

Class Action Settlement Agreement

This Settlement Agreement and Release (“Settlement Agreement” or “Agreement”) is entered into by and between Welch Foods Inc. and Curtis Hanson (“Class Representative”) on behalf of himself and the Class (defined below) (collectively the “Parties”), in the matter of *Hanson v. Welch Foods Inc.*, Case No. 3:20-cv-02011-JCS (N.D. Cal.) (“*Hanson*” or the “Action”). Subject to Court approval as required by the applicable Federal Rules of Civil Procedure, and as provided herein, the Parties hereby agree that, in consideration for the promises and covenants set forth in the Agreement and upon the entry by the Court of a final Judgment and Final Approval Order and the occurrence of the Effective Date, this Action shall be settled and resolved in full upon the terms and conditions contained herein. Capitalized terms used herein are defined in Section 1 of this Agreement or defined in parentheses elsewhere in this Agreement.

WHEREAS, on March 23, 2020, the Class Representative commenced the Action (as defined below) in the United States District Court for the Northern District of California alleging, among other things, that Welch engaged in false and misleading advertising and labeling of the Class Products (defined below) as helping to support a healthy heart. The Complaint includes claims for violations of California False Advertising Law (Cal. Bus. & Prof. Code §§ 17500 et seq.), Consumers Legal Remedies Act (Cal. Civ. Code §§ 1750 et seq.), Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200 et seq.), breach of express warranty, and breach of the implied warranty of merchantability;

WHEREAS, Welch contends that the labeling and marketing of the Class Products has at all times been truthful and in full compliance with all applicable laws, rules, and regulations;

WHEREAS, Welch denies any wrongdoing of any kind whatsoever, and specifically denies the allegations in the Action, including those set forth in the Complaint and First Amended Complaint;

WHEREAS, Welch and the Class Representative on behalf of the Class (as defined below) wish to resolve any and all past, present, and future claims the Class has or may have against Welch on a nationwide basis as they relate to the allegations in the Action regarding the Class Products;

WHEREAS, the Parties have reached the resolution set forth in this Agreement, providing for, among other things, the settlement of the Action on the terms and subject to the conditions set forth below;

WHEREAS, Class Counsel (as defined below) have determined that a settlement of the Action on the terms reflected in this Agreement is fair, reasonable, adequate, and in the best interests of the Class Representative and the Class; and

WHEREAS, Welch, to avoid the costs, disruption and distraction of further litigation, and denying the allegations of wrongdoing made in the Action, or any liability or fault with respect

thereto, has concluded that it is desirable that the claims against it be settled and dismissed on the terms reflected in this Agreement;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1 DEFINITIONS

As used in this Agreement and the attached exhibits (which are an integral part of the Agreement and are incorporated in their entirety by reference) the following capitalized terms shall have the meanings set forth below, unless this Agreement specifically provides otherwise:

1.1. “Action” means the matter of *Hanson v. Welch Foods Inc.*, Case No. 3:20-cv-02011-JCS (N.D. Cal.).

1.2. “Agreement” or “Settlement Agreement” means this Class Action Settlement Agreement (including all exhibits attached hereto).

1.3. “Claim” means a request for relief submitted by or on behalf of a Class Member on a Claim Form to the Class Administrator in accordance with the terms of the Agreement.

- (a) “Approved Claim” means a Claim approved by the Class Administrator, according to the terms of this Agreement.
- (b) “Claimant” means any Class Member who submits a Claim Form for the purpose of claiming benefits, in the manner described in Section 5 of this Agreement.
- (c) “Authorized Claimant” means a Claimant with an Approved Claim.
- (d) “Claim Form” means the form to be used by or on behalf of a Class Member to submit a Claim to the Class Administrator.
- (e) “Claims Deadline” means the date by which a Claim Form must be postmarked or submitted online to the Class Administrator to be considered timely. The Claims Deadline shall be stated in the Class Notice, the Settlement Website, and in the Claim Form, and shall be no later than sixty-three (63) calendar days after the Notice Date.
- (f) “Claims Process” means the process by which Class Members may submit Claims, as described in Section 5 of this Agreement.

1.4. “Class” or “Settlement Class” means all persons in the United States who, between March 23, 2016 and October 1, 2021 (the “Class Period”), purchased in the United States, for household use and not for resale or distribution, one of the Class Products, as defined below. Excluded from the Class are: (i) those who purchased the Class Products for purpose of resale or distribution; (ii) Welch and its officers, directors and employees; (iii) any person who files a valid and timely Request for Exclusion; and (iv) the Judge to whom this Action is

assigned and any members of his immediate family.

1.5. “Class Member” or “Settlement Class Member” means any person who is a member of the Class.

1.6. “Class Period” means March 23, 2016 to October 1, 2021.

1.7. “Class Products” means any of the following:

- (a) Welch’s 100% Grape Juice Concord Grape
- (b) Welch’s 100% Juice Red Sangria
- (c) Welch’s 100% Black Cherry Concord Grape Juice

1.8. “Class Administrator” means the independent company retained by Class Counsel, with Welch’s consent, and approved by the Court, to help design and to implement the program for disseminating the Class Notice, and to administer the Claims Process.

1.9. “Claims Administration” means the administration of the Claims Process by the Class Administrator.

1.10. “Class Counsel” means the following attorney of record for the Class Representative and Class in the Action, unless otherwise modified by the Court:

Jack Fitzgerald
Fitzgerald Joseph LLP
2341 Jefferson Street, Suite 200
San Diego, California 92110
Phone: (619) 215-1741

1.11. “Class Notice” means the forms of notice to be disseminated to Class Members pursuant to the Notice Plan informing them of the Settlement, including both the Long Form Notice and the Short Form Notice, and the substance of those documents.

- (a) “Long Form Notice” refers to the proposed full Class Notice that is attached to this Agreement as Exhibit 1, which is subject to Court approval and revision at the Court’s order without affecting the enforceability of the remainder of the Agreement.
- (b) “Short Form Notice” refers to the proposed summary Class Notice that is attached to this Agreement as Exhibit 2, which is subject to Court approval and revision at the Court’s order without affecting the enforceability of the remainder of the Agreement.

