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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF SAN BERNARDINO

16 MASTANE SHALIKAR, individually, and on
behalf of all others similarly situated,
17
Plaintiff,
18
v.
19
SKEETER SNACKS, LLC
20
Defendant.
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CASE NO. CIVDS1702247
**SETTLEMENT AGREEMENT AND
RELEASE**

1 This Settlement Agreement and Release (the “Settlement”) is made and entered into by and
2 between the following parties: Plaintiff Mastane Shalika (“Plaintiff” and/or “Class
3 Representative”), individually and on behalf of the Settlement Class, and Defendant, Skeeter
4 Snacks, LLC (“Defendant”) and their respective counsel of record.

5 **I. DEFINITIONS**

6 As used in this Settlement and all related documents, the following terms have the
7 following meanings:

8 A. “Action” means the civil action entitled *Shalika v. Skeeter Snacks, LLC*,
9 which was filed in the Superior Court for the State of California, County of San Bernardino, on
10 February 8, 2017, Case No. CIVDS1702247.

11 B. “Authorized Claimant” means any Settlement Class Member who timely
12 submits a valid Claim Form.

13 C. “Claims Deadline” means the date set by the Court for the last date on which a
14 Claim Form may be submitted or postmarked. The Claims Deadline shall be no more than sixty
15 (60) days after the last date of publication of the Publication Notice.

16 D. “Claim Form” means the form Settlement Class Members must submit to
17 participate in the reimbursement provisions of the Settlement. The Claim Form is attached as
18 Exhibit “A.”

19 E. “Class Counsel” means Faruqi & Faruqi, LLP.

20 F. “Class Notice” means, collectively, the Publication Notice and Long Form
21 Notice, substantially in the forms to be agreed upon by the Parties and that will be submitted to the
22 Court in connection with the Parties’ motion for Preliminary Approval.

23 G. “Class Period” means July 1, 2013 up to and including the date Class Notice is
24 provided to the Settlement Class Members.

25 H. “Complaint” means the class action complaint filed in the civil action entitled
26 *Shalika v. Skeeter Snacks, LLC*, Case No. CIVDS1702247 on February 8, 2017, in the Superior
27 Court for the State of California, County of San Bernardino.

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1 I. "Court" means the Superior Court for the State of California, County of San
2 Bernardino.

3 J. "Covered Products" means any of the following Skeeter Snacks Nut Free
4 products: Chocolate Chip 8oz, Cinnamon Grahams 10oz, Chocolate Grahams 10oz, Chocolate
5 Chip 36ct 1oz, Cinnamon Grahams 36ct 1oz, Chocolate Grahams 36ct 1.2oz, Cookie Variety 36ct,
6 Chocolate Chip Family Pack 8ct 1oz, Graham Variety Family Pack 8ct 1oz, Chocolate Chip Minis
7 – 4/3pack – 8oz, Double Chocolate Minis – 4/3pack – 8oz, Cookie Variety 4/3pack – 8oz, Honey
8 Grahams – 4/3pack – 10oz, Shortbread – 8 oz, Honey Graham – 8 oz, and Double Chocolate – 8
9 oz.

10 K. "Effective Date" means (a) if no objection is raised to this proposed Settlement
11 at the Final Approval Hearing, the date on which the Final Approval Order and Judgment is
12 entered; or (b) if any objections are raised to the proposed Settlement at the Final Approval
13 Hearing, the latest of (i) the expiration date of the time for the filing or notice of any appeal from
14 the Final Approval Order and Judgment, (ii) the date of final affirmance of any appeal of the Final
15 Approval Order and Judgment, (iii) the expiration of the time for, or the denial of, a petition for
16 writ of review of the Final Approval Order and Judgment and, if the writ is granted, the date of
17 final affirmance of the Final Approval Order and Judgment following review pursuant to that
18 grant; or (iv) the date of final dismissal of any appeal from the Final Approval Order and
19 Judgment or the final dismissal of any proceeding on *certiorari* to review the Final Approval
20 Order and Judgment.

21 L. "Final Approval Hearing" means the hearing scheduled to take place at least
22 thirty (30) days after the Claims Deadline at which the Court shall, among other things: (a)
23 determine whether to grant final approval to this Settlement; (b) consider any timely objections to
24 this Settlement and all responses thereto; and (c) rule on any application for attorneys' fees, costs,
25 and/or incentive awards.

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1 M. "Final Approval Order and Judgment" means the order, substantially in the
2 form of Exhibit "E" attached hereto, in which the Court grants final approval of this Settlement
3 and authorizes the entry of a final judgment.

