

IN THE SUPERIOR COURT OF DOUGHERTY COUNTY, GEORGIA

BS STEAKS LLC; PAPA JOE'S OYSTER BAR  
& GRILL, INC.; SNELLGROVE'S  
RESTAURANT, INC.; SOUND WAVES OF  
SURF CITY, INC.; VLMOONEY, INC. d/b/a  
KRIS & SAM'S; and LIT'L PEPPER  
GOURMET, INC.

Plaintiffs,

v.

US FOODS, INC.

Defendant.

Case No.: 18-CV-968-1

CLASS ACTION

  
Evonne S. Mull, Clerk  
Dougherty County, Georgia

**UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT  
AND CONDITIONAL CLASS CERTIFICATION**

Plaintiffs move this Court to enter an Order conditionally certifying a class, for purposes of settlement only, and preliminarily approving the Settlement Agreement<sup>1</sup> between the parties. Plaintiffs have consulted with Defendant, who does not oppose this motion for the sole purpose of effecting the settlement. For the reasons shown below, the settlement is fair, reasonable, and adequate and the settlement class may be properly certified.

**I. INTRODUCTION**

Plaintiffs are small businesses across the country that pursued similar putative class actions against US Foods, Inc. ("US Foods") based upon Fuel Surcharges ("the fees") US Foods charged Plaintiffs and other customers in connection with the delivery of food products. The claims and allegations in these cases are very similar and the parties in each case share some counsel. The

---

<sup>1</sup> The Settlement Agreement and its accompanying exhibits are attached as Exhibit A. The proposed Preliminary Approval Order is attached as Exhibit B.

litigation has been consolidated in this forum by agreement of the parties for purposes of efficiently and effectively carrying out this settlement.

Plaintiffs allege that US Foods breached the contracts at issue because the Fuel Surcharges recover more than US Food's increased fuel costs. Additionally, Plaintiffs argue that the fees are deceptive, fraudulent, and unfair. US Foods vigorously contests and denies these allegations and contends that its fee practices are lawful, proper and consistent with the contractual language, and contends that it does not recover more than its actual fuel costs through the fees.

This litigation was pursued and defended aggressively in several different venues across the country. The parties engaged in significant motion practice, including motions to compel individual arbitration and a remand motion. The parties engaged in significant written discovery. Thousands of pages of documents were searched for, produced, and reviewed. The parties also exchanged information as part of the mediation process. In sum, the parties through their extensive efforts to date are well-versed in the facts of this case and well-equipped to reasonably evaluate the benefits of settlement and the risks and costs of continued litigation.

After lengthy arm's length negotiation, in May of 2018 the Parties agreed to mediate before the Honorable Edward Infante (Ret.), former U.S. Magistrate Judge for the Northern District of California and a highly regarded and experienced class action mediator. This mediation session did not ultimately lead to a settlement. The Parties agreed to mediate once again in July 2018 before James R. Epstein (Ret.), former Justice for the Illinois Appellate Court and one of the most respected class action mediators in the country. As a result of this mediation, the settlement represented by the Settlement Agreement reflects Judge Epstein's mediator's proposed settlement which was communicated to the parties at the conclusion of the July 2018 mediation. After agreeing to the relief to the class, the Parties engaged in further lengthy negotiations to draft and

finalize the settlement agreement and related documents that would give effect to this relief. Ultimately, these negotiations and mediations resulted in the execution of the attached Settlement Agreement, which sets forth the details of the settlement and is submitted to the Court herewith. (See Settlement Agreement, Ex. A).

Plaintiffs' counsel has extensive experience in cases such as this, and have conducted the discovery and investigation necessary to make an informed evaluation of the proposed settlement. Plaintiffs' counsel are of the opinion that the proposed settlement is in the best interest of the class and provides valuable relief in the form of a settlement fund of \$2,575,000. The structure, notice, claims procedure, and relief established in this settlement ensure that it is well-within the bounds of what is fair, reasonable and adequate, that notice is correct under O.C.G.A. § 9-11-23(e), and that the proposed Settlement Class meets all the requirements for certification for purposes of settlement under O.C.G.A. § 9-11-23(b)(3).<sup>2</sup>

## **II. Conditional Certification Of The Settlement Class Is Appropriate.**

Plaintiffs respectfully seek, and US Foods does not oppose, conditional certification of the Settlement Class. In order for the Parties to provide notice of the settlement and give effect to the settlement, certification for settlement purposes is necessary. *See, e.g., Columbus Drywall*, 258 F.R.D. at 561 (certifying a class “for the purposes of [a] proposed settlement only”). Certification allows for notice of the terms of the settlement, the right to be heard, the right to opt out, and the time and place of final approval to be provided to the settlement class.

---

<sup>2</sup> Since O.C.G.A. § 9-11-23 is modeled after Federal Rule of Civil Procedure 23 “the appellate courts of Georgia have relied on the federal rules when construing [O.C.G.A. § 9-11-23].” *State Farm Mut. Auto. Ins. Co. v. Mabry*, 274 Ga. 498, 499 (2001). *See also Barnum v. Coastal Health Servs., Inc.*, 288 Ga. App. 209, 215 (2007) (Because of [the] similarity [between Federal Rule 23 and OCGA § 9-11-23] it is proper that we give consideration and great weight to constructions placed on the Federal Rules by the federal courts.” (quoting *Bicknell v. CBT Factors Corp.*, 171 Ga.App. 897, 899 (1984))).

Certification of a class is left to the broad discretion of the trial court. *See, e.g., State Farm Mut. Auto. Ins. Co. v. Mabry*, 274 Ga. 498, 499–500 (2001) (“the discretion of the trial judge in certifying or refusing to certify a class action is to be respected in all cases where not abused”); *Roland v. Ford Motor Co.*, 288 Ga. App. 625, 627 (2007) (“trial court has broad discretion”). Factual findings in a class certification order must be affirmed unless, under the “clearly erroneous” standard, they are not supported by any evidence. *Vill. Auto Ins. Co. v. Rush*, 286 Ga. App. 688, 688 (2007) (citations omitted).

In exercising this discretion, courts recognize the “strong judicial policy favoring settlement” and are informed by the “realization that compromise is the essence of settlement.” *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984); *see, e.g., Leary v. Julian*, 225 Ga. App. 472, 474 (1997) (settlement favored under Georgia law). Courts have long recognized class actions as an essential device to resolve disputes involving similar factual or legal issues. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 617 (1997). The interests favoring settlement are particularly supportive of class action settlements, given the inherent costs, delays, and risks involved in such complex litigation. *See, e.g., In re U.S. Oil and Gas*, 967 F.2d at 493 (“Public policy strongly favors the pretrial settlement of class action lawsuits”); *Hillis v. Equifax Consumer Servs., Inc.*, 2007 WL 1953464, at \*9 (N.D. Ga. June 12, 2007) (“When exercising its discretion, the court is mindful of the public and judicial policies that strongly favor the settlement of class action lawsuits”).

The elements for class certification for settlement purposes are the same for certification that is opposed, although courts recognize that problems that may arise during a contested certification are not relevant. *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1997) (“Confronted with a request for settlement-only class certification, a district court need not inquire

whether the case, if tried, would present intractable management problems...for the proposal is that there be no trial.”). Here, Plaintiffs seek—and US Foods does not oppose—certification of a Settlement Class defined as:

All customers in the United States which paid US Foods one or more of the fees at any time from August 31, 2013 through and including the Friday before notice is provided to the Settlement Class.<sup>3</sup>

Plaintiffs seek certification of this class under O.C.G.A. § 9-11-23(a) and (b)(3). Section 23(a) provides that certification is appropriate where:

(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

O.C.G.A. § 9-11-23(a). Section 23(b)(3) provides that certification is appropriate where, additionally:

The court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include:

(A) The interest of members of the class in individually controlling the prosecution or defense of separate actions;

(B) The extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

(C) The desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(D) The difficulties likely to be encountered in the management of a class action.

O.C.G.A. § 9-11-23(b)(3).

---

<sup>3</sup> Excluded from the Settlement Class are: (a) any individual or entity currently in bankruptcy (b) any individual or entity whose obligations were discharged in bankruptcy (c) government entities; and (c) any judicial officer, including that officer’s family, which presided over this case.

Plaintiffs will show that each requirement for conditional certification of the Settlement Class is easily met here.

**A. The Settlement Class Is Numerous.**

There is no set number of plaintiffs that results in joinder being impracticable, but an oft-cited benchmark is that class treatment is appropriate when the class exceeds forty members. *See, e.g. Newberg on Class Actions* § 3:12 (5th ed.). “It is not necessary that a precise number of class members be known; plaintiffs may make reasonable and supported estimates as to the size of the proposed class.” *Miles v. Am. Online, Inc.*, 202 F.R.D. 297, 302 (M.D. Fla. 2001) (citation omitted). Ultimately, “common sense is sufficient to determine that numerosity has been amply proven....” *Welch v. Theodorides-Bustle*, 273 F.R.D. 692, 695 (N.D. Fla. 2010).

Here, joinder is impracticable if not impossible, and numerosity is established. US Foods has tens of thousands of customers nationwide, and evaluation of customer data from US Foods’ billing and financial system indicates that the Settlement Class includes more than 200,000 members. Class size clearly favors conditional certification.

**B. Common Questions Of Law And Fact Exist.**

Section 23(a)(2) requires that there be either questions of law or fact common to the class. O.C.G.A. § 9-11-23(a)(2). This is not a high threshold; not all questions need be common to all class members and a single common question will satisfy this requirement. *See, e.g., Carriuolo v. Gen. Motors Co.*, 2016 WL 2870025, at \*3 (11th Cir. May 17, 2016); *Cheney v. Cyberguard Corp.*, 213 F.R.D. 484, 490 (S.D. Fla. 2003) (“factual differences between class members do not preclude a finding of commonality, as long as common questions of law exist”) (citations omitted).

Here, the commonality requirement is clearly satisfied because Plaintiffs and each member of the Settlement Class paid the fees at issue under the same fee programs, calculated pursuant to

similar if not identical methodology, and charged under the same or similar terms. Plaintiffs contend that these common practices violated common contractual law and were deceptive. Thus, common issues of fact and law—including if US Foods’ fee programs are unlawful and if the resulting fees were excessive—pervade the Settlement Class.

**C. The Plaintiffs’ Claims Are Typical.**

Typicality focuses on the nature of the claims of the class representative, not the specific facts giving rise to those claims. OCGA § 9-11-23(a)(3). While commonality refers to the shared characteristics of the class, typicality refers to the class representative’s claims in relation to the claims of the class. *Piazza v. EBSCO Indus. Co.*, 273 F.3d 1341, 1346 (11th Cir. 2001). Where a class representative has the same interest and suffered the same injury as the absent class members, then typicality is satisfied. *Welch v. Theodorides-Bustle*, 273 F.R.D. 692, 695 (N.D. Fla. 2010).

However, typicality does not require identical claims or interests; the question is whether any factual differences are so great as to render make the class representative’s interests antagonistic to those of the class, “such that the interests of the class are placed in significant jeopardy.” *Walco Invs., Inc. v. Thenen*, 168 F.R.D.315, 326 (S.D. Fla. 1996). If the claims “are based on the same legal or remedial theory, differing fact situations of the class members do not defeat typicality.” *Adamson v. Bowen*, 855 F.2d 668, 676 (10th Cir.1988).

Here, each of the Plaintiffs’ claims are based on the same legal theory and same conduct as those of the Settlement Class. They allege they were charged the same fees, under the same fee programs and fee terms as the other members of the Settlement Class. Thus, Plaintiffs and each class member allege to have been harmed in the same way: by paying fees which Plaintiffs maintain were excessive. The only differences between Plaintiffs and class members are in the amount, not type, of damages under the common remedial theory of recovery. *See, e.g., Kornberg*,

741 F.2d 1332, 1337 (11th Cir. 1984) (differences in the amount of damages do not destroy typicality).

Because the Plaintiffs and the Settlement Class assert the same legal theories, and seek the same type of relief for the same injury, the Named Plaintiffs' interests are materially identical to those of the proposed settlement class. Typicality is easily met here.

**D. Plaintiffs Will Adequately Protect The Interests Of The Settlement Class.**

Adequacy involves two inquiries, "whether the plaintiffs' counsel is experienced and competent and whether plaintiffs' interests are antagonistic to those of the class." *Brenntag Mid. S., Inc.*, 308 Ga. App. at 905 (quotation omitted).

Here, first, no substantial conflict exists between Plaintiffs and the proposed settlement class they seek to represent. Plaintiffs share the same interests and seek the same relief as all absent class members; no class member has an interest in not recovering the damages sought, and, if Plaintiffs succeed, the benefits will be shared. Second, Plaintiffs' counsel have extensive experience prosecuting class actions and other complex litigation (including litigation very similar to this case which was successfully resolved on a class basis).<sup>4</sup> As such, the interests of the Settlement Class are more than adequately represented by Plaintiffs and their counsel in this case and the requirements of Rule 23(a)(4) are satisfied.

**E. Common Issues Predominate And Superiority Exists.**

---

<sup>4</sup> Plaintiff's counsel have served as counsel in multiple putative and certified class actions, including: *Grilling the Dream, Inc. et al. v. Sysco Corporation*, Case No. 17-cv-1192-1 (Superior Court of Dougherty County, Georgia); *Hunters Run Apartments, LTD et al. v. WCA Waste Corporation, et al.*, Case No. 1:15-cv-151 (N.D. Fla.); *In & Out Welders, Inc. v. Sunbelt Rentals, Inc.*, Case No. 7:16-cv-04021 (D.S.C.); *Whitton v. Deffenbaugh Disposal Inc.*, Case No. 12-2246-CM (D. Kan.); *Danny Lynn Electric & Plumbing et al. v. Veolia ES Solid Waste Southeast, Inc. et al.*, Case No. 2:09-cv-192-MHT (M.D. Ala.).