1.12. “Class Representative” means named plaintiff Curtis Hanson.

1.13. “Court” means the United States District Court for the Northern District of

California, the Honorable Joseph C. Spero presiding, and any other Judge assigned to preside over this Action.

1.14. “Defendant” or “Welch” means Welch Foods Inc., the defendant in the Action.

1.15. “Defendant’s Counsel” or “Welch’s Counsel” means Proskauer Rose LLP.

1.16. “Effective Date” means the date on which the Judgment becomes final. For purposes of this definition, the Judgment shall become final on the later in time of: (a) the date of expiration of the time for filing or noticing any appeal from the Judgment; or (b) if an appeal from the Judgment is filed, and the Judgment is affirmed or the appeal dismissed, the date of such affirmance or dismissal; or (c) if a petition for certiorari seeking review of the appellate judgment is filed and denied, the date the petition is denied; or (d) if a petition for writ of certiorari is filed and granted, the date of final affirmance or final dismissal of the review proceeding initiated by the petition for a writ of certiorari. Any proceeding or order, or any appeal or petition for review pertaining solely to any application for the Fee Award will not in any way delay or preclude the Judgment from becoming final.

1.17. “Fee Award” means the attorneys’ fees and costs that may be awarded by the Court to compensate Class Counsel, which will be paid out of the Settlement Fund, as described in Section 7 of this Agreement.

1.18. “Final Approval Hearing” means the hearing to be conducted by the Court on such date as the Court may order to determine whether to grant final approval of the Settlement.

1.19. “Final Approval Order” means the order to be submitted to and entered by the Court in connection with the Motion for Final Approval and the Final Approval Hearing, substantially in the form attached hereto as Exhibit 3, which is subject to Court approval and revision at the Court’s order without affecting the enforceability of the remainder of the Agreement.

1.20. “Judgment” means the final judgment entered by the Court pursuant to Federal Rule of Civil Procedure 58, substantially in the form attached hereto as Exhibit 4, which is subject to Court approval and revision at the Court’s order without affecting the enforceability of the remainder of the Agreement.

1.21. “Motion for Final Approval” means the motion filed with the Court for final approval of the Settlement.

1.22. “Motion for Preliminary Approval” means the motion filed with the Court for preliminary approval of the Settlement.

1.23. “Notice and Other Administrative Costs” means all costs and expenses actually incurred by the Class Administrator in administering the Settlement, including but not limited to: all costs and expenses associated with the publication of Class Notice; establishment of the Settlement Website; providing CAFA notice; processing, handling, reviewing, and paying Approved Claims; and paying taxes and tax expenses related to the Settlement Fund (including all federal, state, or local taxes of any kind and interest or penalties thereon, as well as expenses

incurred in connection with determining the amount of and paying any taxes owed and expenses related to any tax attorneys and accountants). All such costs and expenses are to be paid from the Settlement Fund. This includes all taxes on the income of the Settlement Fund, and any costs or expenses incurred in connection with the taxation of the Settlement Fund, all of which shall be paid out of the Settlement Fund, and shall be considered to be a Notice and Other Administrative Cost, which shall be timely paid by the Class Administrator. The Parties shall have no liability or responsibility for the payment of any such taxes.

1.24. “Notice Plan” means the plan for dissemination of Class Notice to be submitted to the Court in connection with the Motion for Preliminary Approval.

1.25. “Notice Date” means the date by which the Class Administrator is required to commence dissemination of the Class Notice as described in Section 9 below, and shall be no later than twenty-one (21) calendar days after the date the Court enters the Preliminary Approval Order.

1.26. “Objection Deadline” means the date by which Class Members must file with the Court a written statement objecting to any terms of the Settlement or to Class Counsel’s request for fees or expenses, and shall be no later than sixty-three (63) calendar days after the Notice Date.

1.27. “Opt-Out Deadline” means the postmark date by which a Class Member must submit his or her Request for Exclusion to the Class Administrator to opt out of the Settlement and not release his or her claims as part of the Released Claims, and shall be no later than sixty-three (63) calendar days after the Notice Date.

1.28. “Party” or “Parties” means the Class Representative, on behalf of the Class, and Welch.

1.29. “Person” means any individual, corporation, partnership, association, or any other legal entity.

1.30. “Plaintiff” means the Class Representative, individually and on behalf of the Class.

1.31. “Preliminary Approval Date” means the date the Court enters the Preliminary Approval Order.

1.32. “Preliminary Approval Order” means the order to be submitted to and entered by the Court in connection with the Motion for Preliminary Approval, substantially in the form attached hereto as Exhibit 5, which is subject to Court approval and revision at the Court’s order without affecting the enforceability of the remainder of the Agreement.

1.33. “Proof of Purchase” means documentation or other evidence reasonably establishing that a Claimant purchased the claimed number of Class Products within the Class Period.

1.34. “Released Claims” or “Released Claim” means any and all actions, causes of

action, claims, demands, rights, suits, liabilities, debts, dues, sum of money, accounts, controversies, promises, trespasses, damages, judgments, liens, losses, obligations, demands, reckonings, bonds, bills, specialties, variances, trespasses, costs, expenses, penalties, attorneys' fees, injunctive and/or declaratory relief whatsoever in law or in equity, existing under federal statutory or common law, state statutory or common law, local statutory or common law, whether known or unknown, accrued or unaccrued, suspected or unsuspected, disclosed or undisclosed, matured or unmatured, absolute or contingent, joint or several, and whether arising now or in the future, that any Releasing Party has or may have against the Released Parties that (i) relate to the Class Products (except for any claim for personal injury), (ii) arise out of or relate to the facts alleged or the claims asserted in the Action, (iii) are based on the identical factual predicate as that underlying the claims in the Action, or (iv) depend on the same set of facts alleged in the Action, which have been or which could have been asserted in the Action, and that have been brought, could have been brought, or are currently pending in any forum in the United States. The scope of the Released Claims shall be the broadest permitted by law, but is not intended to go beyond that scope.