4 N. "Long Form Notice" means notice of the proposed Settlement to be provided to
5 Settlement Class Members under Section V of this Settlement. The Long Form Notice is attached
6 as Exhibit "B."

7 O. "Objection/Exclusion Deadline" means the date set by the Court for the
8 submission of objections or Requests for Exclusion from the class, and shall be at least sixty (60)
9 days after the last date of publication of the Publication Notice.

10 P. "Parties" means Plaintiff and Defendant.

11 Q. "Person" means any individual, proprietorship, corporation, partnership,
12 association, trustee, unincorporated association, or any other type of legal entity, except a
13 governmental entity.

14 R. "Preliminary Approval" means the date the Court preliminarily approves the
15 settlement of the Action, including but not limited to, the terms and conditions of this Settlement.

16 S. "Preliminary Approval Order" means the order, substantially in the form of
17 Exhibit "D" attached to this Settlement, in which the Court grants its preliminary approval to the
18 Settlement, conditionally certifies the Settlement Class, approves and authorizes Class Notice to
19 the Settlement Class, appoints the Settlement Administrator, and sets a Final Approval Hearing.

20 T. "Publication Notice" means notice of this Settlement to be provided to
21 Settlement Class Members under Section V of the Settlement substantially in the form attached as
22 Exhibit "C."

23 U. "Released Parties" means Defendant and its predecessors, successors, assigns,
24 parents, subsidiaries, divisions, departments, and affiliates, and any and all of its past, present, and
25 future officers, directors, employees, stockholders, shareholders, managers, members, partners,
26 agents, servants, attorneys, insurers, representatives, licensees, licensors, customers, subrogees,
27 accountants and assigns, and representatives of any and all of the foregoing.

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1 V. “Releasing Parties” means Plaintiff and Settlement Class Members.

2 W. “Request(s) for Exclusion” means a valid request for exclusion from a Settlement
3 Class Member.

4 X. “Released Claims” means any and all claims, demands, actions, and causes of
5 action of any kind or nature whatsoever, whether at law or equity, known or unknown, direct,
6 indirect, or consequential, liquidated or unliquidated, foreseen or unforeseen, developed or
7 undeveloped, arising under common law, regulatory law, statutory law, or otherwise, including but
8 not limited to unjust enrichment, fraud, breach of warranty express or implied, violation of
9 California Civil Code 1750 et seq., violation of California Business and Professions Code Sections
10 17200 et seq. and 17500 et seq., and any related or similar state consumer protection statutes, claims
11 for restitution, disgorgement of profits, injunctive and declaratory relief, arising during the Class
12 Period, and arising out of or relating to the advertising, packaging, labeling, marketing, promotion,
13 sale or distribution of the Covered Products, including all claims which were alleged or which could
14 have been alleged by Plaintiff, Class Counsel, the Settlement Class and/or any Settlement Class
15 Member against the Released Parties in the Action, or any other legal action, whether those claims
16 are asserted individually or on a class-wide basis. However, this definition expressly excludes
17 claims for personal injury.

18 Y. “Settlement Administrator” means Rust Consulting, Inc.

19 Z. “Settlement Class” means all Persons who purchased any of the Covered
20 Products in the United States, its territories, or at any United States military facility or exchange
21 during the Class Period. Excluded from the Settlement Class are all persons who validly opt out
22 of the Settlement Class in a timely manner, counsel of record (and their respective law firms) for
23 the Parties, Defendant and any of its parents, affiliates, subsidiaries, independent service providers
24 and all of their respective employees, officers, and directors; the presiding judge in the Action; and
25 any natural person or entity that entered into a release with Defendant prior to the Effective Date
26 concerning any Covered Products.

27 AA. “Settlement Class Member” means any member of the Settlement Class.

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1 BB. "Valid Claim" means a claim for reimbursement timely submitted by a
2 Settlement Class Member that satisfies all the criteria to qualify for reimbursement established by
3 the Parties' Counsel and the Settlement Administrator.

4 CC. "Written Proof of Purchase" means a receipt or other documentation from a
5 third party commercial source, reasonable establishing the fact and the date of purchase of a
6 Covered Product by a Settlement Class Member during the Class Period in the United States.

