expenses paid to Class Counsel in the event that the final judgment or Attorneys' Fees and Costs Award is reversed or otherwise reduced); provided, that the date described in clause (ii) shall not occur prior to the following entry of the Final Approval Order and award of the Attorneys' Fees and Costs Award. Defendant agrees that it will pay the amounts approved by the Court within the time required by this paragraph.

7.4 Class Counsel shall provide Defendant with all necessary accounting and tax information, including W-9 forms, with reasonable advance notice, and in no instance later than the Effective Date, to allow Defendant to make the Attorneys' Fees and Costs Award payment as set forth above.

**VIII. NOTICE AND DISSEMINATION TO THE SETTLEMENT CLASS, AND CLAIMS DEADLINE**

Subject to Court approval, the Parties agree that Defendant shall cause notice of the proposed Settlement to be provided to the Settlement Class (in both the English and Spanish languages) by the following methods:

**8.1 Settlement Notice**

The Parties agree that the Settlement Notice shall otherwise be in the manner and form agreed by the Parties and approved by the Court. Collectively, the Settlement Notice shall in general terms set forth and sufficiently inform the Settlement Class Members of: (1) a short, plain

statement of the background of the Action, the Settlement Class certification, and the essential terms of the Settlement; (2) appropriate means for obtaining additional information regarding the Settlement and the Action; (3) appropriate information concerning the procedure for objecting or opting-out from the Settlement, if they should wish to do so; and (4) that any relief to Settlement Class Members is contingent on the Court's final approval of the Settlement. The Parties will request the Court to approve the Settlement Notice in the Preliminary Approval Order.

### **8.2 Publication Notice**

Similarly, the Settlement Administrator will cause the Publication Notice to be published in accordance with the Media Plan attached as part of Exhibit "B." The Parties agree that the Publication Notice provides to the Settlement Class and Settlement Class Members information sufficient to inform them of: the essential terms of the Settlement; appropriate means for obtaining additional information regarding the Settlement and the Action; and, appropriate information about the procedure for objecting or opting-out from the Settlement, if they should wish to do so. Because the Media Plan is determined to be the best notice practicable under the circumstances and satisfies due process, the Parties will request the Court to approve the Media Plan in the Preliminary Approval Order.

### **8.3 Settlement Website**

Prior to the Notice Date, the Settlement Administrator will establish a Settlement Website that will contain information about the Action, the Settlement, and relevant documents, including the First Amended Class Action Petition in the Action, the Motion for Preliminary Approval, the Preliminary Approval Order, this Agreement, Application for Attorneys' Fees and Costs Award, Settlement Notice, Publication Notice, and Claim Forms. The Settlement Website will also identify key deadlines and dates (e.g., the Claims Deadline, the Opt-Out Deadline, the Objection Deadline,

and the date of Final Approval Hearing), and direct Settlement Class Members on how to submit Claim Forms and include a “Frequently Asked Questions” section.

#### **8.4 Toll-Free Telephone Support Line**

The Settlement Administrator will establish a toll-free telephone support line that will provide Settlement Class Members with general information about the Action and will respond to frequently asked questions about the Action and claim procedure available exclusively through an interactive voice response (IVR), which shall be available in English and Spanish.

#### **8.5 Methods for Dissemination of Notice**

As soon as practicable, but no later than thirty (30) days after the Court’s entry of the Preliminary Approval Order, the Settlement Administrator shall disseminate the Settlement Notice consistent with the Preliminary Approval Order by setting up the Settlement Website on the Internet and posting both the Settlement Notice and Publication Notice.

Within thirty (30) days after the entry of the Preliminary Approval Order, the Settlement Administrator shall initiate the Publication Notice pursuant to the Media Plan.

#### **8.6 Declaration of Compliance**

The Settlement Administrator shall prepare a declaration attesting to compliance with the Settlement Notice requirements set forth above and a statement of the number of Persons the Media Plan reached. Such declaration shall be provided to Defendant’s Counsel and Class Counsel and filed with the Court no later than seven (7) days prior to the Final Approval Hearing.

#### **8.7 Report on Requests for Exclusion and Objections**

Not later than seven (7) days before the Final Approval Hearing, the Settlement Administrator shall prepare and deliver to Class Counsel, who shall file with the Court, and Defendant’s Counsel, a report stating the total number of Persons who have submitted timely and

valid Opt-Out requests from the Settlement Class and Objections to the Settlement, and the names of such Persons.