1.35. "Released Parties" or "Released Party" means Welch, together with its affiliates, predecessors, successors, assigns, parents, subsidiaries, divisions, and departments, and any and all of their past, present and future officers, executives, officials, principals, directors, employees, stockholders, members, heirs, partners, agents, servants, successors, advisors, attorneys, accountants, financial advisors, insurers, representatives, licensees, licensors, retailers, resellers, manufacturers, distributors, suppliers, subrogees, trustees, executors, administrators, insures, reinsurers, accountants, actuaries, fiduciaries, consultants, representatives and assigns, and any other Person acting on Welch's behalf. It is expressly understood that, to the extent a Released Party is not a party to the Agreement, all such Released Parties are intended third-party beneficiaries of the Agreement.

1.36. "Releasing Parties" or "Releasing Party" means (i) the Class Representative, (ii) all other Class Members who do not exclude themselves from the Settlement, (iii) the Class Representative's and/or other participating Class Members' respective past or present parents, predecessors, successors, assigns, heirs, beneficiaries, representatives, affiliates, divisions, business units, subsidiaries, (iv) any entities in which the Class Representative and/or other participating Class Member has or had a controlling interest or that has or had a controlling interest in him, her, or it, and any other person or entity (including any governmental entity) claiming by or through, on behalf of, for the benefit of, derivatively for, or as representative of the Class Representative and/or any other Class Member, and (v) the respective past and present directors, governors, executive-committee members, officers, officials, employees, members, partners, principals, agents, attorneys, advisors, trustees, administrators, fiduciaries, consultants, service providers, representatives, successors in interest, assigns, beneficiaries, heirs, executors, accountants, accounting advisors, and auditors of any or all of the above persons or entities.

1.37. "Request for Exclusion" means the written submission that must be submitted to the Class Administrator and postmarked on or before the Opt-Out Deadline, consistent with the terms of this Agreement, by a Class Member who wishes to be excluded from the Settlement.

1.38. "Service Award" means any award approved by the Court to be paid to the Class Representative from the Settlement Fund.

1.39. “Settlement” means the resolution of this Action in accordance with the terms of this Agreement.

1.40. “Settlement Fund” means the qualified settlement fund to be funded by Welch in accordance with Section 4 below, which is in the form of a non-reversionary common fund and is established in accordance with 26 C.F.R. §§ 1.468B-1(c) and (e)(1).

1.41. “Settlement Payment” means the amount to be paid to Authorized Claimants, as set forth in Section 5 below.

1.42. “Settlement Website” means the Internet website to be established and maintained by the Class Administrator to provide information to the Class about the Settlement and to permit Class Members to submit Claims online.

1.43. Other capitalized terms in this Agreement but not defined in Section 1 shall have the meanings ascribed to them elsewhere in this Agreement.

2 CERTIFICATION OF THE CLASS

2.1. 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 by Plaintiff, or of any defense asserted by Welch, in the Action or (b) any wrongdoing, fault, violation of law, or liability on the part of any Party, Released Party, Class Member, or their respective counsel.

2.2. As part of the Motion for Preliminary Approval, Plaintiff will seek certification of the Class. Welch hereby consents, solely for purposes of the Settlement, to the certification of the Class, to the appointment of Class Counsel, and to the approval of Plaintiff as a suitable representative of the Class; provided, however, that if the Court fails to approve this Settlement or the Settlement otherwise fails to be consummated, then Welch’s consent given in this provision shall be null and void and Welch shall retain all rights it had immediately preceding the execution of this Agreement, including, without limitation, the right to object to all of the matters to which it is consenting in this provision and Agreement.

3 DISMISSAL OF LITIGATION

3.1 Upon final approval of this Settlement by the Court, a Final Approval Order substantially in the form attached hereto as Exhibit 3, or in the form of a written decision and Order, will be entered by the Court, providing for the dismissal of this Action with prejudice.

4 SETTLEMENT FUND

4.1 Welch agrees to fund into the Settlement Fund the amount of \$1,500,000 U.S., which shall be used to pay all Settlement expenses, including but not limited to any Notice and Other Administrative Costs, Fee Award, Service Award, and Settlement Payment.

4.2 The Class Administrator is authorized to establish the Settlement Fund under 26 C.F.R. §§ 1.468B-1(c) and (e)(1), to act as the “administrator” of the Settlement Fund pursuant

to 26 C.F.R. § 1.468B-2(k)(3), and to undertake all duties as administrator in accordance with the Treasury Regulations promulgated under § 1.468B of the Internal Revenue Code of 1986. All costs incurred by the Class Administrator operating as administrator of the Settlement Fund shall be considered Notice and Other Administrative Costs and shall be borne solely by the Settlement Fund. Any interest proceeds and/or income earned by the Settlement Fund shall remain in the Settlement Fund and be used to pay Settlement expenses.

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

4.4 Within ten (10) calendar days after entry of the Preliminary Approval Order, Welch shall pay \$1,500,000 U.S. into the qualified Settlement Fund established by the Class Administrator.

4.5 All Settlement Payments, Fee Awards, Service Awards, and Notice and Other Administrative Costs shall be paid from the Settlement Fund. Any funds that remain in the Settlement Fund after such payments shall be donated *cy pres* to the American Heart Association, subject to Court approval or, if not approved by the Court, to one or more other Court-approved non-sectarian, not-for-profit firms whose work is sufficiently tethered to the allegations in this Action.

4.6 In the event the Court does not grant final approval of the Settlement, or the Settlement is otherwise overturned or fails to be carried out in accordance with the terms of this Agreement, all funds in the qualified Settlement Fund shall be promptly returned to Welch. In the event the Court denies final approval of the Settlement or it is overturned on appeal, such funds shall be returned to Welch within twenty-one (21) calendar days of the Court’s denial or the decision overturning the Settlement.