In addition to the four criteria under O.C.G.A. § 9-11-23(b)(a), the requirements of 23(b)(3) also must be satisfied in that common questions of law or fact predominate over individual questions, and in that a class action is superior to other available methods of adjudication. As explained above, the claims of the Plaintiffs and the class members arise from US Foods' alleged fee practices, and in particular the calculation of, assessing, and collecting of specific fees. The focus of such claims is on US Foods' contracts and fee practices. Plaintiffs allege that these common fee practices give rise to the same liability common to Plaintiffs and class members' claims. Accordingly, the claims of the Settlement Class arise from a similar nucleus of operative facts and involve questions of law common to all class members.

Moreover, because certification is being sought as part of a settlement, the Court does not "need to inquire whether the case, if tried, would present intractable management problems...for the proposal is that there be no trial." *Amchem Products Inc. v. Windsor*, 521 U.S. 591, 620 (1997).<sup>5</sup> As there is no trial, but rather meaningful, fair and reasonable relief is provided to all class members from a common Settlement Fund pursuant to a single distribution methodology, any individual liability or damages issues that might have occurred at trial are moot. Accordingly, the common liability questions here are more than sufficient to satisfy the predominance requirement of Rule 23(b)(3) for certification for settlement purposes of the Settlement Class.

Finally, the proposed resolution of the consolidated lawsuits by settlement on behalf of a Settlement Class also satisfies the superiority requirement. Trying the individual claims of

---

<sup>5</sup> As set out in the Settlement Agreement, US Foods denies any wrongdoing or liability for the claims alleged, and in the absence of a Settlement Agreement and certified Settlement Class, would continue to vigorously defend both class certification and the claims on the merits, and seek to compel Plaintiffs' claims to individual arbitration.

thousands of class members in venues across multiple states would be incredibly costly. Given the costs of pursuing individual actions and the relatively small amounts at stake for most class members, settlement class members have little interest in individually controlling the prosecution of separate actions; as evidenced by the fact that Plaintiffs are aware of no other similar cases that have been filed against US Foods to date. And, importantly, to the extent there are potential class members who may want to pursue their own claims regarding these alleged practices, they have the opportunity to opt out of the settlement and to not be bound by the Settlement. Finally, the interests of efficiency and the administration of justice for the Parties and for the judicial system are advanced by proceeding as a single case resolved by class-wide resolution.

Accordingly, certification of the Settlement Class is appropriate under O.C.G.A. § 9-11-23(b)(3).

### **III. Preliminary Approval Of The Settlement Is Appropriate.**

Preliminary approval of a proposed settlement is the first of a two-step process necessary to settle a class action. At preliminary approval, “the judge reviews the proposal preliminarily to determine whether it is sufficient to warrant public notice and a hearing.” *Manual for Complex Litigation, Fourth*, § 13.14, at 173 (2004). During this preliminary evaluation, the Court may examine the submitted materials and determine whether the proposed settlement appears fair on its face. *In re Corrugated Container Antitrust Litigation*, 643 F.2d 195, 212 (5th Cir. 1981).

Courts have broad discretion to approve class action settlements. *See, e.g., In re U.S. Oil and Gas Litig.*, 967 F.2d 489, 493 (11th Cir. 1992) (“Although class action settlements require court approval, such approval is committed to the sound discretion of the district court.”). In exercising this discretion, courts recognize the “strong judicial policy favoring settlement” and are informed by the “realization that compromise is the essence of settlement.” *Bennett v. Behring*

*Corp.*, 737 F.2d 982, 986 (11th Cir. 1984); *see, e.g., Leary v. Julian*, 225 Ga. App. 472, 474 (1997) (settlement favored under Georgia law). Courts have long recognized class actions as an essential device to resolve disputes involving similar factual or legal issues. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 617 (1997). The interests favoring settlement are particularly supportive of class action settlements, given the inherent costs, delays, and risks involved in such complex litigation. *See, e.g., In re U.S. Oil and Gas*, 967 F.2d at 493 (“Public policy strongly favors the pretrial settlement of class action lawsuits”); *Hillis v. Equifax Consumer Servs., Inc.*, 2007 WL 1953464, at \*9 (N.D. Ga. June 12, 2007) (“When exercising its discretion, the court is mindful of the public and judicial policies that strongly favor the settlement of class action lawsuits”).

If the Court grants preliminary approval, it directs notice to the class members (as discussed below) and sets a hearing date for a final determination on whether the settlement is “fair, reasonable, and adequate.”<sup>6</sup> *Ault v. Walt Disney World Co.*, 692 F.3d 1212, 1216 (11th Cir. 2012). Preliminary approval is simply a threshold step for class notice that “does not involve a determination of the merits of the proposed settlement or affect the substantive rights of any class member.” *Figueroa v. Sharper Image Corp.*, 517 F. Supp.2d 1292, 1299 (S.D. Fla. 2007). For preliminary approval, “the court simply determines whether the proposed settlement falls within the range of possible approval.” *Id.* at 1298.

---

<sup>6</sup> The Eleventh Circuit has identified factors relevant to the ultimate determination of whether class settlement's terms are fair, reasonable and adequate, including: “(1) the likelihood of success at trial; (2) the range of possible recovery; (3) the point on or below the range of possible recovery at which a settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved.” *In re CP Ships Ltd. Sec. Litig.*, 578 F.3d 1306, 1318 (11th Cir. 2009). At the preliminary approval stage these factors may still be informative. *See, e.g., Dalton v. Cardworks Servicing, LLC*, 2010 WL 5341939, at \*6 (S.D. Ala. Nov. 19, 2010).

Accordingly, a court should ordinarily grant preliminary approval of a settlement where it “appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible [judicial] approval.” Rubenstein, *Newberg on Class Actions* (5th Ed.) §13.13 (2015) (*quoting* Manual for Complex Litigation, Second, §30.44); *see also In re Checking Account Overdraft Litigation*, 275 F.R.D. 654, 661 (S.D. Fla. 2011) (“Preliminary approval is appropriate where the proposed settlement is the result of the parties’ good faith negotiations, there are no obvious deficiencies and the settlement falls within the range of reason”). A settlement that is the result of arm’s-length negotiations by class counsel is presumed to be fair and reasonable. *See* 4 *Newberg on Class Actions* § 11:41 (4th ed.).

The proposed Settlement in this case bears all the hallmarks of both procedural and substantive fairness such as to warrant preliminary approval and notice to the Settlement Class. First, the Settlement Agreement was the product of extended, arm’s length negotiations and protracted mediation. The Parties participated in mediation twice before settlement was reached before an experienced mediator and former Illinois Court of Appeals Justice. The Honorable James R. Epstein (Ret.) has more than fifteen years of judicial experience and has overseen numerous class action settlements that have been granted Court approval. Resolution was only reached after lengthy negotiation and thorough mediation first with Judge Infante, and then with Justice Epstein.

Moreover, the settlement was reached only after lengthy and zealous adversarial litigation in multiple forums, which included motion practice and written and document discovery.. The parties are each represented by experienced counsel who were well-versed in similar litigation and who, by virtue of the intensive litigation to date and their experience, understand the risks of continued litigation and the benefits of the Settlement Agreement. Plaintiffs and all other class

members participate in the Settlement according to a single standard, objective formula which ensures that each class member is returned a fair share of their damages, particularly given the risks and delay of continued litigation and the risk that their individual claims may be compelled to arbitration. In short, there is nothing about the proposed Settlement that remotely suggests that it might be the product of collusion.

Second, the Settlement Agreement provides for a \$2,575,000 settlement fund from which Settlement Class claimants will receive cash payments. Plaintiffs' estimate, from review of the financial data provided and context of similar litigation, is that there is conservatively \$8,000,000 in potential damages. US Foods contends that there are no damages at all; that the fees are lawful, proper and not excessive in any amount. Thus, Plaintiffs expect that the Settlement is expected to represent more than 32% of the total damages possible. The relief afforded by the Settlement is clearly within the range of what is reasonable and fair.

This is particularly true when these immediate and certain benefits are compared to the obstacles that remain to a successful resolution of the litigation. US foods has always vigorously denied liability—including the existence of any damages at all—and that Plaintiffs' claims can be certified in an adversarial context. US Foods contends that Plaintiffs' claims are subject to arbitration agreements under which Plaintiffs' claims can be compelled to individual arbitration. No Court has yet ruled on any dispositive motion or motion to compel arbitration, and US Foods remains confident of its chances of success. Were Plaintiffs able to avoid having their claims compelled to individual arbitration, to survive pleading challenges, to pass summary judgment and obtain class certification, including any appellate issues, final resolution of Plaintiffs' claims by court trial would likely still take years. Added to the risks and delay of resolution aside from settlement must be the risk that the award by a court or jury is closer to US Foods' damages analysis

than to Plaintiffs' damages analysis. Continued litigation through trial and appeal would also invariably reduce the ultimate relief to the class through the costs of that litigation, including significant expert fees.

The proposed Settlement is the product of hard-fought negotiation and represents valuable relief to the Settlement Class. Plaintiffs respectfully submit that preliminary approval is appropriate.

#### **IV. The Proposed Notice Is The Best Notice Practicable.**

The parties have agreed to a comprehensive notice plan that satisfies the requirements of O.C.G.A. § 9-11-23 and due process. Section 23(e) provides that, in connection with settlement, "notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs." Section 23(c)(2) provides that, in the case of a class maintained under Section 23(b)(3), such as this,

the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (A) the court will exclude the member from the class if the member so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if the member desires, enter an appearance through counsel.

O.C.G.A. § 9-11-23(c)(2).

Plaintiffs respectfully request that the Court approve the notice plan agreed to by the Parties and set forth in the Settlement Agreement. This notice plan provides for direct notice to class members by sending the Short Form Notice (Exhibit A to the Settlement Agreement) through email and direct mail (for class members where email addresses are not maintained in US Foods' records). The Short Form Notice contains all the information required by Rule 23(c)(2)(B) and is

clear and easily understood. US Foods has retained KCC, a well-respected and experienced national administrator that has successfully overseen the administration of similar class settlements on a nationwide basis, to carry out the notice and administration of this settlement.

The settlement administrator will also establish and maintain a class settlement website. The website will contain all important settlement documents, including the Settlement Agreement, a long form notice (Exhibit B to the Settlement Agreement) that contains all the information in the short form notice as well as additional information regarding the settlement and class members' rights, allows class members to submit claims online, and provides no-cost avenues for class members to seek additional information or answers to questions not addressed on the website or in the notices.

In sum, the notice plan and notice documents contemplated by the Settlement Agreement go beyond the notice required by O.C.G.A. § 9-11-23(c) and ensure that adequate notice is provided to the Settlement Class of this proposed settlement.

### **CONCLUSION**

For the reasons set out above, Plaintiffs respectfully request that the Court grant this Motion and enter the unopposed Preliminary Approval Order attached as Exhibit B, which will conditionally certify the Settlement Class, grant preliminary approval of the Settlement, and authorize Notice to the Settlement Class.

Dated: September 7, 2018.

Respectfully submitted,

/s/ Oscar M. Price, IV

Oscar M. Price, IV (*pro hac vice*)

Nicholas W. Armstrong (*pro hac vice*)

**PRICE ARMSTRONG, LLC**

2421 2nd Avenue North, Suite 1

Birmingham, AL 35203

Phone: 205.208.9588

Fax: 205.208.9598

oscar@pricearmstrong.com

nick@pricearmstrong.com

/s/ Patrick S Flynn

Patrick S. Flynn (Ga. Bar No 004765)

**FLYNN & PHILLIPS**

517 West Broad Ave.

Albany, GA 31701

Phone: 229.518.4050

Fax: 229.446.4884

pflynn@fpplaw.com

*Attorneys for Plaintiff*



**CERTIFICATE OF SERVICE**

I certify that a true and exact copy of *Unopposed Motion for Preliminary Approval of Settlement and Conditional Class Certification* has been served upon Defendant's counsel listed below via eFile Peach Court and electronic mail:

Darren K. Cottriel  
**JONES DAY**  
1420 Peachtree Street, Suite 800  
Atlanta, Georgia 30309  
[dcottriel@jonesday.com](mailto:dcottriel@jonesday.com)

This 7 day of September, 2018.

**FLYNN & PHILLIPS, LLC**

By: /s/Patrick S. Flynn  
Georgia Bar No.: 004765  
517 West Broad Avenue  
P.O. Box 7 (31702)  
Albany, Georgia 31701  
Telephone: (229)446-4886  
Facsimile: (229)446-4884  
[Pflynn@fpplaw.com](mailto:Pflynn@fpplaw.com)

*Attorney for Plaintiff*

**IN THE SUPERIOR COURT OF DOUGHERTY COUNTY, GEORGIA**

**BS STEAKS LLC; PAPA JOE'S OYSTER BAR  
& GRILL, INC.; SNELLGROVE'S  
RESTAURANT, INC.; SOUND WAVES OF  
SURF CITY, INC.; VLMOONEY, INC. D/B/A  
KRIS & SAM'S; and LIT'L PEPPER  
GOURMET, INC.**

Plaintiffs,

v.

**US FOODS, INC.**

Defendant.

Case No.: 18 CV 968-1

CLASS ACTION

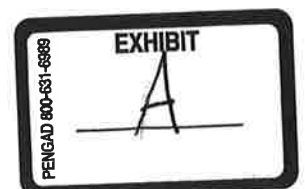
**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (the "Settlement Agreement") is entered into by and between Defendant US Foods, Inc., on behalf of the "Defendant" defined below, and Plaintiffs BS Steaks LLC, Papa Joes Oyster Bar & Grill, Inc., Snellgrove's Restaurant, Inc., Sound Waves Of Surf City, Inc., VLMooney, Inc. d/b/a Kris & Sam's, and Lit'l Pepper Gourmet, Inc. (collectively, "Plaintiffs"), Plaintiffs agreeing on behalf of themselves and the Settlement Class defined herein, subject to approval by the Court. Plaintiffs and Defendant are hereafter sometimes collectively referred to as the "Parties" and individually as a "Party".

**RECITALS**

WHEREAS, the above-captioned consolidated lawsuit is comprised of the Parties and claims alleged or that could have been alleged regarding the Fees (as defined herein) in multiple separate putative class action lawsuits (collectively, the "Litigation").

WHEREAS, Plaintiffs have each asserted contract, tort, statutory, equitable and/or injunctive claims, on their own behalf and on behalf of putative classes of persons similarly



situated, seeking monetary damages and other relief on behalf of classes of persons and entities who paid “fuel surcharges” to Defendant or its affiliates and subsidiaries.