**IX. OBJECTIONS AND REQUESTS FOR EXCLUSION**

**9.1 Objections**

Any Settlement Class Member who intends to object to the Settlement must do so no later than the Objection Deadline. In order to object, the Settlement Class Member must file with the Clerk of the Court, on or before the Objection Deadline, and provide a copy to the Settlement Administrator, Class Counsel, and Defendant's Counsel, on or before the Objection Deadline, a document that includes:

- a) The case name and number, *Kimberly E. Ferron v. Kraft Heinz Foods Company*, Case No. 0:20-cv-62136-RAR, United States District Court for the Southern District of Florida.
- b) The name, address, telephone number, and, if available, the email address of the Person objecting;
- c) The name and address of the lawyer(s), if any, who is representing the Person making the Objection or who may be entitled to compensation in connection with the Objection;
- d) A detailed statement of Objection(s), including the grounds for those Objection(s);
- e) Copies of any papers, briefs, or other documents upon which the Objection is based;
- f) A statement of whether the Person objecting intends to appear at the Final Approval Hearing, either with or without counsel;

- g) The identity of all counsel (if any) who will appear on behalf of the Person objecting at the Final Approval Hearing and all Persons (if any) who will be called to testify in support of the Objection;
- h) A statement of his/her membership in the Settlement Class, including all information required by the Claim Form;
- i) The signature of the Person objecting, in addition to the signature of any attorney representing the Person objecting in connection with the Objection; and
- j) A detailed list of any other objection by the Settlement Class Member, or his/her counsel, to any class actions submitted in any court, whether state or otherwise, in the United States in the previous five (5) years. If the Settlement Class Member or his/her counsel has not objected to any other class action settlement in any court in the United States in the previous five (5) years, he/she shall affirmatively state so in the written materials provided in connection with the Objection to this Settlement. This information is requested in order to assist the Court in determining whether the Objection is made by a professional objector seeking financial consideration for their efforts. Failing to provide this information will not affect the validity of the Objection, but may result in the Court presuming that the Objection is made by a professional objector.

## **9.2 Compliance with Objection Requirements**

Any Settlement Class Member who fails to file and serve timely a written Objection containing all of the information listed in the items (a) through (j) of the preceding paragraph, including notice of his/her intent to appear at the Final Approval Hearing, shall not be permitted

to object to the Settlement and shall be foreclosed from seeking any review of the Settlement or the terms of this Agreement by any means, including but not limited to an appeal.

Any Settlement Class Member who submits a timely written Objection shall consent to deposition by Class Counsel prior to the Final Approval Hearing.

### **9.3 Requests for Exclusion**

Any Settlement Class Member may Opt-Out. A Settlement Class Member who wishes to Opt-Out must do so no later than the Opt-Out Deadline. In order to Opt-Out, a Settlement Class Member must mail to the Settlement Administrator a request to Opt-Out that is received no later than the Opt-Out Deadline. The Opt-Out request must contain the requestor's name, address, the words "I wish to be excluded from the "*Kimberly E. Ferron v. Kraft Heinz Foods Company*, Class Action," and signature.

Opt-Out requests that are received after the Opt-Out Deadline will be considered invalid and of no effect, and the Person who submits an untimely Opt-Out request will remain a Settlement Class Member and will be bound by any Orders entered by the Court, including the Final Approval Order. Except for those Persons who have properly and timely submitted Opt-Out requests, all Settlement Class Members will be bound by this Agreement and the Final Approval Order, including the Releases contained herein, regardless of whether they file a Claim or receive any monetary Benefit.

Any Person who timely and properly submits an Opt-Out request shall not: (a) be bound by any orders or the Final Approval Order nor by the Releases contained herein; (b) be entitled to any relief under the Settlement; (c) gain any rights by virtue of this Agreement; or (d) be entitled to object to any aspect of this Agreement.

Each Person requesting to Opt-Out from the Settlement Class must personally sign his/her own individual Opt-Out request. No Person may Opt-Out of the Settlement Class by any other Person, and no Person shall be deemed to have Opted-Out of the Settlement Class through any purported “mass” or “class” Opt-Outs.

The Settlement Administrator shall provide Class Counsel and Defendant’s Counsel with a final list of timely Opt-Out requests received by the Settlement Administrator within five (5) business days after the Opt-Out Deadline.