5 CLAIMS PROCESS

5.1 To receive a Settlement Payment, a Class Member must complete a Claim Form online or in hard copy and submit it to the Class Administrator by the Claims Deadline. The Class Administrator shall review and process the Claims in accordance with the guidelines set forth below.

5.2 The Claim Form will be distributed as part of the Notice Plan as described below, will be available on the Settlement Website, and may be submitted to the Class Administrator online through the Settlement Website or by U.S. mail or other regularly maintained mail

delivery service.

5.3 Claim Forms must be submitted or postmarked on or before the Claims Deadline to be considered timely. The Claims Deadline will be clearly and prominently stated in the Preliminary Approval Order, the Class Notice, on the Settlement Website, and on the Claim Form.

5.4 On the Claim Form, each Claimant will be required to provide customary identifying information, including the Claimant's name, address, email address, and telephone number. In addition, each Claimant will be required to identify which of the Class Products he or she has purchased during the Class Period. For each Class Product, the Claimant will be required to state the total number of such product(s) he or she purchased during the Class Period, and the approximate date(s) of purchase. The Claim Form may also request additional information from Claimants to provide reasonable bases for the Class Administrator to monitor for and detect fraud. Such additional information may include, for example, retailers and locations (city and state) at which the Claimant purports to have purchased the Class Products. In addition, the Claim Form will require the Claimant to declare that the information provided is true and correct to the best of the Claimant's memory and knowledge.

5.5 A maximum of one Claim Form may be submitted for each household. The Class Administrator shall identify any Claim Forms that appear to seek relief on behalf of the same household ("Duplicate Claim Forms"). The Class Administrator shall designate any such Duplicate Claim Forms as invalid Claims.

5.6 The Class Administrator shall be responsible for reviewing all claims to determine their validity. The Class Administrator shall reject any Claim that does not comply in any material respect with the instructions on the Claim Form or with the terms of this Section 5, that is submitted via a Claim Form that is not reasonably complete or does not contain sufficient information to entitle the Claimant to a Settlement Payment or to enable the mailing of the Settlement Payment to the Claimant, that is submitted or postmarked after the Claims Deadline, or that the Class Administrator identifies as fraudulent. The Class Administrator shall retain sole discretion in accepting or rejecting Claims and shall have no obligation to notify Claimants of rejected Claims unless otherwise ordered by the Court.

5.7 The Class Administrator shall exercise, in its discretion, all usual and customary steps to prevent fraud and abuse and take any reasonable steps to prevent fraud and abuse in the claim process. The Class Administrator may, in its discretion, deny in whole or in part, any Claim to prevent actual or possible fraud or abuse.

5.8 The Class Administrator shall provide periodic updates to Class Counsel and Defendant's Counsel regarding the status of Claim Form submissions beginning not later than fourteen (14) days after the Notice Date and continuing on a bi-weekly basis thereafter.

5.9 Class Members who submit a timely and valid Claim Form approved by the Class Administrator shall be designated as Authorized Claimants.

5.10 Subject to Sections 5.11 and 5.12 below, an Authorized Claimant is entitled to a Settlement Payment of \$1 for each Class Product he or she purchased during the Class Period, up

to 12 products, without the need to present Proof of Purchase.

5.11 Claimants seeking a Settlement Payment for the purchase of more than 12 Class Products during the Class Period will need to show Proof of Purchase to be eligible for payment exceeding \$12. An Authorized Claimant with Proof of Purchase is entitled to a Settlement Payment of \$1 for each Class Product he or she purchased during the Class Period, up to the number of products shown in his or her Proof of Purchase, regardless of the number, and even if in excess of 12.

5.12 If the total value of all Approved Claims is less than or exceeds the funds available for distribution to Class Members in the Settlement Fund after all other expenses have been deducted, then the amounts of the Settlement Payments will be increased or reduced *pro rata*, as necessary, to use all funds available for distribution to Class Members. All payments to Class Members will be made in a single distribution, and any such *pro rata* adjustment will be calculated prior to the distribution of funds.

5.13 The Class Administrator shall pay out Approved Claims in accordance with the terms of this Agreement commencing no earlier than the later of (i) thirty (30) days after the Claims Deadline and (ii) thirty (30) days after the Effective Date. The Parties shall work with the Class Administrator to choose a manner of payment that is secure, cost-effective, and convenient for Authorized Claimants.

5.14 Any person that receives a Settlement Payment will be solely responsible for any taxes or tax-related expenses owed or incurred by that person by reason of that Settlement Payment. Such taxes and tax-related expenses will not be paid from the Settlement Fund. In no event will Welch, the Class Representative, Class Counsel, the Class Administrator, or any of the other Released Parties have any responsibility or liability for taxes or tax-related expenses arising in connection with the issuance of Settlement Payments or other payments made from the Settlement Fund to the Class Representative, Class Members, or any other person or entity.

5.15 Those Authorized Claimants whose payments are not cleared within one hundred and eighty (180) days after issuance will be ineligible to receive a Settlement Payment and the Class Administrator will have no further obligation to make any payment from the Settlement Fund to such Authorized Claimants.

5.16 The Class Administrator shall provide periodic reports to Class Counsel and Defendant's Counsel regarding the implementation of the Agreement and this Claims Process.

5.17 The Class Administrator shall provide all information gathered in investigating Claims, including, but not limited to, copies of all correspondence and email and all notes of the Class Administrator, the decision reached, and all reasons supporting the decision, if requested by Class Counsel or Defendant's Counsel.

6 INJUNCTIVE RELIEF

6.1 For a period of at least two (2) years (the "Refrain From Use Period"), Welch agrees to refrain from using on the labels of the Class Products the claims "helps support a healthy heart" and "helps promote a healthy heart," as well as any substantially identical claim,

subject to Section 6.5.

6.2 The obligation to begin the Refrain From Use Period shall not arise until one (1) year following the Effective Date, provided that Welch may elect to begin the Refrain From Use Period earlier.