WHEREAS, Defendant denies all allegations of wrongful conduct and damages, denies liability to Plaintiffs or the putative classes, asserts that its conduct and practices are lawful and proper, and asserts numerous procedural and substantive defenses to Plaintiffs’ claims (including that Plaintiffs are required to adjudicate their claims through individual arbitration), and Defendant further denies that this Litigation satisfies the requirements to be tried as a class action under the state and federal rules and requirements for class certification applicable to each lawsuit brought by Plaintiffs.

WHEREAS, the Parties have engaged in extensive arm’s length negotiations concerning the claims alleged, the defenses presented, and the potential risk and uncertain outcomes of continued litigation for all Parties, as part of a protracted mediation process.

WHEREAS, Plaintiffs have conducted a thorough investigation of the facts and claims alleged herein through extensive litigation and discovery and as part of the mediation process and, having taken into account the sharply contested issues involved in this litigation, the risks and costs to the Settlement Class of continued litigation and attendant appeals, the possibility that Plaintiffs’ claims may be compelled to arbitration on an individual basis, the possibility that a contested class might not be certified, and if certified, the possibility that such certification would be reversed on appeal, the risk that Plaintiffs and the proposed class may recover no damages or substantially less damages than the amounts sought in the Litigation, other uncertain outcomes of continued litigation and attendant appeals, and the substantial relief to be provided to the Settlement Class pursuant to this Settlement Agreement, Plaintiffs believe a settlement on the terms set forth in this

Settlement Agreement is fair, equitable, and in the best interests of the Settlement Class, and have thus agreed to settle this Litigation on the terms set forth herein.

WHEREAS, Defendant, though expressly disclaiming any liability or wrongful conduct, but nonetheless recognizing the expense and uncertainty of continued litigation and appeals, and the attendant disruption to business operations and distraction of further litigation, desires to resolve this Litigation to avoid further expense, to eliminate risk, and to resolve all claims brought by Plaintiffs on their own behalf and on behalf of the Settlement Class on the terms set forth in this Settlement Agreement and has thus agreed to settle this Litigation.

WHEREAS, Plaintiffs and Defendant have agreed to settle and fully and finally resolve their disagreements on a nationwide class basis for the total sum of \$2,575,000 and as consistent with the terms set forth herein, which shall include a full and complete release of claims against Defendant.

### **AGREEMENT**

NOW THEREFORE, intending to be legally bound and acknowledging the sufficiency of the consideration provided herein, the Parties agree, subject to the approval of the Court and the provisions contained herein, that this Litigation and Plaintiffs' Claims against Defendant, as herein defined, are fully and finally settled, resolved, discharged and released, and that the Litigation shall be dismissed with prejudice on the terms and conditions set forth herein.

### **DEFINITIONS**

As used in this Settlement Agreement, the following terms shall have the following meanings:

(a) "Administration Expenses" shall mean the costs of administering this Settlement Agreement from the date of execution hereof through the completion of distribution of funds to

the Settlement Class, including all amounts paid the Settlement Administrator, all costs of notice to the Settlement Class, all costs associated with creating, administering, maintaining, and hosting the settlement website, and all costs of allocation and distribution of funds.

(b) "Class Counsel" shall mean the law firm of Price Armstrong LLC and the law firm of Flynn & Phillips, LLC, and the attorneys who are members of that law firm.

(c) "Class Period" shall mean from August 31, 2013 through and including the Friday before notice is provided to the Settlement Class as provided herein.

(d) "Court" shall mean the Superior Court of Dougherty County, Georgia.

(e) "Defendant" means US Foods, Inc., its parent companies, operating subsidiaries, divisions and affiliated entities, and each and all of their respective predecessors, successors, direct and indirect parents and subsidiaries, acquired companies, divisions, related or affiliated entities, and any entity in which any of them have a controlling interest, and for each and every above referenced entity, its respective past, present, and future shareholders, directors, managers, officers, employees, agents, attorneys, insurers, co-insurers, reinsurers, and each and all of their respective predecessors, assigns and legal representatives.

(f) "Fees" shall mean "fuel surcharges" charged by Defendant (including any entity included within the definition of "Defendant" as set forth hereinabove) and any substantively similar charges (regardless of term used when charged) which are at issue or could have been at issue in the operative complaints in the Litigation.

(g) "Final Approval" shall mean the later date on which (1) the Court enters the Final Order, (2) the Court enters final approval of attorneys' fees and expenses, and (3) all reconsideration, review and appellate rights with respect to the Final Order and this Settlement

Agreement (should any third party have standing to assert such rights) have expired or have been fully exhausted, culminating in affirmation of this Settlement as proposed by the Parties.

(h) "Final Order" shall mean the final order and judgment of the Court approving this Settlement Agreement and the Settlement provided herein, which shall, among other things, dismiss with prejudice this Litigation and release all claims brought therein by Plaintiffs and the Settlement Class.

(i) "Litigation" shall refer to (i) *BS Steaks LLC, et al. v. US Foods Inc.*, Superior Court of Dougherty County, Georgia, Case No. 18 CV 968-1 (SUCV2018000968); (ii) *VL Mooney, Inc. d/b/a Kris & Sam's v. US Foods, Inc.*, Circuit Court of Pulaski County, Arkansas, Case No. 60CV-17-7219; (iii) *Sound Waves of Surf City, Inc. v. US Foods, Inc.*, General Court of Justice, Superior Court Division of Onslow County, North Carolina, Case No. 18-cvs-1127; (iv) *Lit'l Pepper Gourmet, Inc. v. US Foods, Inc.*, United States District Court for the Southern District of California, Case No. 3:17-cv-02080; and (v) *Papa Joe's Oyster Bar & Grill, Inc. and Snellgrove's Restaurant, Inc. v. US Foods, Inc.*, Circuit Court of the Second Judicial Circuit in and for Franklin County, Florida, Case No. 192018CA000137CAAXMX.

(j) "Parties" shall mean Plaintiffs and Defendant, including each and all of their respective predecessors, successors, direct and indirect parents and subsidiaries, acquired companies, divisions, related and affiliated entities, and any entity in which any of them have a controlling interest, and for each and every above referenced entity, its respective past, present, and future shareholders, directors, managers, officers, employees, agents, attorneys, insurers, co-insurers, reinsurers, and each and all of its respective predecessors, assigns and legal representatives.

(k) "Plaintiffs' Claims" shall mean any and all claims, actions, causes of action, demands, rights, and suits of whatever kind or nature whatsoever, including without limitation any and all

damages, debts, losses, costs, expenses, penalties, attorneys' fees, expert fees and interest, whether known or unknown, suspected or unsuspected, assigned or unassigned, asserted or unasserted, whether as individual claims or claims asserted on a class basis or on behalf of the general public, Plaintiffs or any member of the Settlement Class brought or could have brought against Defendant in the Litigation or in any similar case in a court of competent jurisdiction, arising out of, based upon, or related to any of the Fees, including, but not limited to claims (whether based in contract, tort, common law, statute, or any other legal or equitable theory), regarding the negotiation, implementation, disclosure, advertisement, maintenance, calculation, assessment, modification, presentation, representation, suppression, charging, collection or payment of the Fees, or which in any way otherwise regard or relate to the Fees.

(l) "Plaintiffs' Counsel" shall mean the law firm of Price Armstrong LLC, Flynn & Phillips, LLC, Brooks, LeBoeuf, Foster & Gwartney, PA, Rainwater, Holt & Sexton, PA, Davidson S. Meyers, and D'Eglidio, Licari, Townsend & Shah APC, and the attorneys who are members of those law firms.

(m) "Preliminary Approval Order" shall mean the order to be entered by the Court granting preliminary approval of this Settlement Agreement, as described and defined later in this Settlement Agreement.

(n) "Released Claims" shall mean any and all claims, actions, causes of action, demands, rights, and suits of whatever kind or nature whatsoever, including but not limited to Plaintiffs' Claims as defined above, claims for damages, equitable, legal and administrative relief, interests, penalties, fees, costs, debts, demands, losses, liabilities or rights, whether based on federal, state, or local laws, statutes or ordinances, regulations, contracts, common law or any other source, known or unknown, suspected or unsuspected, whether or not concealed or hidden, assigned or

unassigned, asserted or unasserted, whether as individual claims or claims asserted on a class basis or on behalf of the general public, that Plaintiffs or any member of the Settlement Class has, had or have against Defendant regarding the Fees, including without limitation, claims for breach of contract, claims for injunctive or declaratory relief, and claims for violation of any state or federal statutes, rules, or regulations, including without limitation any common law or statutory claims for unlawful, unconscionable, unfair, deceptive, or fraudulent business practices or false advertising arising out of, based upon, or related to the facts, transactions, events, occurrences, acts, practices, or omissions that were alleged or could have been alleged in the Litigation or in any similar case in a court of competent jurisdiction, including without limitation, those arising from the negotiation, implementation, disclosure, advertisement, maintenance, calculation, assessment, modification, presentation, representation, suppression, charging collection or payment of the Fees, or which in any way otherwise regard or relate to the Fees.

(o) "Settlement Administrator" shall mean a class action settlement administration company to be chosen and retained by Plaintiffs with the consent of Defendant.

(p) "Settlement Class" shall mean all customers in the United States which paid Defendant one or more of the Fees at any time within the Class Period. Excluded from the Settlement Class are: (1) any individual or entity currently in bankruptcy, (2) any individual or entity whose obligations were discharged in bankruptcy, and (3) any judicial officer who has presided over any of the related litigation. At times, a member of the Settlement Class may be referred to as "Class Member." A Settlement Class Member shall include any principal, affiliate, legal predecessor or successor, trustee or any person or entity claiming by or through the Settlement Class Member.

(q) "Settlement Fund" shall mean an all-inclusive fund of \$2,575,000 established by Defendant used to (1) provide monetary compensation to all members of the Settlement Class that



submit a valid and timely claim and which do not file a valid and timely opt-out notification (which shall be distributed by the Settlement Administrator in accordance with the terms set out herein), and (2) pay awarded attorneys' fees, litigation expenses, class representative incentive awards, and all Administration Expenses associated with the Settlement. For the avoidance of doubt, Defendant shall not be responsible for nor bear any other payment, fees, costs, charges or expenses incurred by Plaintiffs, Plaintiffs' Counsel or Class Counsel.

(s) "Settlement Notice" shall mean the notice of proposed class action settlement provided for herein.

(t) "Notice Database" shall mean the database that the Settlement Administrator will create from the Settlement Class Member Information List provided by Defendant to the Claims Administrator that is reasonably necessary to administer the settlement and to distribute settlement funds. The Notice Database and its contents shall be kept in strict confidence, shall be accessed and used only by the Settlement Administrator for purposes of carrying out the Settlement Administrator's duties under this Settlement, and shall not be used for any other business, litigation or other purpose of any kind or nature whatsoever.

#### **CERTIFICATION OF SETTLEMENT CLASS**

The Parties entered this Settlement Agreement solely for the purposes of fully and finally resolving on a nationwide class basis the Plaintiffs' Claims, Released Claims and the Litigation along the lines and terms set forth herein. Nothing in this Settlement Agreement shall be construed as an admission by Defendant of any wrongdoing as asserted in the Litigation or that this Litigation or any similar case is amenable to court litigation or class certification for any purpose other than this settlement or that any of the Plaintiffs' Claims, Released Claims or the Litigation are meritorious in any respect.

The Parties agree, for the sole purpose of effecting a settlement, and upon the express terms and conditions set out in this Settlement Agreement, Plaintiffs shall seek, and Defendant will not oppose, certification of the Settlement Class defined above. Plaintiffs, on behalf of themselves and the Settlement Class, acknowledge and agree that if this Settlement Agreement is not fully and finally approved by the Court without material change, the settlement is voidable at the election of either Party and, if voided, that Defendant has not waived and has expressly reserved the right to challenge the certification of the Settlement Class, to seek to compel individual arbitration of Plaintiffs' claims and complaints in the Litigation, and to challenge the substantive merits of Plaintiffs' Claims in the Litigation, or in any similar case, and to object to and appeal any order entered in any of the cases that comprise the consolidated Litigation or any similar case. Nothing in this Settlement Agreement may be used in any judicial or administrative proceeding regarding the propriety of (i) litigating or adjudicating Plaintiffs' Claims in court or (ii) class certification outside of the context of settlement. The Court's certification of the Settlement Class is not and shall not be deemed to be the adjudication of any fact or issue for any purpose other than the accomplishment of the Settlement.

If this Settlement is not approved by the Court for any reason, or is modified by the Court (including change to the release provided herein), or is otherwise terminated, then (1) this Settlement Agreement shall have no legal or persuasive effects and shall immediately become null and void, and the Parties expressly agree to do whatever is necessary legally and procedurally to return all cases that comprise this Litigation or any similar case to their pre-settlement status, including filing all necessary joint motions; (2) this Settlement and all aspects of it, including but not limited to, all negotiations, terms and documents created as a result of negotiations or the proposed settlement may not be used for any purpose in this or any other legal action unless the

subject of that legal action is the settlement of the Litigation or any similar case; (3) the Litigation, including the actions consolidated therein and any similar case, shall revert to the same procedural and legal status existing immediately prior to the Parties entering into this Settlement Agreement, including that Plaintiffs shall immediately dismiss the consolidated complaint in the Litigation within thirty (30) days; (4) the Settlement Class shall be automatically decertified, and the Parties shall take whatever action is appropriate so that the Parties can be restored to their pre-settlement positions; and (5) the Settlement Fund, less any administrative costs paid to the Settlement Administrator at that time, shall be returned to Defendant within fourteen (14) calendar days.

#### **STAY OF PROCEEDINGS IN THE LITIGATION**

Within seven (7) days after execution of this Settlement Agreement, the Parties will jointly move and request that the applicable Courts before which the Litigation is pending stay and suspend all discovery and other proceedings in the Litigation pending Final Approval of this Settlement Agreement. It is agreed by all Parties that if this Settlement Agreement shall not receive Final Approval or shall otherwise fail in consummation, nothing whatsoever related to the Settlement shall in any way prejudice any Parties' ability to prosecute or defend any aspect of the pending Litigation or any similar litigation as if this Settlement Agreement had never been entered into.