In the event that a Person submits an Opt-Out and an Objection, or presents a submission that is otherwise unclear on its face, as determined by the Settlement Administrator, the submission shall be interpreted to be an Opt-Out.

**X. COSTS OF NOTICE AND ADMINISTRATION**

In addition to providing to Settlement Class Members the benefits described in Section V above, Defendant will pay actual fees and expenses for: (a) the costs of preparing and disseminating the notices provided for in Section VI above; and (b) the other Administration Expenses, including payments made for the services of the Settlement Administrator and third-party expenses. Notwithstanding anything to the contrary herein, Defendant shall not be responsible for any cost that may be incurred by, on behalf of, or at the direction of Plaintiff or Class Counsel in: (a) responding to inquiries about this Agreement, the Settlement, or the Action; (b) defending this Agreement or the Settlement against any challenge to either or both of them; or (c) defending against any challenge to the Preliminary Approval Order, Final Approval Order, or judgment entered pursuant to this Agreement.

**XI. PROCEDURES FOR SETTLEMENT APPROVAL**

**11.1 Preliminary Approval**

Plaintiff shall move the Court for entry of the Preliminary Approval Order as set forth in Section IV.

**11.2 Final Approval**

No fewer than fourteen (14) days prior to the date set by the Court for the Fairness Hearing, Plaintiff shall apply to the Court for entry of the Final Approval Order, subject to changes agreed to by the Parties for accuracy, formatting, or clarity.

At the Fairness Hearing, the Parties will jointly request the Court to enter the Final Approval Order, which: (a) grants final approval of the certification of the Settlement Class solely for the purposes of the Settlement; (b) designates the Class Representatives; (c) designates Class Counsel conditionally approved in the Preliminary Approval Order; (d) grants final approval to the Settlement and establishes this Agreement as fair, reasonable, and adequate to the Settlement Class; (e) provides for the Releases of all Released Claims and enjoins Settlement Class Members from asserting, filing, maintaining, or prosecuting any of the Released Claims; (f) approves the final list of timely Opt-Outs provided by the Settlement Administrator who will not be bound by the Settlement and Final Approval Order; (g) orders the dismissal with prejudice of all claims, causes of action, and counts alleged in the Action, and incorporates the Releases stated in this Agreement, with each of the Parties to bear its or his own costs and attorneys' fees, except as provided in Section VII above; (h) authorizes the payment by Defendant of the Attorneys' Fees and Costs Award in accordance with Section VII above and the terms of this Agreement; and (i) preserves the Court's continuing jurisdiction over the administration of the Settlement and enforcement of this Agreement.

## **XII. RELEASES**

**12.1** By executing this Agreement, the Parties acknowledge that, upon both the entry of the Final Approval Order by the Court, and the passing of the Effective Date, the Action shall be dismissed with prejudice, and all Released Claims shall thereby be conclusively settled, compromised, satisfied, and released as to the Released Parties. The Final Approval Order shall provide for and effect the full and final release, by the Releasing Parties, of all Released Claims, consistent with the terms of this Agreement. The relief provided for in this Agreement shall be the sole and exclusive remedy for any and all claims of Settlement Class Members against the Released Parties related to the Released Claims.

**12.2** The Releasing Parties hereby fully release and forever discharge the Released Parties from any and all actual, potential, filed, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, asserted or unasserted, claims, demands, liabilities, rights, debts, obligations, liens, contracts, agreements, judgments, actions, suits, causes of action, contracts or agreements, extra contractual claims, damages, punitive, exemplary or multiplied damages, expenses, costs, penalties, fees, attorneys' fees, and/or obligations of any nature whatsoever, whether known or unknown, whether at law or in equity, whether accrued or unaccrued, whether previously existing, existing now or arising in the future, whether direct, individual, representative, or class, of every nature, kind and description whatsoever, based on any federal, state, local, statutory or common law or any other law, rule or regulation, including the law of any jurisdiction outside the United States, against the Released Parties, or any of them, relating in any way to any conduct prior to the date of the Preliminary Approval Order and that: (a) is or are based on any act, omission, inadequacy, misstatement, representation (express or implied), harm, matter, cause, or event related to any Product; (b) involves legal claims that have

been asserted in the Action or could have been asserted in the Action; or (c) involves the advertising, marketing, promotion, purchase, sale, distribution, design, testing, manufacture, application, use, performance, warranting, packaging of the Products or Labeling (collectively, the “Released Claims”). The Releasing Parties acknowledge that, in releasing the Released Claims, they expressly waive all rights under Section 1542 of the California Civil Code (and any similar law), which Section provides:

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

The Parties acknowledge and agree that personal injury claims are not part of any of the facts alleged by Class Representatives in this Action and that personal injury claims are not included within the Released Claims.