6.3 Prior to the start of the Refrain From Use Period, Welch shall be permitted to continue to print the current labels for the Class Products in the normal course of business, and to ship Class Products bearing those labels. Moreover, Welch shall be permitted to sell through all inventory bearing the current labels even after the Refrain From Use Period begins (in which case, both the current and modified labels might be in the marketplace for some overlapping period of time). If Welch experiences supply chain issues with the printing of labels in accordance with Section 6.1, so long as Welch provides Class Counsel with representations concerning the supply chain issues (which Welch may provide to Class Counsel confidentially), the obligation to begin the Refrain From Use period under Section 6.2 shall not arise until eighteen (18) months following the Effective Date.

6.4 If Class Counsel on behalf of the Class Representative believes Welch is in breach of any of the injunctive relief provisions set forth in this Section, they shall be obligated to give Welch reasonable notice and a reasonable opportunity to cure following a “meet and confer” conference before seeking any related relief.

6.5 Nothing in this Agreement shall preclude Welch from using, in compliance with 21 C.F.R. § 101.75, an authorized health claim regarding the link between diets low in saturated fat and cholesterol and reduction in the risk of cardiovascular disease, if the Class Products qualify for such a claim under 21 C.F.R. § 101.75.

7 ATTORNEYS’ FEES, COSTS, AND SERVICE AWARD

7.1 At least 35 days before the Objection Deadline, Class Counsel and the Class Representative shall file a motion, set for hearing on the same date as the Final Approval Hearing, requesting a Fee Award and Service Award, to be paid from the Settlement Fund.

7.2 The Class Administrator shall pay to Class Counsel from the Settlement Fund the Fee Award within twenty-one (21) calendar days of entry of the Judgment and the Final Approval Order, notwithstanding the filing of any appeals, or any other proceedings which may delay the Effective Date of the Settlement, subject to Class Counsel providing all payment routing information and tax ID numbers for Class Counsel, and the completion of necessary forms, including but not limited to W-9 forms. Payment of the Fee Award will be made from the Settlement Fund by wire transfer to Class Counsel in accordance with the wire instructions to be provided by Class Counsel.

7.3 Notwithstanding the foregoing, if for any reason, the Fee Award is overturned, reduced, vacated, or otherwise modified, Class Counsel shall be obligated to return within thirty (30) calendar days any difference between the amount of the original award and any reduced award.

7.4 Any Service Award approved by the Court for the Class Representative shall be

paid by the Class Administrator from the Settlement Fund in the form of a check to the Class Representative that is sent care of Class Counsel, or other method authorized by Class Counsel on behalf of the Class Representative, within the earlier of thirty (30) days after the Effective Date, or the date the Class Administrator begins making distributions of Settlement Payments to Authorized Claimants.

7.5 The payment of the Fee Award and Service Award are subject to and dependent upon the Court's approval as set forth above. However, this Settlement is not dependent or conditioned upon the Court's approving Class Counsel's and the Class Representative's requests for such payments or awarding the particular amounts sought by Class Counsel and the Class Representative. In the event the Court declines Class Counsel's or the Class Representative's requests, or awards less than the amounts sought, this Settlement will continue to be effective and enforceable by the Parties, provided however, that the Class Representatives and Class Counsel retain the right to appeal any decision by the Court regarding the Fee Award and Service Award, even if the Settlement is otherwise approved by the Court.

8 CLASS ADMINISTRATOR

8.1 Class Counsel, with Welch's consent and the Court's approval, will retain a Class Administrator, to help implement the terms of the Agreement and the Settlement.

8.2 The Class Administrator shall assist with various administrative tasks, including, without limitation: (1) establishing and operating the Settlement Fund, (2) arranging for dissemination of the Class Notice pursuant to the Notice Plan agreed to by the Parties and approved by the Court, (3) making any mailings required under the terms of this Agreement or any Court order or law, including handling returned mail, (4) answering oral and written inquiries from Class Members and/or forwarding such inquiries to Class Counsel or their designee, (5) receiving and maintaining any Requests for Exclusion, (6) establishing a Settlement Website, (7) establishing a toll-free informational telephone number to provide settlement-related information to Class Members, (8) receiving and processing Claims (including monitoring for fraud and validating or rejecting such Claims) and distributing payments to Authorized Claimants, (9) providing regular updates on the claims status to counsel for all Parties, (10) distributing payment of any Fee Award to Class Counsel under the terms of this Agreement, (11) distributing payment of any Service Award to the Class Representative under the terms of this Agreement, and (12) otherwise assisting with administration of the Settlement.

8.3 The Class Administrator shall make all reasonable efforts to abide by the following standards:

- (a) The Class Administrator shall accurately and neutrally describe, and shall train and instruct its employees and agents to accurately and objectively describe, the terms of the Settlement in communications with Class Members;
- (b) The Class Administrator shall provide prompt, accurate and objective responses to inquiries from Class Counsel or their designee, Welch and/or Welch's Counsel.

- (c) The Class Administrator shall keep a clear and careful record of all communications with Class Members, all Claims decisions, all expenses, and all tasks performed in administering the notice and Claims review processes.

9 NOTICE

9.1 Dissemination of Class Notice will be effectuated through targeted internet and social-media based advertisements. The Class Notice will conform to all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clauses), and any other applicable law, and will otherwise be in the manner and form approved by the Parties and the Court. Copies of the proposed forms of Class Notice are attached as Exhibits 1 and 2. Class Notice shall be disseminated pursuant to the Notice Plan agreed upon by the Parties and submitted to the Court in connection with the Motion for Preliminary Approval. The costs of such notice will be paid from the Settlement Fund and will be deemed a Notice and Other Administrative Cost.

9.2 The Class Administrator will commence disseminating Class Notice no later than twenty-one (21) calendar days following the Court's entry of the Preliminary Approval Order (the "Notice Date").

9.3 At or prior to the Final Approval Hearing, at the request of either Class Counsel or Welch's Counsel, the Class Administrator shall provide the Court with an affidavit attesting that Class Notice was disseminated pursuant to the Notice Plan.