#### **PRESENTATION OF SETTLEMENT TO THE COURT**

Within fourteen (14) calendar days following the execution of this Settlement Agreement, Plaintiffs shall submit to the Court a Motion for Preliminary Approval and a proposed Preliminary Approval Order, which Defendant shall have an opportunity to review and revise, and which Defendant shall not ultimately oppose once agreed to, which (1) incorporates the terms of this Settlement Agreement, (2) approves and appoints Class Counsel, (3) grants preliminary approval

of this Settlement Agreement as fair, reasonable, adequate, and in the best interests of the Plaintiffs and Settlement Class under Rule 23 of the Georgia Civil Practice Act, (4) grants preliminary certification of the Settlement Class solely for the purposes of effectuating the Settlement contemplated by this Settlement Agreement, and subject to the terms of this Settlement Agreement, (5) enjoins any further actions relating to the subject matter of this Settlement Agreement, (6) approves and directs notice to be given to members of the Settlement Class as set out herein, (7) sets procedures for objections and opt-outs, and (8) sets a hearing for Final Approval of this Settlement Agreement (the "Preliminary Approval Order").

As provided herein, this Settlement Agreement and the Preliminary Approval Order are for settlement purposes only, and neither the fact of, nor any provision contained in this Settlement Agreement or the Preliminary Approval Order, nor any action taken thereunder, shall constitute or be construed as an admission of: (a) the validity of any claim or allegation by Plaintiffs, or of any defense asserted by Defendant, in the Litigation; (b) any wrongdoing, fault, violation of law or liability on the part of Defendant; (c) the propriety of court litigation or class treatment of Plaintiffs' claims or complaints in the Litigation for any purpose other than for purposes of settlement and this Settlement Agreement. If the Court fails to grant the Preliminary Approval Order or the Settlement Agreement otherwise fails to be consummated, then Defendant shall retain all rights it had immediately preceding the execution of this Settlement Agreement to oppose and object to the maintenance of the Litigation in court or as a class action for any purpose.

#### **SETTLEMENT NOTICE TO CLASS**

The Settlement Administrator shall provide notice to the Settlement Class as soon as is practical after entry of the Preliminary Approval Order, but no later than forty-five (45) calendar

days following entry of the Preliminary Approval Order unless otherwise necessary and mutually agreed to by the Parties. Such notice shall substantially take the following forms, the contents and form of which still remain subject to Defendant's and Plaintiffs' final approval before being utilized:

- a. A Short-Form Notice (in a form substantially similar to that attached as Exhibit A, subject to final approval of the Parties) will be emailed to each Class Member for whom Defendant maintains an email address.
- b. A Short-Form Notice (in a form substantially similar to that attached as Exhibit A, subject to final approval of the Parties) will be sent by first class mail to each Class Member at the customer's billing address for whom Defendant does not maintain an email address.
- c. A website will be created which will host all important settlement documents and information, including the Settlement Agreement, a Long Form Notice (in a form substantially similar to that in Exhibit B, subject to final approval of the Parties), and a copy of the Court's Orders regarding the Settlement. The website shall be approved by Class Counsel and the Defendant prior to publication and prior to any post-publication changes.

#### **OBLIGATIONS OF THE SETTLEMENT ADMINISTRATOR**

In addition to any tasks and responsibilities ordered by the Court, the Settlement Administrator shall be authorized to and shall in fact undertake the following tasks to help implement the terms of the Settlement Agreement, including: (1) mailing or arranging for the emailing and mailing of the Settlement Notice to the Settlement Class Members; (2) handling returned email or mail not delivered to Settlement Class Members; (3) attempting to obtain updated

address information for Settlement Class Members by all reasonable means, including running change of address, skip traces or other procedures based on the information in the Settlement Class Member Information List provided by Defendant to the Settlement Administrator, and any notices returned without a forwarding address or an expired forwarding address; (4) making any additional mailings required under the terms of this Settlement Agreement; (5) answering written inquiries from Settlement Class Members and/or forwarding such inquiries to the Parties' counsel or their designee; (6) receiving and maintaining on behalf of the Court and the Parties any Settlement Class Member correspondence regarding requests for exclusion to the Settlement; (7) establishing and maintaining the settlement website as described above; (8) receiving and processing payment requests and distributing payments to Settlement Class Members as provided herein; and (10) otherwise assisting with administration of the Settlement.

The contract with the Settlement Administrator shall obligate the Settlement Administrator, among other duties, to abide by the following standards and requirements:

- a. Accurately and neutrally describe the provisions of this Agreement in communications with Class Members; and
- b. Provide prompt, accurate and objective responses to inquiries from Class Counsel or their designee, Defendant and/or Defendant's Counsel.

The Settlement Administrator shall execute a Confidentiality Agreement in a form satisfactory to Defendant, after which Defendant will provide the Settlement Administrator with the Settlement Class Member Information List. Using the Settlement Class Member Information List, the Settlement Administrator shall create the Notice Database. The Settlement Class Member Information List and Notice Database and its contents shall be kept in strict confidence, shall be accessed and used only by the Settlement Administrator for purposes of carrying out the Settlement

Administrator's duties under this Settlement, and shall not be used for any other business, litigation or other purpose of any kind or nature whatsoever. The Parties agree that the Settlement Class Member Information List and Notice Database (or any portion thereof) are highly confidential and proprietary to Defendant, and shall not be disclosed to any other person or entity without Defendant's prior written consent. Once the administration of the Settlement is completed, the Settlement Administrator shall destroy the Settlement Class Member Information List and Notice Database, upon a date to be agreed upon by the Parties and Settlement Administrator.

#### **PROCEDURE FOR OPTING-OUT OF THE SETTLEMENT CLASS**

Any member of the Settlement Class may request to be excluded from the Settlement Class. A member of the Settlement Class who does not wish to participate in this Settlement, and instead wishes to relinquish their rights to benefits under the Settlement Agreement, must write to the Settlement Administrator, Class Counsel, and Defendant's Counsel stating an intention to "opt out" of the class (hereafter "Request for Exclusion"). The Request for Exclusion must be in writing and personally signed by the Settlement Class Member requesting exclusion from the Settlement and must contain the following information: (i) the Settlement Class Member's name, current address and telephone number; and (ii) a statement that indicates the desire to be excluded from the Settlement Class. The Request for Exclusion must be received by the Settlement Administrator, Class Counsel, and Defendant's Counsel not later than twenty-one (21) calendar days prior to the date set for the Final Fairness Hearing.

- (a) Any attempt to opt out by notice to the Clerk of the Court, the Court, or any person other than the Settlement Administrator, Class Counsel, and Counsel for Defendant shall be of no effect.

- (b) Any Request for Exclusion which is not received by the Settlement Administrator, Class Counsel, and Counsel for Defendant within the deadlines set forth in this Settlement Agreement shall be of no effect.
- (c) Any objector who timely submits an objection as set forth below, but does not provide a Request For Exclusion shall not be considered to have complied with the terms of the opt-out procedure and shall be bound by the Settlement Agreement if approved by the Court.
- (d) Any Settlement Class Member who does not make a timely and valid Request for Exclusion shall be bound by all subsequent proceedings, orders, this Settlement Agreement and the Final Approval Order, even if he, she or it has pending, or subsequently initiates, litigation, arbitration or any other proceeding against Defendant relating to the Released Claims.
- (e) At their sole and unfettered discretion, Class Counsel and Defendant's Counsel may jointly agree to waive failure to comply with the above requirements.
- (f) Any Settlement Class Member who timely and validly requests to be excluded from the Settlement Class shall not (i) be bound by any orders or judgments entered in the Litigation relating to the Settlement Agreement; (ii) be entitled to an award from the Settlement Fund, or be affected by, the Agreement; (iii) gain any rights or obligations by virtue of the Settlement Agreement; or (iv) be entitled to object to any aspect of the Settlement Agreement.

#### **PROCEDURE FOR PRESENTING OBJECTIONS**

Any Settlement Class Member shall have the right to appear and show cause, if they have any, why the proposed settlement should not be approved by the Court. Any Settlement Class



Member may also object to the allowance or disallowance of claims of Class Members, the implementation or enforcement of the Settlement Agreement, the binding effect of the Settlement Agreement upon the claims of any Class Member, the allowance of attorneys' fees and expenses requested, or any other aspect of the proposed Settlement or Settlement Agreement. Any objection must be in writing and filed with the Court, with a copy delivered to Class Counsel and Defendant's Counsel as set out below, no later than twenty-one (21) calendar days prior to the Final Fairness Hearing. All written objections must be delivered to the following, or at such other address as shall be hereafter designated by the Court Clerk, Class Counsel, and/or Defendant's Counsel:

Clerk of the Court

Evonne Mull  
Clerk of Dougherty County Superior Court  
222 Pine Avenue  
Albany, Georgia 31701

Class Counsel

Oscar M. Price, IV  
ATTN: US Foods Settlement Objection  
Price & Armstrong, LLC  
2226 1st Ave S, Suite 1  
Birmingham, Alabama 35233

Defendant's Counsel

Darren K. Cottriel  
ATTN: US Foods Settlement Objection  
JONES DAY  
3161 Michelson Drive, Suite 800  
Irvine, California 92612-4408

An objection to the Settlement Agreement shall be signed by the objector; shall clearly state a desire to object to the Settlement Agreement; shall reference the above case name and case number; and shall include the following information: (a) the objecting party's name, signature, title, home and business addresses, home and business telephone numbers, and a copy of the objecting party's contract(s) with Defendant and the date the objecting party entered into a contract with Defendant (or other information sufficient to identify the class member's contract); (b) a

notice of intention to appear, either in person or through an attorney, with the name, address, and telephone number of the attorney, if any, who will appear; (c) certification that the objecting party is a member of the Settlement Class; (d) a statement of each objection asserted; (e) a detailed description of the basis and facts underlying and supporting each objection; (f) a detailed description of the legal authorities, if any, underlying and supporting each objection; (g) copies of exhibits and/or affidavits, if any, the objecting party may offer during the hearing; (h) a list of all witnesses, if any, the objecting party may call to testify at the hearing, along with a summary of each witness's anticipated testimony; and (i) the signature, full name, firm name, and business address of all attorneys who have any financial interest in the objection or who represent (or have represented) the objecting party in this or a related matter.

No objector shall be heard and no papers, briefs, or pleadings submitted by any such Class Member shall be received and considered by the Court unless the Court, Class Counsel, and Defendant's Counsel, receive the objector's written and signed objection at least twenty-one (21) calendar days prior to the Final Fairness Hearing. Any member of the Settlement Class who fails to object in the manner described above, shall be deemed to have waived his, her, or its objections and will be forever barred from making any such objections in the Litigation, in any other action or proceeding, or from taking an appeal of the Final Approval Order in this Litigation. Members of the Settlement Class who wish to object may, but are not required to, obtain counsel at their own expense to represent them in connection with any such objection and are allowed but not required, to appear in person before the Court at the Final Fairness Hearing.

Plaintiff, Class Counsel and Defendant and its counsel shall have the right and opportunity to respond in writing to any objections to the Settlement prior the Final Fairness Hearing, as well as to respond to the objections at the Final Fairness Hearing.

**SETTLEMENT FUND AND  
ADMINISTRATION OF SETTLEMENT**

Within fourteen (14) days of the Preliminary Approval Order, Defendant shall deposit into a trust account maintained by the Settlement Administrator a portion of the Settlement Fund totaling \$200,000. Within seven (7) days of Final Approval, Defendant shall deposit into the trust account the remaining portion of the Settlement Fund (\$2,375,000), resulting in total deposits of \$2,575,000. Defendant shall have no further funding obligation other than the funding of the Settlement Fund. No disbursements shall be paid from the trust account except as agreed in writing by the Parties herein and approved by the Court. This Settlement Fund shall cover all payments to be made as part of this Settlement, whether to the Plaintiffs, to the Settlement Class, to Class Counsel, to Settlement Administrator, or as otherwise necessitated to finalize the Settlement, including all Administration Costs.

To be eligible to receive a monetary payment as part of this settlement, a member of the Settlement Class must submit a properly completed claim form with the Settlement Administrator (in a form substantially similar to Exhibit C). Any member of the Settlement Class that desires to be eligible for a monetary payment as part of this settlement, must only complete one claim form regardless of how many physical locations exist for such member of the Settlement Class.

Defendant will provide the Settlement Administrator with the Settlement Class Information List for the Settlement Administrator to create the Notice Database. Using the Notice Database, the Settlement Administrator shall award and distribute to each member of the Settlement Class which submits a valid and timely claim form its pro-rata share of the remaining proceeds of the Settlement Fund (after deductions and payments for attorneys' fees, expenses reimbursed to Class Counsel, Administration Expenses, and incentive awards to Plaintiffs) based upon the total amount of Fees charged to each during the Class Period. Provided, however, that in the event the claimed

awards exceed the amount of the then available net Settlement Fund, the Settlement Administrator shall reduce the amount of each claim, pro rata, before making the distributions.

All claims forms from Class Members must be received by the Settlement Administrator on or before seventy-five (75) calendar days following the Final Approval Order. Such claims may be submitted via mail or electronically through the settlement website established by the Settlement Administrator. The Settlement Administrator shall provide to Counsel for Defendant and to Class Counsel the identity and claim amount of all claimants whose claims it believes to be valid prior to distributing compensation. The Administrator shall distribute the settlement compensation to Class Members who submitted valid and timely claims as determined by the Settlement Administrator as set forth herein within one hundred twenty (120) calendar days after Final Approval. The Settlement Administrator shall have additional time and shall take such steps as are reasonably necessary to complete distribution of, or redistribute, any money not paid as a result of returned and/or uncashed checks in accordance with the payment structure set forth herein, and the Parties agree that additional administration costs, if any, as a result of returned and/or uncashed checks will be first satisfied from such money.

