

SETTLEMENT AGREEMENT AND RELEASE

Virginia Simonin v. WinCo Foods, LLC
U.S. District Court, District of Oregon, Case No. 3:19-cv-02094-AR

This Settlement Agreement and Release (“Agreement”) is made and entered into by and among Defendant WinCo Foods, LLC, (“Defendant”) and Plaintiff Virginia Simonin (“Plaintiff”), on her own behalf and on behalf of a putative class and each of its Settlement Class Members (as defined herein) in *Simonin v. WinCo Foods, LLC*, U.S. District Court, District of Oregon, Case No. 3:19-cv-02094 (“the Action”), with the assistance of counsel. Plaintiff and Defendant collectively are referred to in this Agreement as the “Parties.” The Parties agree that the Action and the Released Claims (as defined herein) shall be fully and finally compromised, settled and released, and dismissed with prejudice and/or final judgment entered, subject to the approval of the Court and the terms and provisions set forth in this Agreement.

RECITALS

- A. On November 25, 2019, Rachel Miller filed a putative class action complaint in Multnomah County Circuit Court for the State of Oregon. The material allegations of the complaint were that Defendant allegedly violated the Oregon Unlawful Trade Practices Act by improperly collecting a surcharge, by omitting the amount of the surcharge as itemized on its customer receipts in its advertised prices, at its point-of-sale registers at its stores located within the City of Portland, Oregon between June 1, 2019 and May 8, 2022.
- B. On December 26, 2019, Defendant filed a notice of removal to federal district court.
- C. On January 28, 2020, Defendant filed a motion to dismiss the complaint.
- D. On February 11, 2020, Rachel Miller and Virginia Simonin filed an amended putative class action complaint in U.S. District Court for the District of Oregon. Rachel Miller was later withdrawn as putative class representative.
- E. On February 25, 2020, Defendant filed a motion to dismiss the amended complaint. After briefing and oral argument, the Court issued a Findings and Recommendation on September 3, 2020, denying Defendant’s motion to dismiss. An order denying Defendant’s motion was entered on November 12, 2020.

- F. During discovery, the Parties exchanged documents and conducted depositions of Plaintiff Virginia Simonin and five of Defendant's employees, including a Rule 30(b)(6) corporate representative of Defendant.
- G. On December 14, 2021, Virginia Simonin and David Maingot filed a Second Amended Complaint. David Maingot later voluntarily withdrew as putative class representative.
- H. On May 8, 2022, WinCo modified its operations and stopped the practice of itemizing the surcharge identified in Plaintiff's complaint on customer receipts and collecting the surcharge at point-of-sale registers.
- I. On June 22, 2022, the Parties participated in a settlement conference with Magistrate Judge Mustafa T. Kasubhai. The case did not settle.
- J. Between March 2022 and August 2022, the Parties exchanged expert discovery and reports.
- K. On October 12, 2022, Plaintiff filed a motion to certify the class, which was fully briefed.
- L. On November 18, 2022, Defendant filed a motion to dismiss, which was fully briefed.
- M. On April 18, 2023, the Parties attended mediation with Judge Michael Hogan (Retired). The case did not settle.
- N. Subsequently, the Parties engaged Senior Judge Henry Kantor as mediator. With Judge Kantor's help, and following months of phone calls, videoconferences, and exchanges of information, the Parties reached an agreement on January 4, 2024.
- O. During the pendency of the Action, the Parties exchanged formal document discovery and other information informally. The information exchanged in informal and formal discovery was sufficient to assess the strengths and weakness of the claims and defenses.
- P. At all times, Defendant has generally and specifically denied any and all wrongdoing or liability of any sort with regard to any of the claims alleged; makes no concessions or admissions of wrongdoing or liability of any sort; and contends that for any purpose other than settlement, the Action is not appropriate for class treatment. Defendant asserts a number of defenses to the claims and has denied any wrongdoing or liability arising out of any of the alleged facts or conduct in the Action. Neither this Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out this Agreement, is or may be construed as, or may be used as an admission, concession, or indication by or against Defendant or any of the Released Parties (defined below) of any

fault, wrongdoing, or liability whatsoever. Nor should the Agreement be construed as an admission, other than for settlement purposes only, that Plaintiff can serve as an adequate Class Representative. There has been no final determination by any court as to the merits of the claims asserted by Plaintiff against Defendant or as to whether a class should be certified, other than for settlement purposes only.