9.4 To the extent required under CAFA, the Class Administrator, on behalf of Welch, will serve notice upon the appropriate federal and state officials to inform them about the proposed Settlement. *See* 28 U.S.C. § 1715(b). The costs of such notice will be paid from the Settlement Fund and will be deemed a Notice and Other Administrative Cost.

10 OBJECTIONS

10.1 Any Class Member who intends to object to the fairness of the Settlement must do so in writing and file his or her written objection with the Court on or before the Objection Deadline for the objection to be considered timely.

10.2 Any objection to the Settlement must include: (a) a caption or title that clearly identifies the Action and that the document is an objection; (b) the objector's name, address, telephone number, email or, if represented by counsel, the name, address, telephone number and email of his or her counsel; (c) information sufficient to establish the objector's standing as a Class Member; (d) a statement indicating whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel; (e) a statement of the objection and the grounds supporting the objection, including any facts and/or law supporting the objection; (f) copies of any papers, briefs, or other documents upon which the objection is based; (g) the name and case number for all actions in which the objector has objected to a class action settlement in the past five (5) years; (h) the objector's signature, and (i) if the objector is represented by counsel, the signature of objector's counsel (the "Objection").

10.3 Any Class Member who files a timely written Objection, as described in the

preceding paragraphs (“Objecting Class Member”), and only those Class Members, may appear and be heard at the Final Approval Hearing, either directly or through counsel hired at the objecting Class Member’s own expense. If not stated in the Objection, Objecting Class Members or their attorneys who intend to appear at the Final Approval Hearing must file with the Court a Notice of Intent to Appear no later than twenty (20) days before the Final Approval Hearing, or as the Court may otherwise direct.

10.4 Upon Court order, the Parties will have the right to obtain document discovery from and take depositions of any Objecting Class Member on topics potentially relevant to their Objection.

10.5 The Parties, either individually or jointly, may, but are not required to respond in writing to any Objection. Any such written responses shall be due the same day as the Motion for Final Approval, or as otherwise ordered by the Court.

10.6 Any Class Member who fails to comply with the provisions of this Section shall waive and forfeit any and all rights he or she may have to appear separately in this Action and/or to object to the Settlement.

11 REQUESTS FOR EXCLUSION

11.1 Class Members who wish to opt out of and be excluded from the Settlement must submit a written Request for Exclusion to the Class Administrator, postmarked or submitted online no later than the Opt-Out Deadline. The Request for Exclusion must be personally completed and submitted by the Class Member or his or her attorney, and so-called “mass” or “class” opt-outs shall not be permitted or recognized.

11.2 Any Class Member who does not submit a timely, valid written Request for Exclusion shall be bound by this Agreement, the Judgment, the Final Approval Order, and all subsequent proceedings and orders in this Action, including the release in Section 13 below, even if he or she has pending, or subsequently initiates, litigation, arbitration or any other proceeding against Defendant relating to the Released Claims.

11.3 Any Class Member who submits a timely, valid written Request for Exclusion shall be excluded from the Settlement and will not be bound by the terms of this Agreement. Such Class Members will not (a) be bound by any orders or judgments entered in this Action or any other litigations relating to the Agreement; (b) be entitled to any payment from the Settlement Fund; (c) gain any rights by virtue of the Agreement; (d) be entitled to object to any aspect of the Agreement; or (e) be affected by any other aspect of the Agreement.

11.4 If a Class Member submits both a Request for Exclusion and Objection, the Class Member will be deemed to have opted out of the Settlement, and thus to be ineligible to object. However, any objecting Class Member who has not timely submitted a completed Request for Exclusion will be bound by the terms of the Agreement upon the Court’s final approval of the Settlement.

11.5 The Class Administrator shall periodically notify Class Counsel and Welch’s counsel of any Requests for Exclusion. The Class Administrator shall also provide Class

Counsel and Welch's Counsel with a final list of all timely, valid Requests for Exclusion within five (5) calendar days after the Opt-Out Deadline. Class Counsel shall file the final list of all timely Requests for Exclusion prior to or at the Final Approval Hearing.

11.6 If more than 350 Class Members submit timely, valid Requests for Exclusion, Welch has the right in its sole discretion, but not the obligation, to terminate the Agreement and revert to the status quo ante, provided, however, that (i) the time for Welch to exercise this right shall expire fourteen (14) calendar days after the Opt-Out Deadline, and (ii) Welch may only exercise the option after meeting and conferring in good faith with Class Counsel.

12 PUBLIC STATEMENTS

12.1 The Parties and their counsel will not make any public statements about the Settlement at any time, except (a) in filings and appearances before the Court, (b) through the Class Notice provided through the Class Administrator, and (c) in language agreed-upon in advance by the Parties to be used in responding to any media inquiries or requests for comment, provided, however, that agreement on language shall not be unreasonably withheld by one Party so long as the language proposed by the other Party is non-disparaging.

12.2 For the avoidance of doubt, nothing in this Agreement shall prohibit or restrict Welch from responding to inquiries from customers or consumers with respect to the Settlement, the Action, or the underlying subject matter. Welch shall not be required to obtain consent or agreement from any other Party to respond to such customer or consumer inquiries.

12.3 For the avoidance of doubt, nothing in this Agreement shall prohibit or restrict Class Counsel from responding to inquiries from Class Members with respect to the Settlement, the Action, or the underlying subject matter. Class Counsel shall not be required to obtain consent or agreement from any other Party to respond to such Class Member inquiries.

13 RELEASES

13.1 Upon the Effective Date, each and every Releasing Party will be deemed to have, and by operation of the Judgment will have, fully, finally, and forever released, relinquished, and discharged each of the Released Parties from all Released Claims, and shall be permanently barred and enjoined from initiating, asserting and/or prosecuting any Released Claim against any Released Party in any court or any forum. Plaintiff agrees and covenants, and each Releasing Party will be deemed to have agreed and covenanted, not to sue any Released Party with respect to any Released Claim, or assist others in doing so, and agree to be forever barred from doing so, in any court of law or equity, or any other forum.