7 **II. LITIGATION BACKGROUND**

8 A. Plaintiff alleges that during the Class Period, Defendant falsely and deceptively
9 labeled and advertised the Covered Products as being "All Natural," when they contain non-
10 natural, artificial, and/or synthetic ingredients including, but not limited to, anhydrous dextrose,
11 lecithin, soy lecithin, and cocoa (processed with alkali). Plaintiff further alleges that Plaintiff and
12 Settlement Class Members paid more for the Covered Products as a result of those alleged
13 statements. Plaintiff has asserted claims on behalf of herself and for others similarly situated in
14 the United States based on Defendant's violations of Cal. Civ. Code § 1770, *et seq.*, Cal. Bus. &
15 Prof. Code §§ 17200 *et seq.* and 17500 *et seq.* and other consumer protection laws.

16 B. Defendant denies any liability or wrongdoing of any kind associated with the
17 claims alleged in the Action, and further contends that, for any purpose other than settlement, the
18 claims alleged in the Action are not appropriate for class treatment.

19 C. The Parties have, in advance of settlement, engaged in extensive arms-length
20 negotiations and an informal exchange of documents and other information pertaining to
21 Plaintiff's claims. The Parties have had a full and fair opportunity to evaluate the strengths and
22 weaknesses of their respective positions.

23 D. Based on the current state of the law, the expense, burden, and time necessary
24 to prosecute the Action through trial and possible appeals, the risks and uncertainty of further
25 prosecution of the Action considering the defenses at issue, the sharply contested legal and factual
26 issues involved, and the relative benefits to be conferred upon Plaintiff and Settlement Class
27 Members pursuant to this Settlement, Class Counsel has concluded that a settlement with
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1 Defendant on the terms set forth herein is fair, reasonable, adequate, and in the best interests of the
2 Settlement Class in light of all known facts and circumstances.

3 E. Defendant and Defendant's counsel recognize the expense and length of
4 continued proceedings necessary to continue the Action through trial and through possible
5 appeals. Defendant also recognizes that the expense and time spent pursuing the Action has
6 detracted and will further detract from resources that may be used to run Defendant's business.
7 Defendant denies any wrongdoing or liability arising out of any of the facts or conduct alleged in
8 the Action and believes that it has valid defenses to Plaintiff's claims.

9 F. Based on the foregoing, which the Parties expressly incorporate as material
10 terms of the Settlement, it is the desire of the Parties to fully, finally, and forever settle,
11 compromise, and discharge the Released Claims. Therefore, it is the intention of the Parties that
12 this Settlement shall constitute a full, final and complete settlement and release, which release
13 includes in its effect all of the Released Parties with respect to any and all claims which were
14 alleged, or could have been alleged, by Plaintiff on her own behalf or on behalf of the Settlement
15 Class in the Action.

16 **III. TERMS OF SETTLEMENT**

17 In consideration of the mutual covenants and promises set forth herein, and subject to
18 Court approval, the Parties agree as follows:

19 A. Certification of Class: For settlement purposes only, and without any finding or
20 admission of any wrongdoing or fault by Defendant, and solely pursuant to the terms of this
21 Settlement, the Parties consent to and agree to the establishment and conditional certification of
22 the Settlement Class.

23 B. Certification is Conditional: This certification is conditional on the Court's
24 preliminary and final approval of this Settlement. In the event the Court does not approve all
25 material terms of the Settlement, then the certification shall be void and this Settlement and all
26 orders entered in connection therewith, including but not limited to any order conditionally
27 certifying the Class, shall become null and void and shall be of no further force and effect and
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1 shall not be used or referred to for any purposes whatsoever in the Action or in any other case or
2 controversy. And, in such an event, this Settlement and all negotiations and proceedings related
3 thereto shall be deemed to be without prejudice to the rights of any and all parties hereto, who
4 shall be restored to their respective positions as of the date of this Settlement, and Defendant shall
5 not be deemed to have waived any opposition or defenses it has to any aspect of the claims
6 asserted herein or to whether those claims are amenable to class-based treatment.

7 C. Releases:

8 1. Upon the Effective Date, and except as to such rights or claims as may be
9 created by this Settlement, Releasing Parties shall fully release and discharge the Released Parties
10 from the Released Claims.

11 In addition, Plaintiff expressly waives and relinquishes, to the fullest extent permitted by
12 law, the provisions, rights and benefits of California Civil Code section 1542, or any other similar
13 provision under federal or state law, which provides

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

19 Plaintiff is deemed to understand and acknowledge the significance of this waiver of
20 California Civil Code section 1542 and/or of any other applicable law relating to limitations on
21 releases. Plaintiff and/or Class Counsel may hereafter discover facts in addition to or different
22 from those which any of them now knows or believes to be true with respect to the subject matter
23 of the Released Claims, but Plaintiff, upon the Effective Date, shall have fully, finally, and forever
24 settled and released any and all Released Claims, known or unknown, suspected or unsuspected,
25 contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore
26 have existed, without regard to the subsequent discovery or existence of such different or
27 additional facts.