If a Class Member or potential Class Member (referred to as a "Claimant" for purposes of this paragraph) disputes the amount of the refund that Claimant receives, the type of relief for which that Claimant is eligible, or the determination that such Claimant is not a member of the Class (and therefore not eligible for any relief), the Claimant must first submit sworn documentation showing actual proof of payment of Fees within one-hundred fifty (150) calendar days of Final Approval. The Settlement Administrator will forward the information that is timely received to Defendant for its response and consideration. If Defendant does not agree with the Claimant's position, Defendant will provide the Settlement Administrator an explanation and any

documentation supporting its disagreement. The Settlement Administrator will forward the Claimant's materials and Defendant's explanation and documents to Class Counsel. The Settlement Administrator, the Defendant and Class Counsel will confer before the Settlement Administrator makes the decision, which shall be final and binding on Claimant and all Parties.

#### **COMPLETE RELEASE AND DISMISSAL OF CLAIMS**

This Settlement Agreement is subject to and conditioned upon the Court's issuance of the Final Order and the occurrence of Final Approval. Plaintiffs, on behalf of themselves and the Settlement Class, by and through Class Counsel, shall do all things necessary under this Settlement Agreement to obtain the entry of a final judgment under Rule 54 of the Georgia Civil Practice Act consistent with the terms of this Settlement Agreement. Upon the occurrence of Final Approval, each and every Settlement Class Member shall be deemed to and does hereby release and forever discharge Defendant from any and all liability, obligation or responsibility for any and all Released Claims. Defendant shall have no further liability to any member of the Settlement Class arising out of or relating to Plaintiffs' Claims, as alleged in the operative Complaint in the Litigation, and/or Released Claims, it being acknowledged that Defendant is forever purchasing peace from the Settlement Class for all matters arising out of or relating to Plaintiffs' Claims as alleged, or which could have been alleged by any member of the Settlement Class regarding or relating to the Fees, and arising out of or relating to Released Claims, including but not limited to, any and all claims, whether known or unknown, assigned or unassigned, asserted or unasserted, whether as individual claims or claims asserted on a class basis or on behalf of the general public, Plaintiffs or any member of the Settlement Class brought or could have brought against Defendant arising out of, based upon or related to any of the Fees, including, but not limited to the Fees at issue or allegations asserted, or which could have been asserted in the putative class action lawsuits that

comprise the Litigation or in any other similar case of competent jurisdiction, and including without limitation, any and all claims at law or equity (whether based in contract, tort, common law, statute, or any other legal or equitable theory) involving the negotiation, implementation, disclosure, advertisement, maintenance, calculation, assessment, modification, presentation, representation, suppression, charging, collection or payment of the Fees, or which in any way otherwise regard or relate to the Fees. This release is to be construed as broadly as possible as to the matters released. Each and every Settlement Class Member shall be permanently barred and enjoined from initiating, asserting or prosecuting any of the Released Claims against Defendant.

With respect to any and all claims released herein, including without limitation Plaintiffs' Claims and the Released Claims, and upon the occurrence of Final Approval, each member of the Settlement Class who does not validly and timely opt-out of the Settlement shall be deemed to and does hereby expressly waive, relinquish and release, to the fullest extent permitted by law, any and all provisions, rights or benefits conferred by §1542 of the California Civil Code or by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable or equivalent to §1542 of the California Civil Code, with respect to the Released Claims, provided that reference to §1542 of the California Civil Code or similar statutes shall not be deemed to convert a specific release into a general release. Section 1542 of the California Civil Code provides:

**Section 1542. General Release—Claims Extinguished. A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

Each member of the Settlement Class may hereafter discover facts in addition to, other than or different from those which he, she or it knows or believes to be true with respect to the Released

Claims, but each member of the Settlement Class who does not validly and timely opt-out of the settlement hereby expressly, fully, finally and forever settles and releases any known or unknown, suspected or unsuspected, contingent or non-contingent claim that would otherwise fall within the definition of Released Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

As an express element and condition of this Settlement Agreement and the benefits conferred upon the Settlement Class, Plaintiffs, individually and on behalf of the Settlement Class, and with the express approval of the Court, shall settle, compromise, resolve, release, waive, discharge, and terminate any and all of the Plaintiffs' Claims and Released Claims and dismiss the same, with prejudice.

#### **INCENTIVE AWARD TO NAMED PLAINTIFFS**

Named Plaintiffs shall request the Court to approve an incentive award of up to \$15,000 each to BS Steaks LLC, Papa Joes Oyster Bar & Grill, Inc., Snellgrove's Restaurant, Inc., Sound Waves Of Surf City, Inc., VLMooney, Inc. d/b/a Kris & Sam's, and Lit'l Pepper Gourmet, Inc. Defendant does not oppose and will not appeal an incentive award of up to these amounts. Plaintiffs' agreement to the foregoing incentive awards did not occur until the substantive terms of the settlement, including the relief to the Settlement Class, had been negotiated and agreed upon during mediation. These incentive awards shall constitute sufficient consideration for named Plaintiffs, and are separate from any attorneys' fees. The amount of the incentive awards approved by the Court shall be deducted from the Settlement Fund as set out above and paid within fourteen (14) days of Final Approval.

The Parties agree and acknowledge that the Court's award of the incentive awards to Plaintiffs shall be separate from its determination of whether to approve the Settlement as set forth

in this Settlement Agreement. In the event the Court approves the Settlement, but declines to award the incentive awards to Plaintiffs or awards a lesser amount than what is requested, the Settlement will nevertheless be binding on the Parties. If the Court declines to approve the Settlement, no incentive awards shall be made or paid to Plaintiffs.

#### **DISMISSAL OF OTHER ACTIONS**

Within ten (10) calendar days of the occurrence of Final Approval, Plaintiffs shall do all things necessary to obtain dismissal with prejudice of the operative complaints in the other cases and proceedings that are part of the Litigation.

#### **ATTORNEYS' FEES AND COSTS**

Class Counsel will petition the Court for an award of attorneys' fees and expenses to be paid out of the Settlement Fund for all attorney services and expenses relating to the Litigation, including but not limited to, services rendered and to be rendered in connection with the Settlement Agreement or its implementation. The amount of attorneys' fees to be awarded to Class Counsel shall be determined by the Court, but Defendant shall not oppose or appeal any award up to 33 and 1/3% of the Settlement Fund (i.e. \$858,000). The amount of reimbursement of litigation expenses to Class Counsel shall be determined by the Court, but Defendants shall not oppose or appeal any reimbursement of litigation expenses up to \$100,000, to be paid out of the Settlement Fund. The amount of attorneys' fees and costs approved by the Court shall be deducted from the Settlement Fund as set out above and paid to Class Counsel within fourteen (14) days of Final Approval. Following Final Approval, Class Counsel may distribute attorneys' fees and expenses approved by the Court (including a portion of such fees and expenses to other counsel for Plaintiffs) as necessary. Class Counsel shall be solely responsible for allocating and distributing the attorneys' fees and expenses payment among Class counsel and Plaintiffs' counsel. Defendant shall have no



obligation, responsibility or involvement whatsoever in regards to the allocation and sharing of the single award and payment of attorneys' fees and expenses as between Class Counsel and Plaintiffs' Counsel. Defendant shall have no obligation for any fees, costs and expenses incurred by Class Counsel or Plaintiffs' counsel in responding to objections to the Settlement, if any, or any challenge to, review of, or appeal from the Final Order.

The Parties' discussion of Class Counsel's attorneys' fees and litigation expenses and Class Counsel's agreement to the foregoing attorney's fees and reimbursement of litigation expenses did not occur until the substantive terms of the Settlement, including the relief to the Settlement Class, had been negotiated and agreed upon during mediation. The Parties agree and acknowledge that the Court's award of attorneys' fees, costs and expenses to Class Counsel shall be separate from its determination of whether to approve the Settlement. In the event the Court approves the Settlement, but declines to award fees and costs to Class Counsel or awards a lesser amount of fees and costs than requested by Class Counsel, the Settlement will nevertheless be valid and binding on the Parties. If the Court declines to approve the Settlement and this Settlement Agreement, no award of fees, costs and expense shall be awarded or paid to Class Counsel.

#### **NO ADMISSION OF LIABILITY**

This Settlement Agreement and the Court Orders effecting this Settlement Agreement are not a concession or admission of wrongdoing or liability by any Party hereto and shall not be cited to, offered into evidence, received into evidence, deemed to be, or otherwise used or construed as an admission of any fault, omission, liability, or wrongdoing on the part of any Party hereto. Neither this Settlement Agreement, nor the fact of settlement, nor any settlement negotiations or discussions, nor the order or judgment to be entered approving this Settlement Agreement, nor any related document shall be deemed an admission, concession, presumption, or inference against any

Party to this Settlement Agreement. To the contrary, Plaintiffs, on behalf of themselves and the Settlement Class, by and through Class Counsel, acknowledge that legitimate disagreements exist with respect to their claims and Defendant contests and disputes the claims asserted in the Litigation, denies the allegations made by Plaintiff, and specifically disclaims and denies any liability or wrongdoing whatsoever, and that Defendant has entered into this Settlement Agreement for no purpose other than to avoid future inconvenience and distraction to its business, and potential protracted, costly litigation. This Settlement Agreement shall not in any way be referred to for any reason by any Plaintiff, any Settlement Class Member, Class Counsel, Plaintiffs' Counsel, Defendant or Defendant's counsel in the Litigation 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 Settlement Agreement.

This Settlement Agreement and all negotiations, correspondence and communications leading up to its execution shall be deemed to be within the protection of Federal Rule of Evidence 408, Georgia Code § 24-4-408, and any analogous state or federal rules or principles. Neither this Settlement Agreement nor any terms, conditions, contents or provisions hereof or exhibits hereto, nor any negotiations, correspondence or communications leading up to the execution of this Agreement, shall constitute a precedent or be admissible for any purpose in any proceeding; provided, however, that this Settlement Agreement shall be admissible to enforce any of its terms and conditions, to support or defend this Agreement in an appeal from an order granting or denying final approval, or to enforce or assert a claim or defense of *res judicata*, collateral estoppel, claim preclusion, issue preclusion, settlement release, merger and bar, or any similar claim or defense against Plaintiffs, the Settlement Class or any Settlement Class Member, or any third party.

### **OPTION TO NULLIFY**

At its sole and unfettered discretion, Defendant may terminate this Settlement and the Parties will return to their respective positions in the Litigation immediately prior to entering this Settlement Agreement, if (i) more than 5% of the members of the Settlement Class validly opt-out of the Settlement; provided that if Defendant wishes to withdraw and terminate pursuant to the terms of this provision, Defendant shall deliver to Class Counsel a written notice of the withdrawal and termination no later than five (5) business days after the deadline for receipt of opt-outs has expired under this Settlement.

The Parties and their respective counsel agree that they will not solicit, facilitate or assist in any way, Requests for Exclusion or Objections by putative or actual Settlement Class Members. The Parties recognize and acknowledge that they have an obligation to support the Settlement and seek the Court's approval of its terms.

### **FAILURE TO OBTAIN COURT APPROVAL**

If the Final Order with all material terms as jointly proposed by the Parties is not entered, or if this settlement is not finally approved and consummated in all material respects as provided in this Settlement Agreement, or if the Final Order is reversed on appeal, or if appealed the Final Order is not affirmed in all material respects, this Settlement Agreement shall be null and void for all purposes. In the event the Court certifies a class for settlement purposes that differs in any material way from the Settlement Class defined in this Settlement Agreement, or in the event that the Court modifies or enters an order of settlement at variance in any material way with the terms hereof, or in the event the Final Order is materially modified on appeal, then this Settlement Agreement shall be voidable for all purposes, at the sole and unfettered option of the Plaintiffs or Defendant. If the Plaintiffs or Defendant elect to exercise this right, such party must do so in

writing, with copies to all counsel of record and to the Court, within fourteen (14) days of such order, and any settlement class certified shall be immediately decertified. In the event the settlement class is decertified, this Settlement Agreement and any orders or notices, and any drafts, communications, and discussions regarding this settlement (written or oral) shall be ineffective and inadmissible in evidence for any purpose in the Litigation or any other lawsuit, and such Stipulation shall be deemed terminated unless otherwise agreed to in writing by all Parties hereto or their respective counsel. The Parties acknowledge this is a compromised settlement to resolve claims over which the Parties disagree and is not intended to be used for any other purpose, including without limitation any attempted use should the class be decertified or should this Settlement not be approved.

#### **GENERAL PROVISIONS**

(a) Entire Settlement Agreement: This Settlement Agreement, including all Exhibits hereto, constitutes the final and entire agreement between the Parties with respect to the subject matter hereof and shall supersede any previous agreements, representations, communications, and understandings among the Parties with respect to the subject matter of the Settlement Agreement. This Settlement Agreement may not be changed, modified or amended except in writing signed by all Parties hereto. The Parties contemplate that the Exhibits to the Settlement Agreement may be modified by subsequent agreement of the Parties' counsel, in writing, or by the Court.

(b) Governing Law: This Settlement Agreement shall be interpreted, construed, enforced, and administered in accordance with the laws of Georgia, without regard to conflict of laws rules. This Settlement Agreement shall be enforced solely in the Superior Court of Dougherty County, Georgia. Defendant, named Plaintiffs and all members of the Settlement Class waive any objection that each such party may now have or hereafter have to the venue of such suit, action, or

proceeding and irrevocably consent to the jurisdiction of this Court in any such suit, action or proceeding to enforce the terms of this Settlement Agreement, and agree to accept and acknowledge service of any and all process which may be served in any such suit, action or proceeding to enforce the terms of this Settlement Agreement, except as otherwise set forth herein.

(c) Reservation of Jurisdiction: Notwithstanding the dismissal of this action and entry of final judgment, the Court shall retain jurisdiction for purposes of interpreting and enforcing the terms of this Settlement Agreement, as necessary.

(d) Best Efforts: All Parties and counsel shall use their best efforts to cause the Court to give preliminary approval to this Settlement Agreement as promptly as possible and to take all steps contemplated by the Settlement Agreement to affect the settlement on the stated terms and conditions and, further, to obtain final approval of the settlement. Specifically, Plaintiffs, Class Counsel, Defendant, and Defendant's counsel agree to recommend the settlement contained in this Settlement Agreement as being in the best interests of the Settlement Class under the circumstances, and both Plaintiffs and Defendant agree to oppose any objections submitted by members of the Settlement Class or others. The Parties agree to cooperate in all matters incidental to the proposal of this class settlement, including scheduling of hearings and deadlines and further discovery (except confirmatory discovery, if necessary). Should any dispute arise between the Parties regarding this Settlement Agreement, or any matters related or incident thereto, the Parties agree to mediate such dispute with the Hon. James Epstein (Ret.) of JAMS before submitting it to the Court for resolution.