- Q. Defendant believes that the claims asserted in the Action do not have merit and that Defendant would have likely prevailed on its motion to dismiss, at summary judgment, or trial. Nonetheless, taking into account the uncertainty and risks inherent in any litigation, Defendant has concluded it is desirable and beneficial that the Action be fully and finally settled and terminated in the manner and upon the terms and conditions set forth in this Agreement. This Agreement is a compromise, and the Agreement, any related documents, and negotiations resulting in it will not be construed as or deemed to be evidence of or an admission or concession of liability or wrongdoing on the part of Defendant, or any of the Released Parties, with respect to any claim of any fault or liability or wrongdoing or damage whatsoever or with respect to the certifiability of a litigation class.
- R. Plaintiff believes that the claims asserted in the Action against Defendant have merit and that she would have prevailed at summary judgment and/or trial. Nonetheless, Plaintiff and Class Counsel recognize that Defendant has raised factual and legal defenses that present a risk that Plaintiff may not prevail. Plaintiff and Class Counsel also recognize the expense and delay associated with continued prosecution of the Action against Defendant through the motion to dismiss, class certification, summary judgment, trial, and any subsequent appeals. Plaintiff and Class Counsel also have taken into account the uncertain outcome and risks of litigation, especially in complex class actions, as well as the difficulties inherent in such litigation. Therefore, Plaintiff believes it is desirable that the Released Claims be fully and finally compromised, settled, and resolved with prejudice. Based on its evaluation, Class Counsel has concluded that the terms and conditions of this Agreement are fair, reasonable, and adequate to the Settlement Class (defined below), and that it is in the best interests of the Settlement Class to settle the claims raised in the Action pursuant to the terms and provisions in this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated into and are an integral part of this Agreement, and in consideration of the mutual promises below, the sufficiency of which the Parties readily acknowledge and accept, the Parties agree as follows:

AGREEMENT

1. DEFINITIONS

In addition to the definitions contained elsewhere in this Agreement, the following definitions shall apply:

1.1 Administration Costs: The costs and expenses actually incurred by the Settlement Administrator in implementing the Notice Plan (defined in Paragraph 3.3), including the publication of Class Notice and establishment of the Settlement Website; implementing the Claims Process, including the processing, handling, and reviewing of claims; implementing the Distribution Plan, including paying Approved Claims; establishing the Settlement Fund; and all other expenses related to the administration of the Settlement Fund and administering this Settlement.

1.2 Agreement, Settlement Agreement, or Settlement: The settlement agreement reflected in this document, titled “Settlement Agreement and Release.”

1.3 Approved Claim: A Claim Form submitted by a Settlement Class Member that: (a) is submitted timely and in accordance with the directions on the Claim Form and the provisions of the Agreement; (b) is completed fully and truthfully by a Settlement Class Member with all of the information requested in the Claim Form; (c) is signed by the Settlement Class Member, physically or electronically; and (d) is approved by the Settlement Administrator pursuant to the provisions of this Agreement.

1.4 Attorney’s Fee and Cost Award: The amount that the Court awards to Plaintiff as reasonable attorneys’ fees and recoverable litigation costs in this matter. The Attorney’s Fee and Cost Award shall be paid from the Settlement Fund.

1.5 Claim Form: The document to be submitted by Settlement Class Members seeking a cash payment pursuant to this Agreement. The Claim Form will be available online at the Settlement Website and the contents of the Claim Form will be substantially similar to the

forms attached hereto as Exhibit 4 (online version) and Exhibit 5 (paper version) (without material modification unless agreed upon by the Parties), subject to Court approval.

1.6 Claimant: A Settlement Class Member who submits a claim for cash payment as described in Paragraph 3.4 of this Agreement.