13.2 The Settlement shall be the sole and exclusive remedy for any and all Released Claims of all Releasing Parties against all Released Parties. No Released Party shall be subject to liability of any kind to any Releasing Party with respect to any Released Claim.

13.3 The Parties shall request that the Court include in the Preliminary Approval Order, among other provisions, a provision enjoining the Class Representative, Class Members, and anyone purporting to represent or to pursue claims on behalf of Class Members, from commencing, prosecuting, intervening in, or participating in any claims or causes of action

relating to the Action or the Released Claims against any Released Parties.

13.4 The Parties shall request that the Court include in the Judgment and Final Approval Order, among other provisions, a permanent injunction enjoining all Releasing Parties, and anyone purporting to represent or to pursue claims on behalf of a Releasing Party, from commencing, prosecuting, intervening in, or participating in any claims or causes of action relating to the Action or the Released Claims against any Released Parties.

13.5 With respect to any and all Released Claims, and upon the Effective Date, without further action, for good and valuable consideration, the Plaintiff, on behalf of himself and the Class and as the representative of the Class, shall fully, finally, and forever expressly waive and relinquish with respect to the Released Claims any and all provisions, rights, and benefits of Section 1542 of the California Civil Code and any and all similar provisions, rights, and benefits conferred by any law of any state or territory of the United States or principle of common law that is similar, comparable, or equivalent to Section 1542 of the California Civil Code, which provides:

“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

13.6 Upon the Effective Date, each of the Released Parties shall be deemed to have, and by operation of the Judgment will have, fully, finally, and forever released, relinquished, and discharged each of the Releasing Parties and their respective counsel, including Class Counsel, for all claims arising out of or relating to the filing, institution, prosecution and resolution of the Action, except to enforce terms and conditions contained in this Agreement.

13.7 Upon the Effective Date, each of the Releasing Parties shall be deemed to have, and by operation of the Judgment will have, fully, finally, and forever released, relinquished, and discharged each of the Released Parties and their respective counsel for all claims arising out of or relating to the filing, institution, prosecution, defense and resolution of the Action, except to enforce terms and conditions contained in this Agreement.

13.8 The Parties agree that the Court shall retain exclusive and continuing jurisdiction over the Parties and the Class Members to interpret and enforce the terms, conditions, and obligations under the Agreement.

14 COURT APPROVAL

14.1 After executing this Agreement, the Parties will submit to the Court the Agreement, and will request that the Court enter the Preliminary Approval Order substantially in the form of the proposed order attached as Exhibit 5. In the Motion for Preliminary Approval, Plaintiff will request that the Court grant preliminary approval of the proposed Settlement, provisionally certify the Class for settlement purposes and appoint Class Counsel, approve the forms of Notice and find that the Notice Plan satisfies due process and Rule 23 of the Federal Rules of Civil Procedure, and schedule a Final Approval Hearing to determine whether the

Settlement should be granted final approval, whether an application for attorneys' fees and costs should be granted, and whether an application for a service award should be granted.

14.2 A Final Approval Hearing to determine final approval of the Agreement shall be scheduled no sooner than 116 calendar days after the Preliminary Approval Date, or another date ordered by the Court. If the Court issues the Preliminary Approval Order and all other conditions precedent of the Settlement have been satisfied, no later than fourteen (14) calendar days before the Final Approval Hearing and eighteen (18) calendar days after the Objection Deadline, the Parties will request, individually or collectively, that the Court enter a Final Approval Order substantially in the form of the proposed order attached as Exhibit 3, with Class Counsel filing a memorandum of points and authorities in support of the motion. Welch may, but is not required to, file a memorandum in support of the motion.

14.3 This Agreement is subject to and conditioned upon the issuance by the Court of the Judgment and Final Approval Order that finally certifies the Class for the purposes of this Settlement, grants final approval of the Agreement, and provides the relief specified herein, which relief shall be subject to the terms and conditions of the Agreement and the Parties' performance of their continuing rights and obligations hereunder. Failing this, subject to Section 7.5, the Parties will be restored to their respective places in the Action. In such event, the terms and provisions of this Agreement will have no further force or effect with respect to the Parties and will not be used in this or any other proceeding for any purposes, and any judgment or order entered by the Court in accordance with the terms of this Agreement will be treated as vacated.

15 REPRESENTATIONS AND WARRANTIES

15.1 Welch represents and warrants: (1) that it has the requisite corporate power and authority to execute, deliver and perform the Agreement and to consummate the transactions contemplated hereby; (2) that 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 Welch; and (3) that the Agreement has been duly and validly executed and delivered by Welch and constitutes its legal, valid and binding obligation.

15.2 Plaintiff represents and warrants that he is entering into the Agreement on behalf of himself individually and as proposed representative of the Class Members, of his own free will and without the receipt of any consideration other than what is provided in the Agreement and disclosed to, and authorized by, the Court. Plaintiff represents and warrants that he has reviewed the terms of the Agreement in consultation with Class Counsel, he understands the terms of the Agreement, and he believes those terms to be fair and reasonable.

15.3 Class Counsel represent and warrant that they are fully authorized to execute the Agreement on behalf of Plaintiff, individually and as representative of the Class.

15.4 The Parties warrant and represent that no promise, inducement or consideration for the Agreement has been made, except those set forth herein.