(e) Court Filings: No Party shall file any materials with the Court in support of the settlement that are inconsistent with the terms of the Settlement Agreement.

(f) Confidentiality: Plaintiffs, Plaintiffs' Counsel (including any other individual and law firm sharing in this settlement), Defendant, and Defendant's Counsel shall not publicize, issue a press release or disclose on the internet, or hold a press conference or issue any public statement with respect to this Settlement. Further, Plaintiffs, Plaintiffs' Counsel (including any other individual and law firm sharing in this settlement), and Defendant's Counsel shall not discuss or mention this settlement (or information learned in this matter) to persons who they know or suspect may institute actions against Defendant related to the subject matter of this action, other than any disclosures necessary to effectuate this settlement (including, fulfilling their duty as Class Counsel) or as compelled by a court of law. To the extent any party receives a subpoena or other legal form which could compel testimony or information, that party shall provide immediate notice via email and phone call to all other parties, which shall have the right to object. All of the information disclosed by Defendant to Plaintiffs' Counsel under the agreements entered in connection with the mediations and all information shared in the context of the mediations shall not be disclosed to any person or entity without Defendant's prior written consent, it being agreed that those agreements and confidentiality remain in effect. All settlement communications between the Parties which occurred before this Settlement Agreement is executed, or which occur afterwards, shall not be used in the Litigation or any other proceeding for any purpose whatsoever, unless the Parties agree in writing to the contrary.

(g) Binding Effect of Settlement Agreement: This Settlement Agreement shall be binding upon and inure to the benefit of the Parties to this Settlement Agreement, Class Counsel, and the members of the Settlement Class, and their respective heirs, predecessors, successors and assigns. Nothing herein shall prevent Defendant from assigning its rights and obligations.

(h) Execution in Counterpart/Multiple Copies: The Parties may execute this Settlement Agreement in counterparts, and execution of counterparts shall have the same force and effect as if all Parties had signed the same instrument. Electronic copies of the executed Settlement Agreement shall be considered an original and may be relied upon as such.

(i) Recitals Incorporated by Reference: The Recitals are hereby incorporated by reference as a material part of the Settlement Agreement between the Parties.

(j) Taxes: All members of the Settlement Class shall be responsible for paying any and all federal, state and local taxes, if any, due on the payments made to them pursuant to the settlement provided herein. No opinion concerning the tax consequences of the proposed settlement to members of the Settlement Class or anyone else is given or will be given by the Parties or the Parties' counsel, and no representations in this regard made by virtue of this Settlement Agreement.

(k) Covenants Of Counsel: Class Counsel and Defendant's Counsel expressly agree that subject to all applicable governing ethical rules, opinions and obligations, they will not represent any individual who (i) is a Settlement Class Member who challenges in any way the settlement described in this Settlement Agreement; or (ii) who opts-out or who claims at some later date that they were not bound by the terms of this Settlement Agreement for any reason. It is expressly acknowledged and agreed that no party or counsel for that party will institute, participate in, or encourage any appeal from an order implementing this Settlement Agreement or any objection to the implementation of this Settlement Agreement and settlement; provided, however, any party has the right to appeal an order which materially alters the terms of this Settlement Agreement (including the consideration to be given by or to any party).

(l) No Other Financial Obligations on Settlement Class Members: Settlement Class Members shall not be liable or obligated to pay any fees, expenses, costs, or disbursements to the Plaintiffs, Class Counsel, or Settlement Class, either directly or indirectly, in connection with the Litigation or this Settlement Agreement other than the amounts expressly provided for herein or as approved by the Court.

(m) No Other Financial Obligations on Defendant: Defendant shall have no further obligations or liabilities to pay any fees, expenses, costs, or disbursements to Plaintiffs, Class Counsel, or Settlement Class, either directly or indirectly, in connection with the Litigation or this Settlement Agreement once the Settlement Fund is distributed as set out herein.

(n) The Parties agree that they will act in good faith and 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 this Settlement Agreement.

(o) The Parties agree that all orders, agreements and designations regarding the confidentiality of documents and information (“Protective Orders”) remain in effect, and all Parties and counsel remain bound to comply with the Protective Orders, including the provisions to certify the destruction of documents deemed Confidential under the Protective Orders. Notwithstanding such provision in the Protective Order, Defendant's Counsel and Class Counsel may retain copies of all documents submitted to the Court, but those documents must be kept confidential to the extent they were designated as “Confidential,” and will continue to be subject to the Protective Order.



(p) Plaintiffs' representatives warrant and represent that no claim or any portion of any claim by any Plaintiff referenced in or covered by this Agreement has been sold, assigned, conveyed, or otherwise transferred to any other entity or person.

(q) This Agreement shall inure to the benefit of and be binding upon the respective agents, assigns, administrators, employees, trustees, executors, heirs, and successors in interest of each of the Parties.

(r) 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, 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.

(s) 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.

(t) 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).

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

IN WITNESS WHEREOF, the undersigned, being duly authorized, have caused this Settlement Agreement to be executed as of this 23<sup>rd</sup> day of August, 2018.

[signature pages follow]

For Defendant:

US Foods, Inc.

By:

\_\_\_\_\_  
Name  
Title


JONES DAY

By:

\_\_\_\_\_  
Darren K. Cottriel  
Counsel for Defendant

For Plaintiffs:

BS Steaks LLC, Papa Joes Oyster Bar & Grill, Inc., Snellgrove's Restaurant, Inc., Sound Waves Of Surf City, Inc., VLMooney, Inc. d/b/a Kris & Sam's, and Lit'l Pepper Gourmet, Inc.

By:  *Managing member*  
BS Steaks, LLC

By: \_\_\_\_\_  
Papa Joes Oyster Bar & Grill, Inc.

By: \_\_\_\_\_  
Snellgrove's Restaurant, Inc.

By: \_\_\_\_\_  
Sound Waves Of Surf City, Inc.

By: \_\_\_\_\_  
VLMooney, Inc. d/b/a Kris & Sam's

By: \_\_\_\_\_  
Lit'l Pepper Gourmet, Inc.

By: \_\_\_\_\_  
Oscar M. Price, IV  
Attorney for Plaintiffs and Class Counsel

For Plaintiffs:

BS Steaks LLC, Papa Joes Oyster Bar & Grill, Inc., Snellgrove's Restaurant, Inc., Sound Waves Of Surf City, Inc., VLMooney, Inc. d/b/a Kris & Sam's, and Lit'l Pepper Gourmet, Inc.

By: \_\_\_\_\_  
BS Steaks, LLC

By: William S. Gried, Pres.  
Papa Joes Oyster Bar & Grill, Inc.

By: \_\_\_\_\_  
Snellgrove's Restaurant, Inc.

By: \_\_\_\_\_  
Sound Waves Of Surf City, Inc.

By: \_\_\_\_\_  
VLMooney, Inc. d/b/a Kris & Sam's

By: \_\_\_\_\_  
Lit'l Pepper Gourmet, Inc.

By: \_\_\_\_\_  
Oscar M. Price, IV  
Attorney for Plaintiffs and Class Counsel

For Plaintiffs:

BS Steaks LLC, Papa Joes Oyster Bar & Grill, Inc., Snellgrove's Restaurant, Inc., Sound Waves Of Surf City, Inc., VLMooney, Inc. d/b/a Kris & Sam's, and Lit'l Pepper Gourmet, Inc.

By: \_\_\_\_\_  
BS Steaks, LLC

By: \_\_\_\_\_  
Papa Joes Oyster Bar & Grill, Inc.

By:  \_\_\_\_\_  
Snellgrove's Restaurant, Inc.

By: \_\_\_\_\_  
Sound Waves Of Surf City, Inc.

By: \_\_\_\_\_  
VLMooney, Inc. d/b/a Kris & Sam's

By: \_\_\_\_\_  
Lit'l Pepper Gourmet, Inc.

By: \_\_\_\_\_  
Oscar M. Price, IV  
Attorney for Plaintiffs and Class Counsel

For Plaintiffs:

BS Steaks LLC, Papa Joes Oyster Bar & Grill, Inc., Snellgrove's Restaurant, Inc., Sound Waves Of Surf City, Inc., VLMooney, Inc. d/b/a Kris & Sam's, and Lit'l Pepper Gourmet, Inc.

By: \_\_\_\_\_  
BS Steaks, LLC

By: \_\_\_\_\_  
Papa Joes Oyster Bar & Grill, Inc.

By: \_\_\_\_\_  
Snellgrove's Restaurant, Inc.

By:  \_\_\_\_\_  
Sound Waves Of Surf City, Inc.

By: \_\_\_\_\_  
VLMooney, Inc. d/b/a Kris & Sam's

By: \_\_\_\_\_  
Lit'l Pepper Gourmet, Inc.

By: \_\_\_\_\_  
Oscar M. Price, IV  
Attorney for Plaintiffs and Class Counsel

**For Plaintiffs:**

**BS Steaks LLC, Papa Joes Oyster Bar & Grill, Inc., Snellgrove's Restaurant, Inc., Sound Waves Of Surf City, Inc., VLMooney, Inc. d/b/a Kris & Sam's, and Lit'l Pepper Gourmet, Inc.**

**By:** \_\_\_\_\_  
**BS Steaks, LLC**

**By:** \_\_\_\_\_  
**Papa Joes Oyster Bar & Grill, Inc.**

**By:** \_\_\_\_\_  
**Snellgrove's Restaurant, Inc.**

**By:** \_\_\_\_\_  
**Sound Waves Of Surf City, Inc.**

**By:**  \_\_\_\_\_  
**VLMooney, Inc. d/b/a Kris & Sam's**

**By:** \_\_\_\_\_  
**Lit'l Pepper Gourmet, Inc.**

**By:** \_\_\_\_\_  
**Oscar M. Price, IV**  
**Attorney for Plaintiffs and Class Counsel**

For Plaintiffs:

BS Steaks LLC, Papa Joes Oyster Bar & Grill, Inc., Snellgrove's Restaurant, Inc., Sound Waves Of Surf City, Inc., VLMooney, Inc. d/b/a Kris & Sam's, and Lit'l Pepper Gourmet, Inc.

By: \_\_\_\_\_  
BS Steaks, LLC

By: \_\_\_\_\_  
Papa Joes Oyster Bar & Grill, Inc.

By: \_\_\_\_\_  
Snellgrove's Restaurant, Inc.

By: \_\_\_\_\_  
Sound Waves Of Surf City, Inc.

By: \_\_\_\_\_  
VLMooney, Inc. d/b/a Kris & Sam's

By:  \_\_\_\_\_  
Lit'l Pepper Gourmet, Inc.

By: \_\_\_\_\_  
Oscar M. Price, IV  
Attorney for Plaintiffs and Class Counsel



For Plaintiffs:

BS Steaks LLC, Papa Joes Oyster Bar & Grill, Inc., Snellgrove's Restaurant, Inc., Sound Waves Of Surf City, Inc., VLMooney, Inc. d/b/a Kris & Sam's, and Lit'l Pepper Gourmet, Inc.

By: \_\_\_\_\_  
BS Steaks, LLC


By: \_\_\_\_\_  
Papa Joes Oyster Bar & Grill, Inc.

By: \_\_\_\_\_  
Snellgrove's Restaurant, Inc.

By: \_\_\_\_\_  
Sound Waves Of Surf City, Inc.

By: \_\_\_\_\_  
VLMooney, Inc. d/b/a Kris & Sam's

By: \_\_\_\_\_  
Lit'l Pepper Gourmet, Inc.

By:  \_\_\_\_\_  
Oscar M. Price, IV  
Attorney for Plaintiffs and Class Counsel

# EXHIBIT “A”

Superior Court of Dougherty County, Georgia  
*BS Steaks, Inc., et al. v. US Foods, Inc., Case No. 18 CV 968-1*

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT  
YOUR LEGAL RIGHTS MIGHT BE AFFECTED BY THIS SETTLEMENT  
PLEASE READ CAREFULLY**

You may be entitled to payment if you paid fuel surcharges to US Foods, Inc. and/or certain affiliated companies (collectively "US Foods"). The class action lawsuit listed above was filed against US Foods alleging US Foods improperly charged "fuel surcharges" or similar fees to some customers. US Foods denies all allegations and claims in the lawsuit, denies any wrongdoing or liability, and opposes contested class action status of the lawsuit. US Foods has agreed to settle to avoid burdensome and costly litigation and disruption to its business operations. The settlement is not an admission of wrongdoing, and this Notice does not mean the Court has expressed any opinion as to the merits of any claim or defense.

A settlement of this lawsuit has been reached whereby a settlement fund of \$2,575,000 would be established. Under the proposed Class Action Settlement, you may be entitled to payment from the fund if: (i) you are a customer of US Foods, **and** (ii) you paid a fuel surcharge or similar fee on an invoice you received from US Foods from August 31, 2013 through [Friday before notice]. If you received this Notice, the parties believe that you may be a settlement class member based upon US Foods' records.

Excluded from the Settlement Class are: (1) any individual or entity currently in bankruptcy, (2) any individual or entity whose obligations were discharged in bankruptcy, and (3) any judicial officer who has presided over any of the related litigation.

If you are a member of the Settlement Class, you must submit a claim form by no later than \_\_\_\_\_ to receive payment from the settlement fund if the Class Action Settlement is approved by the Court. If you remain in the Settlement Class, you will release any claims you may have against US Foods related to the fuel surcharge or fees at issue. If you wish to exclude yourself from the Class Action Settlement, and give up your right to seek money from the settlement fund, you must provide notice by no later than \_\_\_\_\_. If you wish to submit an objection to the Class Action Settlement you must file a written objection by no later than \_\_\_\_\_, and you may (but are not required to) appear through counsel if you wish to do so. Please visit [www.\\_\\_\\_\\_\\_.com](http://www._____.com) for instructions on how to submit a claim form, exclude yourself from the proposed Class Action Settlement, or file an objection to the proposed Class Action Settlement.