1 D. Compensation to the Settlement Class: In consideration of a full, complete, and
2 final settlement of the Action, dismissal of the Action with prejudice, and the Releases in Section
3 III above, and subject to the Court’s approval, the Parties agree to the following relief:

4 1. Monetary Relief: Settlement Class Members may seek reimbursement from
5 Defendant in either of the following ways:

6 a. With Written Proof of Purchase: Settlement Class Members may seek a full
7 refund for every Covered Product purchased during the Settlement Class
8 Period, for which they can present Written Proof of Purchase.

9 b. Without Written Proof of Purchase: Settlement Class Members may seek a
10 total payment of \$3.00 if no Written Proof of Purchase is presented.

11 2. Injunctive Relief: Defendant agrees to remove the statement “All Natural” and
12 all other substantially similar statements from both (i) the label of the Covered Products and any
13 of Defendant’s future products containing anhydrous dextrose, lecithin, soy lecithin and/or cocoa
14 (processed with alkali); and (ii) any and all websites, advertisements, and other forms of marketing
15 associated with said products. Defendant agrees to remove “All Natural” representations from the
16 labeling the next time the labels are printed for the Covered Products. Defendant will not generate
17 any additional advertisements or other forms of marketing with the statement “All Natural,” or all
18 other substantially similar statements, for the Covered Products, as of the Effective Date of this
19 agreement, and will remove the statement “All Natural,” and all other substantially similar
20 statements, from its website within 60 days after the Effective Date. All injunctive relief imposed
21 upon Defendant by the Settlement regarding the use of the statement “All Natural” and other
22 substantially similar statements with respect to the Covered Products shall terminate in the event
23 the United States Food and Drug Administration (or a successor agency thereto) allows the use of
24 the term “natural” or any substantially similar term in connection with food products made with
25 anhydrous dextrose, lecithin, soy lecithin and cocoa (processed with alkali).

26 E. Incentive Awards for Class Representative: Class Counsel agrees that it will
27 apply to the Court for an incentive award for the Class Representative in an amount not to exceed
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1 \$1,500, for her participation as the Class Representative, for taking on the risks of litigation, and
2 for settlement of her individual claims as a Settlement Class Member in this Action. Defendant
3 agrees not to oppose Class Representative's motion for an incentive award, provided the requested
4 incentive award does not exceed the amount set forth herein. Defendant shall pay \$1,500 or the
5 incentive award authorized by the Court (whichever is less) within ten (10) calendar days of the
6 Effective Date.

7 F. Attorneys' Fees and Costs:

8 1. Class Counsel agrees that it will apply to the Court, no later than 21 days before the
9 Final Approval Hearing, for an award of attorneys' fees plus costs and expenses not to exceed
10 \$80,000. Defendant agrees not to oppose Class Counsel's motion for attorneys' fees plus costs
11 and expenses, provided the requested attorneys' fees plus costs and expenses do not exceed
12 \$80,000.

13 2. Defendant shall pay the lesser of \$80,000 or the amount of fees plus costs and
14 expenses awarded by the Court to Class Counsel within ten (10) calendar days of the entry of a
15 Final Approval Order, provided that Class Counsel agree to repay such amount in the event the
16 Final Approval Order and Judgment is not entered.

17 3. If the award of attorneys' fees or costs and expenses to counsel is reduced after
18 entry of the Final Approval Order and Judgment, Class Counsel shall repay to Defendant the
19 difference between the amount paid by Defendant to Class Counsel and the amount of the final
20 reduced award no later than five (5) days following entry of the order or opinion reducing the
21 award.

22 **IV. ADMINISTRATION OF SETTLEMENT**

23 A. The Settlement Administrator's duties to administer the settlement include: (1)
24 preparing and publishing Class Notice; (2) establishing and maintaining a settlement website for
25 notification and Claim Form distribution; (3) establishing a telephone number and responding to
26 inquiries and requests for Claim Forms and assistance from Settlement Class Members; (4)
27 receiving and independently reviewing the Claim Forms submitted by Settlement Class Members
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1 for the purpose of verifying any amounts due to Authorized Claimants; (5) receiving and serving
2 upon Class Counsel and Defendant’s counsel any written objections or Requests for Exclusion; (6)
3 reporting, in summary or narrative form, to Class Counsel, Defendant’s Counsel, and the Court,
4 regarding the completion of its tasks identified within this Settlement; and (8) carrying out other
5 related tasks in accordance with the terms of this Settlement, including printing and sending the
6 settlement checks to Settlement Class Members.