**12.3** Nothing herein is intended to release: any claims that any governmental agency or governmental actor has against the Released Parties, any claims asserted for acts or omissions outside of the Class Period or any claims on behalf of any other entity other than the Releasing Parties.

**12.4** Each of the Releasing Parties shall forever refrain, whether directly or indirectly, from instituting, filing, maintaining, prosecuting, assisting with or continuing any suit, action, claim, or proceeding against any of the Released Parties in connection with any of the Released Claims (a “Precluded Action”). If any of the Releasing Parties does institute, file, maintain, prosecute, or continue any such Precluded Action, Plaintiff and Class Counsel shall cooperate with the efforts of any of the Released Parties to obtain dismissal with prejudice. The releases provided for herein shall be a complete defense to, and will preclude, any Released Claim in any suit, action, claim, or proceeding. The Final Approval Order shall further provide for and effect the release of

all known or unknown claims actions, causes of action, claims, administrative claims, demands, debts, damages, costs, attorney's fees, obligations, judgments, expenses, compensation, or liabilities, in law or in equity, contingent or absolute, that the Released Parties now have against Plaintiff, Class Representatives, Class Counsel, or Plaintiffs Counsel by reason of any act, omission, harm, matter, cause, or event whatsoever arising out of the initiation, prosecution, or settlement of the Action, except with respect to any breach of the terms of this Agreement by any of Plaintiff, Class Representatives, or Class Counsel.

**12.5** The Court shall retain jurisdiction over the Parties and this Agreement with respect to the future performance of the terms of this Agreement, and to assure that all payments and other actions required of any of the Parties by the Settlement are properly made or taken.

**XIII. FINAL SETTLEMENT APPROVAL**

This Agreement is subject to and conditioned upon the issuance by the Court of the Final Approval Order that finally certifies the Settlement Class for the purposes of this Settlement, grants final approval of this Agreement and the Settlement, and provides the relief specified herein, which relief shall be subject to the terms and conditions of this Agreement and the Parties' performance of their continuing rights and obligations hereunder. Court approval of the Attorneys' Fees and Costs Award will not be a condition of the Settlement. If the Court denies, in whole or part, Class Counsel's Application for an Attorneys' Fees and Costs Award, the remainder of the terms of this Agreement shall remain in effect.

**XIV. REPRESENTATIONS AND WARRANTIES**

Each specified Party represents and warrants, severally and not jointly, to the other Parties as follows:

**14.1** Each Party has had the opportunity to receive, and has received, independent legal advice from his or its attorneys regarding the advisability of making the Settlement, the advisability of executing this Agreement, and the legal and income tax consequences of this Agreement, and fully understands and accepts the terms of this Agreement.

**14.2** Defendant represents and warrants that: (a) it has the requisite corporate power and authority to execute, deliver, and perform the Agreement and to consummate the transactions contemplated hereby; (b) the execution, delivery, and performance of the Agreement and the consummation by it of the actions contemplated herein have been duly authorized by necessary corporate action on the part of each Defendant; and (c) the Agreement has been duly and validly executed and delivered by Defendant and constitutes its legal, valid, and binding obligation.

**14.3** The Class Representative represents and warrants, severally and not jointly, that she is entering into the Agreement on behalf of herself individually and as a proposed representative of the Settlement Class Members, of her own free will and without the receipt of any consideration other than what is provided in this Agreement or disclosed to, and authorized by, the Court. The Class Representative represents and warrants, severally and not jointly, that she has reviewed the terms of the Agreement in consultation with Class Counsel and believes them to be fair and reasonable, and covenants that she will not file an Opt-Out request or object to this Agreement.

**14.4** Plaintiff represents and warrants, severally and not jointly, that no portion of any claim, right, demand, action, or cause of action against any of the Released Parties that Plaintiff has or may have arising out of the Action or pertaining to his/her purchase and/or use of the Product and/or the design, manufacture, testing, marketing, Labeling, packaging, or sale of the Product otherwise referred to in this Agreement, and no portion of any recovery or settlement to which

Plaintiff may be entitled, has been assigned, transferred, or conveyed by or for Plaintiff in any manner; and no Person other than Plaintiff has any legal or equitable interest in the claims, demands, actions, or causes of action referred to in this Agreement as those of Plaintiff herself.