The Court has appointed the law firms of Price Armstrong LLC and Flynn & Phillips LLC as counsel to represent the Settlement Class Members. Under the proposed Class Action Settlement, Class Counsel will be seeking an award of attorneys' fees, reimbursement of litigation expenses and incentive awards to the Class Representatives.

This Notice is a summary only. You can learn more about the lawsuit and the Class Action Settlement, including the procedures to exclude yourself from the Class Action Settlement or to

object to it at **www.\_\_\_\_\_**.com or by calling the settlement administrator at \_\_\_\_\_.  
Please do not contact the Court for information about the lawsuit.

EXHIBIT “B”

IN THE SUPERIOR COURT OF DOUGHERTY COUNTY, GEORGIA

**BS STEAKS LLC; PAPA JOE'S OYSTER BAR  
& GRILL, INC.; SNELLGROVE'S  
RESTAURANT, INC.; SOUND WAVES OF  
SURF CITY, INC.; VLMOONEY, INC. D/B/A  
KRIS & SAM'S; and LIT'L PEPPER  
GOURMET, INC.**

Plaintiffs,

v.

**US FOODS, INC.**

Defendant.

Case No.: 18 CV 968-1

CLASS ACTION

**NOTICE OF CLASS ACTION SETTLEMENT**

**If you paid fuel surcharges to US FOODS, INC. or to any of  
its affiliated companies you may be entitled to a payment  
from a class action settlement.**

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

- Plaintiffs have sued US Foods, Inc. alleging US Foods and its related entities improperly charged "fuel surcharges" to some customers. The named class representatives and defendant in five separate lawsuits in Georgia, Florida, North Carolina, Arkansas, and California have been consolidated into this action for purposes of settlement.
- US Foods denies all allegations and claims in the lawsuit, denies any wrongdoing or liability, and opposes contested class action status of the lawsuit. US Foods has agreed to settle to avoid burdensome and costly litigation and disruption to its business operations. The settlement is not an admission of wrongdoing, and this Notice does not mean the Court has expressed any opinion as to the merits of any claim or defense.

**QUESTIONS? CALL 1-800-\_\_\_-\_\_\_ or VISIT [www.\\_\\_\\_\\_\\_.com](http://www._____.com)**

- The Court has conditionally allowed the lawsuit to proceed as a class action for settlement purposes only on behalf of certain customers who paid US Foods (including certain affiliated entities, as discussed below) (collectively "US Foods") a fuel surcharge or similar fee (the "Fees") any time between August 31, 2013 to [Friday before notice is sent] (the "Class Period").
- If you received notice regarding this settlement, the parties believe you may be a class member.
- The "Settlement Class" is specifically defined as all customers in the United States which paid US Foods one or more of the Fees at any time within the Class Period. Excluded from the Settlement Class are: (1) any individual or entity currently in bankruptcy, (2) any individual or entity whose obligations were discharged in bankruptcy, and (3) any judicial officer who has presided over any of the related litigation.
- This class action settlement was reached after significant litigation in multiple venues and multiple mediation sessions. Six separate law firms have pursued cases in five different states for the plaintiffs.
- The Superior Court of Dougherty County, Georgia, has examined the proposed Class Action Settlement Agreement and Release and has made a preliminary determination that the Settlement is fair, reasonable, and adequate for the full and final resolution of the claims of the Settlement Class. A full copy of the Class Action Settlement Agreement can be found at [www.\\_\\_\\_\\_\\_](http://www._____.com).
- **Your legal rights are affected whether you act or do not act. The deadlines to exercise these rights are explained in this notice. Read carefully:**

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>	
<b>SUBMIT A CLAIM FORM</b>	The only way to get a payment from the settlement is to timely send in a valid claim form.
<b>EXCLUDE YOURSELF</b>	The only way to exclude yourself from the settlement and the settlement class (or "opt-out") is to provide timely written notice. If you opt out, you will not receive the benefits of this settlement, including that you will give up your right to seek payment from the settlement, but this is the only option that allows you to ever be part of any other lawsuit against US Foods about the Fees and legal claims in this case.
<b>OBJECT</b>	Write to the Court about why you do not like the settlement.

**QUESTIONS? CALL 1-800-\_\_\_\_-\_\_\_\_ or VISIT [www.\\_\\_\\_\\_\\_.com](http://www._____.com)**

<b>DO NOTHING</b>	If you do nothing you will not receive a payment from the settlement, but you still will give up your right to sue US Foods about the legal claims in this case (unless you exclude yourself). To receive a payment, you must submit a claim form.
-------------------	--

The following provides a detailed description about the proposed class settlement and the rights you have if you are a settlement class member, the benefits available under the settlement and how you can get the benefits, including the relevant deadlines and requirements.

## **BASIC INFORMATION**

### **1. Why did I get this notice?**

You may have paid US Foods a fuel surcharge during the applicable time period, and the parties believe you to be a class member.

The case has been settled, and the Court has ordered that this Notice be provided to you because you have a right to know your options before the Court decides whether to approve the settlement. If the Court approves the settlement, an administrator appointed by the Court will make settlement payments to everyone who submitted a valid claim.

This Notice explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the case is the Superior Court of Dougherty County, Georgia. The judge in this case is the Honorable Denise Marshall.

### **2. What is a class action?**

In a class action, one or more plaintiffs, called "Class Representatives" (in this case, the Plaintiffs), sue on behalf of all people and companies that have similar claims. All these other people and companies are "Class Members." One court resolves the issues for all Class Members, except those who voluntarily exclude themselves from the class. This case has been certified as a class action solely for purposes of this settlement. US Foods contends that, for any purpose other than settlement, these and similar cases are not appropriate for class action treatment.

### **3. What is this lawsuit about?**

The lawsuit claims that US Foods charged and collected "fuel surcharges" which were excessive and unlawful. According to Plaintiffs, by doing these things US Foods breached the contracts that some of its customers entered into and/or violated state statutory and common law. US Foods

**QUESTIONS? CALL 1-800-\_\_\_-\_\_\_ or VISIT [www.\\_\\_\\_\\_\\_.com](http://www._____.com)**



denies that it did anything wrong, and contends that its charging and collection of "fuel surcharges" has always been appropriate and proper. The Court has not found that US Foods did anything wrong.

The Amended Class Action Complaint has more information about the lawsuit and is available online at [www.\\_\\_\\_\\_\\_.com](http://www._____.com).

"Plaintiffs' Claims" are described in the Settlement Agreement to mean: any and all claims, actions, causes of action, demands, rights, and suits of whatever kind or nature whatsoever, including without limitation any and all damages, debts, losses, costs, expenses, penalties, attorneys' fees, expert fees and interest, whether known or unknown, suspected or unsuspected, assigned or unassigned, asserted or unasserted, whether as individual claims or claims asserted on a class basis or on behalf of the general public, Plaintiffs or any member of the Settlement Class brought or could have brought against Defendant in the Litigation or in any similar case in a court of competent jurisdiction, arising out of, based upon, or related to any of the Fees, including, but not limited to claims (whether based in contract, tort, common law, statute, or any other legal or equitable theory) arising out of or regarding the negotiation, implementation, disclosure, advertisement, maintenance, calculation, assessment, modification, presentation, representation, suppression, charging, collection or payment of the Fees, or which in any way otherwise regard or relate to the Fees.

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

The Court did not decide in favor of either side. US Foods expressly denies any liability or wrongdoing associated with the lawsuit claims. Instead, both sides agreed to a compromise settlement to avoid the cost and risk of continued litigation in multiple venues, including trials and subsequent appeals, and the disruption to US Foods' business operations resulting from protracted litigation. Settlement also ensures that the people and businesses affected will get compensation. In return, the Defendant gets a general release of all claims which were or could have been asserted in the lawsuit related to the conduct at issue. The Class Representatives and Class Counsel believe the settlement is in the best interests of everyone affected.

### **WHO IS IN THE SETTLEMENT**

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

The Court has certified a Settlement Class defined as:

All customers in the United States which paid Defendant one or more of the Fees at any time within the Class Period. Excluded from the Settlement Class are: (1) any individual or entity currently in bankruptcy, (2) any individual or entity whose obligations were

**QUESTIONS? CALL 1-800-\_\_-\_\_ or VISIT [www.\\_\\_\\_\\_\\_.com](http://www._____.com)**

discharged in bankruptcy, and (3) any judicial officer who has presided over any of the related litigation.

The term "Defendant" means US Foods, Inc., its parent companies, operating subsidiaries, divisions and affiliated entities, and each and all of their respective predecessors, successors, direct and indirect parents and subsidiaries, acquired companies, divisions, related or affiliated entities, and any entity in which any of them have a controlling interest, and for each and every above referenced entity, its respective past, present, and future shareholders, directors, managers, officers, employees, agents, attorneys, insurers, co-insurers, reinsurers, and each and all of its respective predecessors, assigns and legal representatives.

The term "Class Period" means from August 31, 2013 through [the Friday before notice is provided to the Settlement Class].

If you received written notice regarding the settlement, then the parties believe that you may a member of the class based upon US Foods' records.

**6. What if I only paid the Fees once?**

You still are a class member even if you paid only one "fuel surcharge" during the class period.

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

If you still are not sure whether you are included in the settlement as a Class Member, you can get additional information at [www.\\_\\_\\_\\_\\_.com](http://www._____.com) or free assistance by calling the settlement administrator appointed by the Court at 1-800-\_\_\_\_\_.

**THE SETTLEMENT BENEFITS—WHAT YOU CAN GET**

**10. What does the settlement provide?**

US Foods has agreed to establish an all-inclusive settlement fund of \$2,575,000. This fund will be used to pay Class Members who submit timely and valid claims, after any Court approved amounts for attorney's fees, class representative incentive awards, administration costs, and reimbursed litigation expenses are paid from the settlement fund. This remaining amount is referred to as the "net settlement fund."

**11. What can I get from the settlement?**

If you are a Class Member who submits a timely and valid claim (and does not file a valid and timely opt-out), you will get a settlement check representing a portion of the Fees you paid.

**QUESTIONS? CALL 1-800-\_\_ - \_\_ or VISIT [www.\\_\\_\\_\\_\\_.com](http://www._____.com)**

The portion you receive will be equitably determined on a pro-rata basis by the settlement administrator. The total amount of the Fees you paid as a percentage of the total amount of Fees paid by all Class Members who submit timely and valid claims will determine your percentage share of the net settlement fund. The total amount of your payment will depend on how many other Class Members submit timely and valid claims.

## HOW YOU GET A PAYMENT—SUBMITTING A CLAIM FORM

### 12. How can I get a payment?

To qualify for payment, you must send in a claim form by no later than \_\_\_\_\_. The claim form is attached as Exhibit A and available at [www.\\_\\_\\_\\_\\_.com](http://www._____.com). If you choose not to submit your claim form online, you must mail a paper claim form to the settlement administrator appointed by the Court by no later than \_\_\_\_\_. To receive a paper copy of the claim form or to receive instructions on submitting a paper claim form, please contact the settlement administrator at \_\_\_\_\_.

### 13. What if I have multiple locations?

Submit only one claim form, even if you had multiple locations serviced by US Foods.

### 14. When would I get my payment?

The Court will hold a hearing on \_\_\_\_\_ to decide whether to approve the Settlement. If the Court approves the Settlement after that, and if anyone filed an objection, there could be appeals. If there are any appeals, this could delay payment of claims, possibly for more than a year. Updates will be provided online at [www.\\_\\_\\_\\_\\_.com](http://www._____.com).

## EXCLUDING YOURSELF FROM THE SETTLEMENT

### 16. How do I request to be excluded from the class?

To exclude yourself from the settlement (“opt-out”), you must send a letter by U.S. mail stating that you want to be excluded from the settlement of “*BS Steaks LLC, et al. v. US Foods Corporation* (Case No. 18 CV 968-1)”. You also must include your name, address, telephone number, and signature. You must mail your exclusion request postmarked no later than \_\_\_\_\_ to **each** of the following:

[Claims Administrator]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant’s Counsel  
Darren K. Cottriel  
JONES DAY  
3161 Michelson Drive  
Suite 800

Plaintiffs’ Counsel  
Oscar M. Price, IV  
Price Armstrong, LLC  
2226 1st Ave S,

QUESTIONS? CALL 1-800-\_\_\_\_-\_\_\_\_ or VISIT [www.\\_\\_\\_\\_\\_.com](http://www._____.com)

Irvine, California 92612-4408 Suite 1

Birmingham, AL 35203

You can't exclude yourself by phone or by email. If you ask to be excluded, you will not get any settlement payment, and you cannot object to the Settlement. If you timely and appropriately ask to be excluded, you will not be bound by the Settlement and your claims, if any, against US Foods will not be released.

**17. If I remain in the class, what claims are being released?**

Unless you exclude yourself, you are staying in the Settlement Class, and that means that you cannot sue, continue to sue, or be part of any other lawsuit against US Foods regarding the claims and subject matter in this lawsuit. It also means that the Settlement Agreement and all of the Court's orders will legally bind you.

The complete release language from the Settlement Agreement is as follows: any and all claims, actions, causes of action, demands, rights, and suits of whatever kind or nature whatsoever, causes of action, including but not limited to Plaintiffs' Claims as defined above, claims for damages, equitable, legal and administrative relief, interests, penalties, fees, costs, debts, demands, losses, liabilities or rights, whether based on federal, state, or local laws, statutes or ordinances, regulations, contracts, common law or any other source, known or unknown, suspected or unsuspected, whether or not concealed or hidden, assigned or unassigned, asserted or unasserted, whether as individual claims or claims asserted on a class basis or on behalf of the general public, that Plaintiffs or any member of the Settlement Class has, had or have against Defendant regarding the Fees, including without limitation, claims for breach of contract, claims for injunctive or declaratory relief, and claims for violation of any state or federal statutes, rules, or regulations, including without limitation any common law or statutory claims for unlawful, unconscionable, unfair, deceptive, or fraudulent business practices or false advertising arising out of, based upon, or related to the facts, transactions, events, occurrences, acts, practices, or omissions that were alleged or could have been alleged in the Litigation or in any similar case in a court of competent jurisdiction, including without limitation, those arising from or regarding the negotiation, implementation, disclosure, advertisement, maintenance, calculation, assessment, modification, presentation, representation, suppression, and/or charging and collection or payment of the Fees, or which in any way otherwise regard or relate to the Fees.