7 B. Defendant shall pay the Settlement Administrator’s reasonable costs and fees
8 associated with administering this Settlement, and all costs associated with publication and
9 distribution of Class Notice to Settlement Class Members. Defendant shall pay the Settlement
10 Administrator’s costs and fees as they come due upon submission of an appropriate invoice at the
11 end of each month.

12 C. All disputes relating to the Settlement Administrator’s ability and need to
13 perform its duties shall be referred to the Court, if necessary, which will have continuing
14 jurisdiction over the terms and conditions of this Settlement, until all payments and obligations
15 contemplated by the Settlement have been fully carried out.

16 **V. NOTICE TO THE SETTLEMENT CLASS**

17 A. Class Notice: Subject to Court approval, the Parties agree that after entry of the
18 Preliminary Approval Order, Defendant shall provide the Settlement Class with notice of the
19 settlement by the following methods:.

20 1. Settlement Website: No later than twenty (20) calendar days following
21 entry of the Preliminary Approval Order, the Settlement Administrator shall create and publish a
22 website dedicated to this settlement, displaying, *inter alia*, the Long Form Notice (Exhibit “B”)
23 and downloadable Claim Forms (Exhibit “A”) until the Claims Deadline.

24 2. Publication: The Settlement Administrator or Defendant will cause to be
25 published the Publication Notice (Exhibit “C”) once in *USA Today*, not later than twenty (20)
26 calendar days after entry of the Preliminary Approval Order. The Publication Notice shall be no
27 more than 200 words.

1 3. Toll-Free Telephone Support: The Settlement Administrator shall establish
2 a toll-free support system to provide Settlement Class Members with (a) general information about
3 the litigation; (b) frequently asked questions and answers; and (c) the ability to request a Long
4 Form Notice or Claim Form.

5 B. Declaration of Compliance: Within fourteen (14) calendar days of the Claims
6 Deadline, the Settlement Administrator shall provide the Parties with a declaration attesting to
7 completion of the notice process set forth in this section. The Settlement Administrator shall
8 provide weekly reports detailing claims received and administered.

9 **VI. CLAIMS PROCESS/CLAIMS ADMINISTRATION**

10 A. Claim Form: Settlement Class Members may obtain a Claim Form from the
11 Settlement Administrator by calling the toll free number or by visiting the website identified in the
12 Long Form Notice and Publication Notice. Each Claim Form will include instructions and the
13 date the form must be returned in order for the claim to be considered eligible under the
14 settlement.

15 B. Submission of Claim Form: All Claim Forms shall be signed under penalty of
16 perjury and sent directly to the Settlement Administrator at the address indicated on the Claim
17 Form. All Claim Forms seeking a full refund shall be accompanied by Written Proof of Purchase.
18 The Settlement Administrator shall review the Claim Forms and make any calculations of
19 payments to be distributed to the Settlement Class Member.

20 C. Validity of Submitted Claims: No Claim Form will be deemed valid if it is not
21 signed by the Settlement Class Member under penalty of perjury, is not postmarked or submitted
22 electronically on or before the Claims Deadline, or does not contain the requested information.
23 Notwithstanding the above, Class Counsel and Defendant may, but need not, seek permission
24 from the Court to consider late-filed Claim Forms that are received prior to the distribution of
25 settlement funds to the Settlement Class. Any Settlement Class Members who fail to submit valid
26 and timely Claim Forms, and fail to submit a timely and valid Request for Exclusion, shall be
27 bound by all terms of the settlement and any judgment entered in this Action, and will be barred
28 from receiving any monetary relief under this Settlement.

1 D. Distribution of Refund Checks to Authorized Claimants: Upon completion of
2 its calculation of payments, and within fourteen (14) calendar days following the Claims Deadline,
3 the Settlement Administrator shall provide Class Counsel and Defendant’s counsel with a report
4 listing the amount of all refunds to be made to each Settlement Class Member.

5 E. Issuance of Settlement Proceeds: The Settlement Administrator is responsible
6 for issuing the refunds to Authorized Claimants. Payments will be mailed by the Settlement
7 Administrator within twenty-one (21) calendar days of the Effective Date. A declaration of
8 payment will be filed by the Settlement Administrator with the Court and provided to the Parties
9 within ten (10) calendar days of mailing the settlement proceeds.