**14.5** Each Party does not rely or has not relied on any statement, representation, omission, inducement, or promise of any other Party (or any officer, agent, employee, representative, or attorney for any other Party) in executing this Agreement, or entering the Settlement provided for herein, except as expressly stated in this Agreement or any other validly executed written agreement.

**XV. NO ADMISSION OF FAULT, INADMISSIBILITY**

**15.1** The Agreement and every agreement and term contained in it are conditioned upon final approval of the Court and are made for settlement purposes only. Whether or not consummated, this Agreement shall not be construed as, offered in evidence as, received in evidence as, and/or deemed to be, evidence of a presumption, concession or an admission by Plaintiff, the Releasing Parties, any Settlement Class Member or any Released Party, of the truth of any fact alleged or the validity of any claim or defense that has been, could have been, or in the future might be asserted in any litigation, or the deficiency of any claim or defense that has been, could have been, or in the future might be asserted in any litigation, or of any liability, fault, wrongdoing or otherwise of such Party.

**XVI. MISCELLANEOUS PROVISIONS**

**16.1 Conditional Nature of Settlement and Termination**

Each Party shall have the right to terminate this Agreement by providing written notice of its election to do so to the other Parties within thirty (30) days of: (a) the Court's declining to enter the Preliminary Approval Order in substantially the form attached to this Agreement; (b) the

Court's refusal to approve this Agreement or any part of it; (c) the Court's declining to enter the Final Approval Order which is consistent in all material respects with the terms of this Agreement; (d) the date upon which the Final Approval Order is modified or reversed in any respect by the Court of Appeals or the Supreme Court; (e) in the event that the Court enters an order and final judgment in a form other than that provided in this Agreement ("Alternative Judgment") and no Party elects to terminate this Agreement, the date that such Alternative Judgment is modified or reversed in any respect by the applicable appellate court or the Supreme Court; or (f) in the event that more than 1,000 members of the Settlement Class Opt-Out pursuant to Section IX above.

### **16.2 Evidentiary Preclusion**

The Parties agree that, to the fullest extent permitted by law, neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any claim or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any Released Party or the appropriateness of class certification in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. In addition, any failure of the Court to approve the Settlement and/or any objections or interventions may not be used as evidence in the Action or any other proceeding for any purpose whatsoever. However, the Released Parties may file this Agreement and/or the Final Approval Order in any action or proceeding that may be brought against them in any jurisdiction in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

### **16.3 Effect of Non-Approval**

In the event that this Agreement is not approved by the Court in substantially its present form, the Court rejects or modifies any of the material terms of this Agreement, any Objection to the Settlement is sustained by the Court, or the Settlement does not become final for any reason, the terms and provisions of this Agreement shall have no further force and effect with respect to the Parties or the Settlement Class Members, and shall not be used in the Action or in any other action or proceeding for any purpose, and any order or judgment entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*. In such event, this Agreement and all negotiations, proceedings, documents prepared and statements made in connection with this Agreement shall be without prejudice to any Party or Settlement Class Member and shall not be admissible or offered into evidence in any action or proceeding, and shall not be deemed, asserted or construed to be an admission or confession by any Party or any other Person or entity of any fact, matter or proposition of law, and shall not be used or asserted in any other manner or for any purpose, and all Parties and Settlement Class Members shall stand in the same position as if this Agreement and the Settlement had not been negotiated, made or submitted to the Court.

### **16.4 Effectiveness, Amendments, and Binding Nature**

This Agreement may be amended only in writing signed by the Parties. Except as otherwise stated above, each Party, including Plaintiff on behalf of herself and the Settlement Class, expressly accepts and assumes the risk that, if facts or laws pertinent to matters covered by this Agreement are hereafter found to be other than as now believed or assumed by that Party to be true or applicable, this Agreement shall nevertheless remain effective.

This Agreement is binding on, and shall inure to the benefit of, the Parties and their respective direct and indirect parent companies, predecessor entities, successor entities, related companies, direct and indirect subsidiaries, holding entities, past and present affiliates, franchisees, distributors, wholesalers, retailers, advertising and production agencies, licensors, and agents, including all current and former officers, directors, managers, members, partners, owners, employees, shareholders, consultants, attorneys, legal representatives, insurers, agents, assigns, or other equity interest holders of any of the foregoing, and their heirs, executors, administrators, and assigns. All Released Parties other than Defendant, which are Parties, are intended to be third-party beneficiaries of this Agreement.