**IF YOU DO NOTHING**

**18. What happens if I do nothing at all?**

If you do nothing, you will get no money from the settlement and will release all of your claims as discussed above.

**QUESTIONS? CALL 1-800-\_\_-\_\_ or VISIT [www.\\_\\_\\_\\_\\_.com](http://www._____.com)**

## THE LAWYERS REPRESENTING YOU

### 19. Do I have a lawyer in this case?

Yes. The Court has appointed the law firms of Price Armstrong, LLC and Flynn and Phillips, LLC, to represent you and other Class Members as Plaintiffs' Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense, but you are not required to do so.

### 20. How will the lawyers be paid?

Under the terms of the settlement, the appointed lawyers acting as Plaintiffs' Class Counsel can ask the Court for attorneys' fees up to one-third of the settlement fund, and for reimbursement of litigation expenses they've incurred up to \$100,000. This award is to compensate the six separate law firms for the work they spent in pursuing the multiple class actions across five states, and the risk they took that no resolution would ever be reached. The appointed lawyers may also seek payments up to \$15,000 for each of the class representatives, to compensate them for their time and effort in bringing these lawsuits. All costs to administer the settlement and to provide notice will be paid from the settlement fund. Members of the Settlement Class are not personally liable for any such fees and expenses.

## OBJECTING TO THE SETTLEMENT

### 21. How do I object to the Court if I don't like the Settlement?

If you are a class member, you may object to any part of the Settlement you do not like, and the Court will consider your views. You must submit any objection in writing and must provide evidence of your membership in the Class. The procedures for submitting written objections are set out below. **A written objection (and any support for it) must be filed with the Clerk of Court and received no later than \_\_\_\_\_ (the "Objection Deadline") by all of the following.**

Evonne Mull,  
Clerk of the Superior Court  
222 Pine Avenue  
Albany, Georgia 31701

Defendant's Counsel  
Darren K. Cottriel  
JONES DAY  
3161 Michelson Drive  
Suite 800  
Irvine, California 92612-4408

Oscar M. Price, IV  
Price Armstrong, LLC  
2226 1st Ave S,  
Suite 1  
Birmingham, AL 35203

If you hire an attorney in connection with making an objection, that attorney must file with the Court and serve on the counsel identified above a notice of appearance. **The notice of appearance must be filed with the Court and received by the three addressees above via US Mail or other**

**QUESTIONS? CALL 1-800-\_\_-\_\_ or VISIT [www.\\_\\_\\_\\_\\_.com](http://www._____.com)**

**carrier no later than the Objection Deadline.** If you do hire your own attorney, you will be responsible for payment of all fees and expenses that the attorney incurs on your behalf.

If you want to object, you must file your objection in writing to the Court. Your objection **must** include:

- (a) a caption or title that identifies it as “Objection to Class Settlement in “*BS Steaks et al. v. US Foods, Inc.* (Case No. 18 CV 968-1)”.
- (b) your full name, title, current address and telephone number;
- (c) a copy of your contract(s) with US Foods and/or the date you entered into a contract with US Foods (or other information sufficient to identify your contract with US Foods);
- (d) a notice of intention to appear, either in person or through an attorney, with the name, address and telephone number of the attorney, if any, who will appear;
- (e) certification that you are a member of the Settlement Class;
- (f) a statement of each objection you assert;
- (g) a detailed description of the facts underlying each objection you assert;
- (h) a detailed description of the legal authorities, if any, supporting each objection you assert;
- (i) copies of exhibits and/or affidavits you may offer during the final approval hearing, if any;
- (j) a list of all witnesses you may call to testify at the final approval hearing, along with a summary of each witness’s anticipated testimony, if any; and
- (k) the signature, full name, firm name, and business address of all attorneys who have any financial interest in your objection or who represent (or have represented) the objecting party in this or a related matter.

If you make a written objection to the Settlement as set out above, you may request to speak — either in person or through an attorney hired at your own expense — at the Final Fairness Hearing the Court has set to consider whether to give final approval to the Settlement Agreement. You are not required to attend the hearing. Lack of attendance at the Final Fairness Hearing will not prevent the Court from considering your objection. If you (or your attorney) intend to speak at the Final Fairness Hearing, you must file with the Court and serve on the parties’ counsel identified above a notice of intent to appear, and your attorney (if you hire one) must file a notice of appearance with the Clerk of Court. Again, the notice of intent to appear must be filed with the Court, and received by the parties’ counsel above, no later than the Objection Deadline.

If you do not file an objection as described above, you will be deemed to have waived any and all objections to the Settlement, to have consented to the Court’s certification of and jurisdiction over the Settlement Class, and to have released your claims as set out above and defined in the Settlement Agreement (which is available online at [www.\\_\\_\\_\\_\\_.com](http://www._____.com)).

**QUESTIONS? CALL 1-800-\_\_-\_\_ or VISIT [www.\\_\\_\\_\\_\\_.com](http://www._____.com)**

## THE COURT'S FAIRNESS HEARING

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

The Court will hold a Final Fairness Hearing at \_\_\_\_\_ a.m. on \_\_\_\_\_ in Dougherty County Superior Court, 225 Pine Ave, Albany, Georgia. At this hearing, the Court will consider whether the Settlement is fair, reasonable and adequate. You are not required to attend the hearing, but may do so if you wish. If there are objections that have been submitted in writing in advance of the hearing, the Court will consider them. The Court will listen to people who have made a prior written request to speak at the hearing. The Court will also decide whether to pay Class Counsel the amount they are requesting for attorneys' fees and reimbursement of litigation expenses, as well as class representative awards. After the hearing, the Court will decide whether to grant final approval of the Settlement.

### 23. What if the proposed settlement is not approved?

If the proposed Settlement is not granted final approval, the Settlement Class that has been preliminarily approved will be decertified, the actions compromising the Litigation will proceed as if the Settlement had not been entered into, and the Settlement shall not be valid or enforceable.

## HOW DO I GET MORE INFORMATION

### 24. Are there more details about the settlement?

This Notice is just a summary, and you are entitled, if you wish, to read the entire Settlement Agreement. The Settlement Agreement and some other documents filed in this lawsuit can be found online at [www.\\_\\_\\_\\_\\_.com](http://www._____.com).

### 25. How do I get more information?

You can call or write to the Settlement Administrator at 1-800-\_\_\_\_-\_\_\_\_ and \_\_\_\_\_. You can also visit the website at [www.\\_\\_\\_\\_\\_.com](http://www._____.com), where you will find answers to some common questions.

Please **do not** contact the Court or Clerk of Court with any questions regarding this case.

QUESTIONS? CALL 1-800-\_\_\_\_-\_\_\_\_ or VISIT [www.\\_\\_\\_\\_\\_.com](http://www._____.com)

# EXHIBIT “C”



## US FOODS FUEL SURCHARGE CLASS ACTION SETTLEMENT CLAIM FORM

- This is a very simple process. To submit a claim for settlement payment related to the "fuel surcharges" you paid to US Foods and/or affiliated companies (collectively "US Foods"), you must provide the information below and sign where indicated. Failure to provide this information and sign this Claim Form may result in denial of your claim(s).
- If you do not want to rely upon the information US Foods has in its computer system, you may—but are not required to—submit the invoices you have from US Foods which the Settlement Administrator will use to create as complete a record as possible. See the Notice of Settlement for more detail.
- Contact the Settlement Administrator at 1-800-\_\_\_\_\_ or www.\_\_\_\_\_.com with any questions.

**Please provide the full name of your business as it appears on your contract or invoices with US Foods** (if your business underwent any name changes within the last six (6) years, please include all prior business names):

\_\_\_\_\_

**Please provide the principal address for your business** (where you received deliveries):

\_\_\_\_\_

\_\_\_\_\_

**Please provide the billing address for your business** (your check will be mailed here):

\_\_\_\_\_

\_\_\_\_\_

**Please provide your business phone number(s):**

\_\_\_\_\_

**Please list the US Foods operating company or affiliate(s) from whom you purchased products and or received invoices, if available** (this information would appear at the top and/or bottom of the invoice):

\_\_\_\_\_

**Please list your US Foods Customer Number, if available** (this would appear on the top of the invoices):

\_\_\_\_\_

**Please provide the approximate time period (month and year) during which you purchased products – and received invoices – from US Foods** (for example, "September 2013 through March 2015"):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

By: \_\_\_\_\_

(Print Name)

\_\_\_\_\_  
TITLE

**\* By signing above you are affirming that, to the best of your knowledge, you are or were a US Foods customer, that you paid an invoiced fuel surcharge to US Foods, and the information stated on this form is otherwise true and correct.**

**RETURN THIS FORM, POSTMARKED OR ONLINE, NO LATER THAN \_\_\_\_\_, 2018,**

**TO:  
US Foods Class Action Settlement  
[Administrator]**

IN THE SUPERIOR COURT OF DOUGHERTY COUNTY, GEORGIA

**BS STEAKS LLC; PAPA JOE'S OYSTER BAR  
& GRILL, INC.; SNELLGROVE'S  
RESTAURANT, INC.; SOUND WAVES OF  
SURF CITY, INC.; VLMOONEY, INC. d/b/a  
KRIS & SAM'S; and LIT'L PEPPER  
GOURMET, INC.**

Plaintiffs,

v.

**US FOODS, INC.**

Defendant.

Case No.: 18-CV-968-1

CLASS ACTION

**[PROPOSED] ORDER PRELIMINARY APPROVING SETTLEMENT  
AND PROVIDING FOR NOTICE**

Plaintiffs, without objection from Defendant, have made application for an order approving the settlement of this litigation, in accordance with the Settlement Agreement which, together with its exhibits, sets out the terms and conditions of the proposed settlement and notice to the Settlement Class. Having reviewed the filings and conducted a hearing to consider the same, it is,

HEREBY ORDERED:

1. Pursuant to O.C.G.A. § 9-11-23, the Court preliminarily certifies, for purpose of effectuating the settlement only, the following Settlement Class:

All customers in the United States which paid US Foods one or more of the Fees at any time from August 31, 2013 through and including the Friday before notice is provided to the Settlement Class.<sup>1</sup>

2. With regard to the Settlement Class, the Court preliminarily finds that (a) the members of the Settlement Class are so numerous that joinder is impracticable, (b) there are

<sup>1</sup> Excluded from the Settlement Class are: (a) any individual or entity currently in bankruptcy (b) any individual or entity whose obligations were discharged in bankruptcy (c) government entities; and (c) any judicial officer, including that officer's family, which presided over this case.



questions of law and fact common to the Settlement Class which predominate over any individual questions, (c) the claims of the named Plaintiffs are typical of those of the Settlement Class, (d) the named Plaintiffs and their counsel have fairly and adequately represented and protected the interests of the members of the Settlement Class; and (e) a class action is superior for the fair and efficient adjudication of this consolidated litigation through settlement.

3. The Court appoints BS Steaks LLC; Papa Joe's Oyster Bar & Grill, Inc.; Snellgrove's Restaurant, Inc.; Sound Waves of Surf City, Inc.; VLMooney, Inc. d/b/a Kris & Sam's; and Lit'l Pepper Gourmet, Inc. as representatives of the Settlement Class.

4. The Court appoints Oscar M. Price, IV and Nicholas W. Armstrong, of Price Armstrong, LLC, and Patrick Flynn of Flynn & Phillips, LLC as Class Counsel for the Settlement Class.

5. The Court grants preliminary approval to the Settlement Agreement as the product of informed, non-collusive negotiations, without obvious deficiencies, which falls within a reasonable range.

6. The Court approves, as to form and content, the notice plan to the Settlement Class proposed in the Settlement Agreement and its exhibits, and finds that this notice is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to the members of the Settlement Class.

7. Any Settlement Class Member may request to be excluded from the Settlement Class. Such requests for exclusion must be received Settlement Administrator, Class Counsel, and Defendant's Counsel on or before 21 days before Final Fairness Hearing and must otherwise comply with the requirements set forth in the Class Notice documents and Settlement Agreement. If the Court grants final approval of the Settlement Agreement and enters final judgment, all

members of Settlement Class who have not submitted valid requests for exclusion shall be bound by the Final Judgment.

8. The Final Fairness Hearing shall be held before this Court at \_\_\_\_\_ on \_\_\_\_\_ at the Dougherty County Courthouse, Albany, Georgia, to determine whether the final settlement of this litigation on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, and adequate.

9. Any member of the Settlement Class who wishes to object to the settlement may do so by filing a written objection with the Court and delivering a copy to counsel on or before 21 days before Final Fairness Hearing and must otherwise comply with the requirements set forth in the Class Notice documents and Settlement Agreement. No objector shall be heard and no objection shall be considered unless it complies with these requirements. The Court may impose additional requirements on objectors as it deems necessary or appropriate, including the posting of bond and providing of testimony or other discovery.

10. Members of the Settlement Class may appear at the Final Fairness Hearing, at their own expense, individually or through counsel of their choice, by complying with the notice provisions set forth in the Class Notice documents and Settlement Agreement. If they do not enter an appearance, they will be represented by Class Counsel. If the Court grants final approval of the Settlement Agreement and enters final judgment, all members of the Settlement Class who have not given appropriate notice of their intent to appear individually in accordance with the procedures outlined in the Class Notice documents and Settlement Agreement shall be deemed to have waived their right.

11. All filings in support of Final Approval and the distribution of attorney's fees and expenses, and class representative incentive awards, shall be filed and served no later than seven days before the Final Fairness Hearing.

SO ORDERED this \_\_\_\_ day of September, 2018.

---

Hon. Denise Marshall

Prepared by:

Patrick S. Flynn  
Flynn & Phillips, LLC  
Georgia Bar No. 004765  
P.O. Box 7  
Albany, Georgia 31702  
229-446-4886  
Pflynn@fpplaw.com