10 **VII. PROCEDURES FOR OBJECTING TO OR REQUESTING EXCLUSION**
11 **FROM SETTLEMENT**

12 A. Objections: Only Settlement Class Members, on their own behalf and not on
13 behalf of any class, may object to the Settlement (“Objection Statement”). Those who wish to
14 object to the Settlement must do so in writing. Objection Statements must (1) state the basis of the
15 objection and all required information from the Long Form Notice, (2) be mailed to the Settlement
16 Administrator and (3) be filed with the Court by the Objection/Exclusion Deadline. Although
17 Settlement Class Members do not need to attend the Final Approval Hearing in order to object, no
18 Settlement Class Member shall be entitled to be heard at the Final Approval Hearing (whether
19 individually or through separate counsel) unless written notice of the Settlement Class Member’s
20 intention to appear at the Final Approval Hearing, and copies of any written objections or briefs,
21 have been timely filed with the Court and mailed to the Settlement Administrator on or before the
22 Objection/Exclusion Deadline.

23 1. Timeliness of Objections: The date of filing as stamped by the Court
24 shall be the exclusive means used to determine whether an Objection Statement and/or notice of
25 intention to appear has been timely submitted. Settlement Class Members who fail to timely file
26 and serve a written objection in the manner specified above shall be deemed to have waived any
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1 objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to
2 the Settlement.

3 2. Response to Objections: Class Counsel and/or Defendant may, at least
4 two (2) business days (or such other number of days as the Court shall specify) before the Final
5 Approval Hearing, file any responses to any written objections submitted to the Court by
6 Settlement Class Members in accordance with this Settlement.

7 B. Procedure for Requesting Exclusion: Settlement Class Members who wish to
8 opt out of this Settlement must submit a written statement before the Objection/Exclusion
9 Deadline (“Requests for Exclusion”). Requests for Exclusion that do not include all required
10 information and/or that are not submitted on a timely basis, will be deemed null, void, and
11 ineffective. The date of the postmark on the mailing envelope shall be the exclusive means used
12 to determine whether a Settlement Class Member’s Request for Exclusion has been timely
13 submitted. In the event that the postmark is illegible, the Request for Exclusion shall be deemed
14 untimely unless it is received by the Settlement Administrator within three (3) calendar days of the
15 Objection/Exclusion Deadline. Any Settlement Class Member who properly opts out of the
16 Settlement Class using this procedure will not be entitled to any relief, will not be bound by the
17 Settlement, and will not have any right to object or appeal. Settlement Class Members who fail to
18 submit a valid and timely request for exclusion on or before the Objection/Exclusion Deadline
19 shall be bound by all terms of the Settlement and any final judgment entered in this Action if the
20 Settlement is approved by the Court, regardless of whether they ineffectively or untimely
21 requested exclusion from the Settlement.

22 C. Notice of Objections and/or Requests for Exclusion: The Settlement
23 Administrator shall on a daily basis (1) date stamp all original Requests for Exclusion and
24 Objection Statements it receives; and (2) serve copies of same on Class Counsel and Defendant’s
25 counsel no later than seven (7) calendar days after the Objection/Exclusion Deadline. The
26 Settlement Administrator shall inform Class Counsel and Defendant’s counsel of any such
27 documents received that were ineffectively or untimely submitted.

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1 D. No Solicitation of Settlement Objections or Exclusions: The Parties agree to
2 use their best efforts to carry out the terms of this Settlement. At no time will any of the Parties or
3 their counsel seek to solicit or otherwise encourage any Settlement Class Members to object to the
4 Settlement, or request exclusion from participating as a Settlement Class Member, or encourage
5 any Settlement Class Member to appeal from the final judgment.

6 **VIII. DUTIES OF THE PARTIES PRIOR TO FINAL COURT APPROVAL**

7 The Parties shall promptly submit this Settlement to the Court in support of the Motion for
8 Preliminary Approval and determination by the Court as to its fairness, adequacy, and
9 reasonableness. Promptly upon execution of this Settlement, Plaintiffs shall apply to the Court for
10 the entry of a Preliminary Approval Order substantially in the following form, as more particularly
11 set forth on Exhibit “D”:

12 A. Scheduling a Final Approval Hearing, no earlier than thirty (30) days after the
13 Claims Deadline, on the question of whether the proposed Settlement should be finally approved
14 as fair, reasonable, and adequate as to the Settlement Class Members;