#### **16.5 Public Statements**

None of the Parties will release any public statements regarding this Agreement or its terms, other than publication of the Class Notice. Notwithstanding the foregoing, the Parties may make such public disclosures about the Action or the Settlement that fairly and accurately describe the Settlement and are agreed to in writing in advance by all Parties. This does not prohibit disclosures about this Settlement to individual accounting, tax or other professionals as may be necessary or otherwise necessary for compliance with federal and state laws.

#### **16.6 Cooperation in Implementation**

Class Representatives and Class Counsel: (a) acknowledge that it is their intent to consummate this Agreement; and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement the terms and conditions of this Settlement and to exercise their reasonable best efforts to accomplish the terms and conditions of this Agreement.

### **16.7 Governing Law**

This Agreement shall be construed and governed in accordance with the laws of the State of Florida, without regard to Florida's conflict-of-laws principles.

### **16.8 Stay Pending Court Approval**

Class Counsel and Defendant's Counsel agree to stay all proceedings in the Action, other than those proceedings necessary to carry out or enforce the terms and conditions of the Settlement, until the Effective Date of the Settlement has occurred. If, despite the Parties' best efforts, this Agreement should fail to become effective, the Parties will return to their prior positions in the Action, in accordance with Section III of this Agreement.

The Parties also agree to use their best efforts to seek the stay and dismissal of, and to oppose entry of any interim or final relief in favor of any Settlement Class Member in, any other proceedings against any of the Released Parties which challenges the Settlement or otherwise asserts or involves, directly or indirectly, a Released Claim.

### **16.9 Signatures**

This Agreement may be executed in counterparts, and, when so executed, shall constitute a binding original, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Electronic signatures or signatures sent by email shall be deemed original signatures and shall be binding.

### **16.10 Notices**

Whenever this Agreement requires or contemplates that one Party shall or may give notice to the other, notice shall be provided in writing by first class, certified U.S. Mail, return receipt requested, and by email to:

*If to Plaintiff or Class Counsel:*

L. DeWayne Layfield  
Law Office of L. DeWayne Layfield, PLLC  
P. O. Box 3829  
Beaumont, TX 77704  
dewayne@layfieldlaw.com

and

Nicholas Zbrzezni  
Southern Atlantic Law Group, PLLC  
99 6th Street SW  
Winter Haven, FL 33880  
nick@southernatlanticlaw.com  
Office: (863)656-6672

*If to Defendant or Defendant's Counsel:*

Dean N. Panos  
Jenner & Block LLP  
353 N. Clark Street  
Chicago, IL 60654  
DPanos@jenner.com

and

Jeffrey T. Foreman  
Kenny Nachwalter, P.A.  
1441 Brickell Avenue – Suite 1100  
Miami, FL 33131  
jforeman@knpa.com

**16.11 Reasonable Best Efforts to Effectuate this Agreement**

The Parties acknowledge that it is their intent to consummate this Agreement, and agree to cooperate to the extent reasonably necessary to effectuate and implement the terms and conditions of this Agreement and to exercise their best efforts to accomplish the terms and conditions of this Agreement. The Parties further agree they will not engage in any conduct that will or may frustrate

the purpose of this Agreement. The Parties further agree, subject to Court approval as needed, to reasonable extensions of time to carry out any of the provisions of the Agreement.

**16.12 Binding on Successors**

The Agreement shall be binding upon, and inure to the benefit of, the heirs and assigns of the Released Parties.

**16.13 Arms-Length Negotiations**

The determination of the terms and conditions contained herein and the drafting of the provisions of this Agreement has been by mutual understanding after negotiation and mediation, with consideration by, and participation of, the Parties hereto and their counsel. This Agreement shall not be construed against any Party on the basis that the Party was the drafter or participated in the drafting. Any statute or rule of construction that ambiguities are to be resolved against the drafting party shall not be employed in the implementation of this Agreement and the Parties agree that the drafting of this Agreement has been a mutual undertaking.

**16.14 Waiver**

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

**16.15 Exhibits**

All Exhibits to this Agreement are material and integral parts hereof, and are incorporated by reference as if fully rewritten herein.