16 NO ADMISSIONS, NO USE

16.1 The Agreement and every stipulation and term contained in it is conditioned upon

final approval of the Court and is made for settlement purposes only. Whether or not consummated, this Agreement shall not be: (a) 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, Welch, any Class Member or Releasing or 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 the Action or 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 the Action or in any litigation, or of any liability, fault, wrongdoing or otherwise of such entity; or (b) construed as, offered in evidence as, received in evidence as, and/or deemed to be evidence of, a presumption, concession or an admission of any liability, fault or wrongdoing, or in any way referred to for any other reason, by Plaintiff, Welch, any Releasing Party or Released Party in the Action or in any other civil, criminal or administrative action or proceeding other than such proceedings as may be necessary to effectuate the provisions of the Agreement. For the avoidance of doubt, nothing in this Agreement bars Welch from using this Agreement in any way or offering it as evidence in any matter involving any insurance business that may be liable to Welch. Furthermore, nothing in this Agreement bars the Parties from using this Agreement in any way or offering it as evidence in any matter involving the enforcement of the terms of this Agreement.

17 MISCELLANEOUS PROVISIONS

17.1 **Change of Time Periods:** The time periods and/or dates described in this Agreement are subject to Court approval and may be modified upon order of the Court or written stipulation of the Parties, without notice to Class Members. The Parties reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extension of time that might be needed to carry out any of the provisions of this Agreement.

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

17.3 **Entire Agreement:** This Agreement, including all exhibits hereto, shall constitute the entire Agreement among the Parties with regard to the subject matter of this Agreement and shall supersede any previous proposals, negotiations, agreements, representations, communications and understandings among the Parties with respect to the subject matter of the Agreement. The Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation, or undertaking concerning any part or all of the subject matter of this Agreement has been made or relied upon except as expressly set forth herein.

17.4 **Governing Law:** This Agreement shall be interpreted, construed and governed by the laws of the State of California, without regard to laws applicable to choice of law.

17.5 **Execution in Counterparts:** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall be deemed to be one and the same instrument. Facsimile signatures or signatures scanned to PDF

and sent by e-mail shall be treated as original signatures and shall be binding.

17.6 Notices: All notices or mailings required by this Agreement to be provided to or approved by Class Counsel and/or Welch, or otherwise made pursuant to this Agreement, shall be provided in writing by first class U.S. Mail and email to:

If to Plaintiff or Class Counsel:

Jack Fitzgerald
jack@fitzgeraldjoseph.com
Fitzgerald Joseph LLP
2341 Jefferson Street, Suite 200
San Diego, California 92110

If to Welch:

Baldassare Vinti
bvinti@proskauer.com
Proskauer Rose LLP
11 Times Square
New York, NY 10036

17.7 Stay of Proceedings: Upon the execution of this Agreement, the Parties shall request that all discovery and other proceedings in the Action be stayed until further order of the Court, except for proceedings that may be necessary to implement the Agreement or comply with or effectuate the terms of this Agreement.

17.8 Good Faith: The Parties acknowledge that each intends to implement the Agreement. The Parties have at all times acted in good faith and shall continue to, in good faith, cooperate and assist with and undertake all reasonable actions and steps in order to accomplish all required events on the schedule set by the Court, and shall use reasonable efforts to implement all terms and conditions of this Agreement.

17.9 Binding on Successors: This Agreement shall be binding upon, and inure to the benefit of, the heirs, successors, assigns, executors, and legal representatives of the Parties to the Agreement and of the Released Parties.

17.10 Arms'-Length Negotiations: This Agreement settles claims that are contested, and the Parties agree that the terms and conditions of this Agreement were negotiated in good faith and at arms' length by the Parties, and reflect an Agreement that was reached voluntarily, after consultation with competent legal counsel. The determination of the terms of, and the drafting of, this Agreement have been by mutual agreement after negotiation, with consideration by and participation of all Parties hereto and their counsel. Accordingly, 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 construed against the

drafting party shall not be applied to this Agreement, and the Parties agree that the drafting of this Agreement has been a mutual undertaking.

17.11 Waiver: The waiver by one Party of any provision or breach of the Agreement shall not be deemed a waiver of any other provision or breach of the Agreement.

17.12 Variance: 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).

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

17.14 Taxes: No opinion concerning the tax consequences of the Agreement to any Class Member is given or will be given by Welch, Welch's Counsel, or Class Counsel; nor is any Party or his or its counsel providing any representation or guarantee respecting the tax consequences of the Agreement as to any Class Member. Each Class Member is responsible for his/her tax reporting and other obligations respecting the Agreement, if any.

17.15 Modification in Writing: This Agreement and any and all parts of it may be amended, modified, changed, or waived only by a written instrument signed by duly authorized agents of Welch and Plaintiff. The Parties contemplate that the exhibits to the Agreement may be modified by subsequent agreement between Welch and Class Counsel, or by the Court. Amendments and modifications to the Agreement may be made without additional notice to the Class Members unless such notice is required by the Court.

17.16 Headings: The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.

17.17 Continuing Jurisdiction: After entry of the Judgment, the Court shall retain continuing and exclusive jurisdiction with respect to (a) the interpretation, implementation and enforcement of the terms of this Agreement, (b) addressing settlement administration matters, and (c) addressing such post-Judgment matters as may be appropriate under court rules or applicable laws. All Parties hereto submit to the jurisdiction of the Court for such purposes.

[REMAINDER INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, each of the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below and agree that it shall take effect on that date.

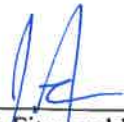
Plaintiff, on behalf of the Class



Curtis Hanson

Dated: 01 Oct, 2021

Class Counsel



Jack Fitzgerald
Fitzgerald Joseph LLP
2341 Jefferson Street, Suite 200
San Diego, California 92110

Dated: October 1, 2021

Welch Foods Inc.

Name:
Title:

Dated: _____, 2021

IN WITNESS WHEREOF, each of the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below and agree that it shall take effect on that date upon which it has been executed by all of the undersigned.

Plaintiff, on behalf of the Class

Curtis Hanson

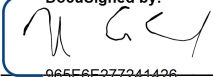
Dated: _____, 2021

Class Counsel

Jack Fitzgerald
Fitzgerald Joseph LLP
2341 Jefferson Street, Suite 200
San Diego, California 92110

Dated: _____, 2021

Welch Foods Inc.

DocuSigned by:


965E6E277241426...
Name:
Title:

Dated: _____, 2021