15 B. Approving as to form and content the Publication Notice and the Long Form
16 Notice;

17 C. Approving as to form and content the proposed Claim Form and instructions;

18 D. Directing publication of the Publication Notice, and the method and frequency
19 of Class Notice;

20 E. Preliminarily approving the Settlement;

21 F. Preliminarily and conditionally certifying the Settlement Class for settlement
22 purposes;

23 G. Preliminarily approving the Settlement Administrator and the administration of
24 the settlement in accordance with the procedures set forth in this Settlement;

25 H. Staying all proceedings in the Action, and enjoining the prosecution of any
26 other individual or class claims; and

1 I. Providing that, in the event the Settlement set forth in this Settlement is not
2 approved by the Court, or in the event that this Settlement becomes null and void pursuant to its
3 terms, this Settlement and all orders entered in connection therewith, including but not limited to
4 any order conditionally certifying the Class, shall become null and void and shall be of no further
5 force and effect and shall not be used or referred to for any purposes whatsoever in the Action or
6 in any other case or controversy; and that in such an event, this Settlement and all negotiations and
7 proceedings related thereto shall be deemed to be without prejudice to the rights of any and all
8 parties hereto, who shall be restored to the respective positions as of the date of this Settlement. In
9 the event the Court does not enter the Preliminary Approval order described herein, or decides to
10 do so only with material modifications, then this entire Settlement shall become null and void,
11 unless the Parties hereto agree in writing to proceed with this Settlement as modified.

12 **IX. DUTIES OF THE PARTIES FOLLOWING PRELIMINARY COURT**
13 **APPROVAL**

14 Class Counsel will submit a proposed Final Order and Judgment at the Final Approval
15 Hearing in the form set forth as Exhibit “E,” which shall:

16 A. Approve the Settlement, adjudging the terms thereof to be fair, reasonable and
17 adequate, and directing consummation of its terms and provisions;

18 B. Approve Class Counsel’s application for the requested award of attorneys’ fees
19 and costs and the Class Representative’s application for an incentive award; and

20 C. Permanently bar Plaintiff and Settlement Class Members from prosecuting
21 against Defendant, and other Released Parties, from any and all Released Claims.

22 **X. CONFIRMATORY DISCOVERY**

23 Defendant will provide confirmatory discovery in the form of an executed declaration
24 setting forth and confirming all representations made to Plaintiff’s counsel regarding the Products.
25 Defendant further agrees to file said executed declaration in support of approval of the Settlement.
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1 **XI. PARTIES' AUTHORITY**

2 The signatories represent that they are fully authorized to enter into this Settlement and
3 bind the Parties to its terms and conditions.

4 **XII. MUTUAL FULL COOPERATION**

5 A. The Parties agree to cooperate fully with each other to accomplish the terms of
6 this Settlement, including but not limited to, execution of such documents and the taking of such
7 other action as may reasonably be necessary to implement the terms of this Settlement. The
8 Parties to this Settlement shall use their best efforts, including all efforts contemplated by this
9 Settlement and any other efforts that may become necessary by order of the Court, or otherwise, to
10 effectuate this Settlement. As soon as practicable after execution of this Settlement, Class
11 Counsel, with the assistance and cooperation of Defendant and its counsel, shall take all necessary
12 steps to secure the Court's final approval of this Settlement.

13 B. Defendant agrees that it will not attempt to discourage Settlement Class
14 Members from submitting Claim Forms.

15 **XIII. NO ADMISSION**

16 This Settlement is not to be construed or deemed as an admission of liability, culpability,
17 negligence, or wrongdoing on the part of Defendant. Defendant denies all liability for claims
18 asserted in the Action. Each of the Parties has entered into this Settlement with the intention to
19 avoid further disputes and litigation with the attendant inconvenience and expenses. This
20 Settlement is a settlement document and shall, pursuant to Cal. Evid. Code §§ 1151 and 1152 be
21 inadmissible in evidence in any proceeding in order to establish liability. The preceding sentence
22 shall not apply to an action or proceeding to approve or enforce this Settlement.

23 **XIV. ENFORCEMENT ACTIONS**

24 The Court shall retain jurisdiction, and shall have exclusive jurisdiction, to enforce,
25 interpret and implement this Settlement, including any alleged violations of the Settlement, and
26 the terms of any order entered pursuant to this Settlement.

1 **XV. COMPLETE DEFENSE**

2 To the extent permitted by law, this Settlement may be pleaded as a full and complete
3 defense to, and may be used as the basis for an injunction against, any action, suit, or other
4 proceedings that may be instituted, prosecuted, or attempted in breach of or contrary to this
5 Settlement.