**16.16 Taxes**

No opinion concerning the tax consequences of the Agreement to any Settlement Class Member is given or will be given by the Released Parties, Defendant's Counsel, or Class Counsel; nor is any Party or their counsel providing any representation or guarantee respecting the tax

consequences of this Agreement as to any Settlement Class Member. Each Settlement Class Member is responsible for his/her tax reporting and other obligations respecting this Agreement, if any.

**16.17 Retain Jurisdiction**

The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of this Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the agreements embodied in this Agreement.

**16.18 No Attorneys' Fees**

Notwithstanding any of the provisions herein, if any Party finds it necessary to institute legal proceedings to enforce another Party's obligation under this Agreement, each Party shall be responsible for its attorneys' fees and costs.

**16.19 Support From The Parties**

After a full investigation, discovery and arms-length negotiations, the Parties and their counsel agree that they: (a) have independently determined that the Settlement is in the best interest of the Settlement Class; (b) shall support motions for entry of the Preliminary Approval Order and Final Approval Order; and (c) will not encourage any Persons to Opt-Out or file Objections to the Settlement or this Agreement.

**16.20 Variance; Dollars**

In the event of any variance between the terms of this Agreement and any of the Exhibits hereto, the terms of this Agreement shall control and supersede the Exhibit(s). All references in this Agreement to "Dollars" or "\$" shall refer to U.S. dollars.

**Exhibits**

Exhibit A – Claim Form

Exhibit B – Notices to include:

Publication Notice

Media Plan

Settlement Notice

Exhibit C – List of Products

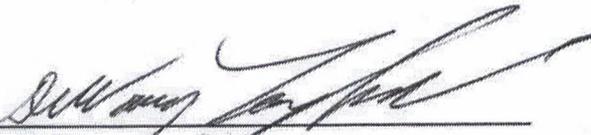
Exhibit D – Proposed Preliminary Approval Order

*[Signature pages follow]*

[Signature Page to Settlement Agreement]

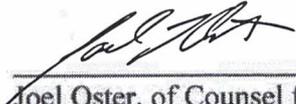
IN WITNESS WHEREOF, the Parties hereby enter this Settlement Agreement as of the date first set forth above.

**PLAINTIFF COUNSEL**

  
\_\_\_\_\_  
L. DeWayne Layfield  
Law Office of L. DeWayne Layfield, PLLC  
P. O. Box 3829  
Beaumont, TX 77704  
dewayne@layfieldlaw.com  
Office: (409) 832-1891

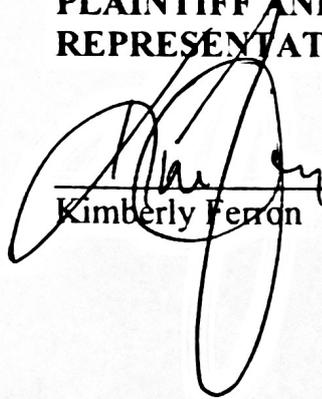
  
\_\_\_\_\_  
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\_\_\_\_\_  
Joel Oster, of Counsel for  
Law Office of Howard W. Rubinstein, PA  
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Santa Fe, NM 87501  
howardr@pdq.net  
Office: (877)630-6889

*[Signature Page to Settlement Agreement]*

**PLAINTIFF AND CLASS  
REPRESENTATIVE**

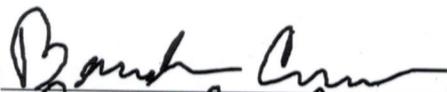


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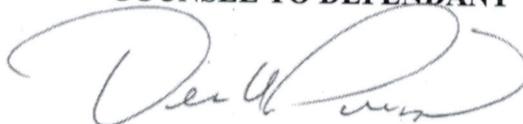
Kimberly Ferron

[Signature Page to Settlement Agreement]

**DEFENDANT**  
KRAFT HEINZ FOODS COMPANY

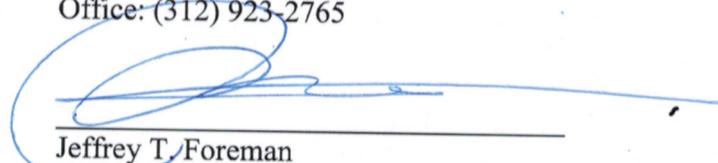
By:   
Name: Brendan Curran  
Title: Coffee GM

**COUNSEL TO DEFENDANT**



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