6 **XVI. NOTICES**

7 Unless otherwise specifically provided, all notices, demands or other communications in
8 connection with this Settlement shall be in writing and shall be deemed to have been given as of
9 the third business day after mailing by United States registered or certified mail, return receipt
10 requested, addressed as follows:

For the Settlement Class	For Defendant
Barbara A. Rohr Faruqi & Faruqi, LLP 10866 Wilshire Boulevard Suite 1470 Los Angeles, CA 90024	Stephanie Stroup Norton Rose Fulbright, LLP 555 South Flower Street, 41 st Floor Los Angeles, CA 90071

15 **XVII. CONSTRUCTION**

16 The Parties agree that the terms and conditions of this Settlement are the result of arm’s
17 length negotiations between the Parties and that this Settlement shall not be construed in favor of
18 or against any Party by reason of the extent to which any Party or her or its counsel participated in
19 the drafting of this Settlement.

20 **XVIII. MATERIAL TERMS; CAPTIONS**

21 Each term of this Settlement is a material term of the Settlement not merely a recital, and
22 reflects not only the intent and objectives of the Parties but also the consideration to be exchanged
23 by the Parties hereunder. Paragraph titles or captions are inserted as a matter of convenience and
24 for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any
25 of its provisions.
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XIX. INTEGRATION CLAUSE

This Settlement contains the entire agreement between the Parties relating to the settlement, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written, and whether by Plaintiff’s or Defendant’s legal counsel, are extinguished.

XX. NON-EVIDENTIARY USE

Neither this Settlement nor any of its terms shall be offered or received into evidence in the Action, or in any other action or proceeding; provided, however, that nothing contained in this section “non-evidentiary use” shall prevent this agreement from being used, offered, or received in any proceeding to enforce, construe, or finalize this Settlement.

XXI. NO COLLATERAL ATTACK

This Settlement shall not be subject to collateral attack by any Settlement Class Member or any recipient of the notices to the Settlement Class after the final judgment. Such prohibited collateral attacks shall include claims made before the Final Approval Hearing that a Settlement Class Member’s settlement amount was improperly calculated or adjusted.

XXII. AMENDMENTS

The terms and provisions of this Settlement may be amended only by a written agreement, which is both (1) signed by the Parties who have executed this Settlement and (2) approved by the Court.

XXIII. GOVERNING LAW

This Settlement shall be governed by, construed under, and interpreted and the rights of the Parties determined in accordance with, the laws of the State of California, irrespective of the State of California’s choice of law principles.

XXIV. BINDING ON ASSIGNS

This Settlement shall be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators, successors, and assigns.

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XXV. CLASS COUNSEL SIGNATORIES

It is agreed that because the Settlement Class appears to be so numerous, it is impossible or impractical to have each member of the Settlement Class execute this Settlement. The notice plan set forth herein will advise Settlement Class Members of all material terms of this Settlement, including the binding nature of the releases and such shall have the same force and effect as if this Settlement were executed by each Settlement Class Member.

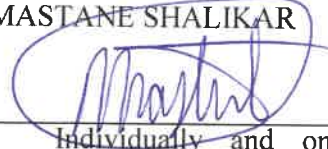
XXVI. COUNTERPARTS

This Settlement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement, which shall be binding upon and effective as to all Parties and the Settlement Class.

IN WITNESS WHEREOF, the Parties have duly executed this Settlement as of the dates indicated below:

CLASS REPRESENTATIVE AND SETTLEMENT CLASS COUNSEL:

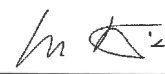
DATED: February 10, 2017
March

MASTANE SHALIKAR


Individually and on behalf of the Settlement Class

DEFENDANT:

DATED: February __, 2017

SKEETER SNACKS, LLC


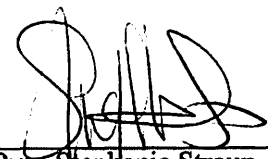
By: _____ will Holsworth

APPROVED AS TO FORM:

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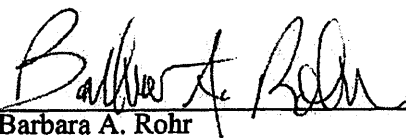
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DATED: April 5, 2017



By: Stephanie Stroup
Attorney for Defendant Skeeter Snacks,
LLC

DATED: April 4, 2017



By: Barbara A. Rohr
Attorney for the Plaintiff and the
Settlement Class