1.7 Claims Deadline: The date by which all Claim Forms must be postmarked or received by the Settlement Administrator to be considered timely. The Claims Deadline shall be sixty (60) calendar days from the Notice Date defined in Paragraph 3.3(a). The Claims Deadline will be clearly set forth in the Preliminary Approval Order as well as in the Class Notice and Claim Form.

1.8 Class or Settlement Class or Settlement Class Members: All persons who, between June 1, 2019 and May 8, 2022, purchased certain non-grocery items from a WinCo store located within the City of Portland, Oregon and paid to WinCo a surcharge on certain non-grocery items related to the Clean Energy Surcharge enacted by the City of Portland, effective January 1, 2019. Excluded from the Settlement Class are: (1) any Judge presiding over this Action and members of their families; (2) persons who properly execute and file a timely request for exclusion from the Settlement Class; (3) David Maingot; and (4) the legal representatives, successors, or assigns of any such excluded persons.

1.9 Class Counsel: Attorneys Michael Fuller of OlsenDaines; Kelly D. Jones of the Law Office of Kelly D. Jones; and Dan Nichols of JurisLaw LLP.

1.10 Class Member or Settlement Class Member: Each person eligible to participate in this Settlement who is a member of the Settlement Class as defined above.

1.11 Class Notice or Notice: The Notice of Proposed Class Action Settlement, substantially similar to the forms attached hereto as Exhibit 2 (the long form) and Exhibit 3 (the short form) (without material modification unless agreed upon by the Parties), subject to Court approval.

1.12 Class Representative: Plaintiff Virginia Simonin will ask the Court to be approved as the Class Representative. Defendant will not oppose this request.

1.13 Court: The U.S. District Court for District of Oregon, acting in Case No. 3:19-cv-02094.

1.14 Defendant: WinCo Foods, LLC.

1.15 Defendant's Counsel: Thomas C. Sand, John C. Clarke, and Sophia C. von Bergen of Miller Nash LLP.

1.16 Effective Date: The date when the Settlement Agreement becomes Final.

1.17 Final: One business day following the latest of the following events: the Final Approval Order and General Judgment of Dismissal have been entered on the Court docket, and: (a) thirty-one (31) calendar days after the Court's Final Approval Order and General Judgment of Dismissal; (b) if an appeal has been filed, the date of completion, in a manner that finally affirms and leaves in place the Final Approval Order and General Judgment of Dismissal without any material modification, of all proceedings arising out of the appeal or appeals (including, but not limited to, the expiration of all deadlines for motions for reconsideration or petitions for review and/or certiorari, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal or appeals following decisions on remand); or (c) the Court following the resolution of the appeal enters a further order approving settlement on the material terms set forth herein and in the Final Approval Order and General Judgment of Dismissal, and either no further appeal is taken from such Final Approval Order and General Judgment of Dismissal or any such appeal results in affirmation of such Final Approval Order and General Judgment of Dismissal.

1.18 Final Approval or Final Approval Order: The Order approving this Agreement issued by the Court at or after the Final Approval Hearing Date and substantially similar to the form attached hereto as Exhibit 6 (without material modification unless agreed upon by the Parties), subject to Court approval.

1.19 General Judgment of Dismissal: The general judgment of dismissal entered by Court after Final Approval of the Agreement and substantially similar to the form attached hereto as Exhibit 7 (without material modification unless agreed upon by the Parties), subject to Court approval.

1.20 Notice Date: The date of publication of notice pursuant to Paragraph 3.3(a) of this Agreement.

1.21 Objection/Exclusion Deadline: The date by which all objections and requests for exclusion must be postmarked or received by the Settlement Administrator or the Court to be considered timely. The Objection/Exclusion Deadline shall be sixty (60) calendar days from the Notice Date defined by Paragraph 3.3(a).

1.22 Preliminarily Approve, Preliminary Approval, or Preliminary Approval Order: The Court's order preliminarily approving the terms and conditions of this Agreement, certifying the Settlement Class for settlement purposes, and directing Notice of the Settlement to the Settlement Class, substantially similar to the form attached hereto as Exhibit 1 (without material modification unless agreed upon by the Parties), subject to Court approval.

1.23 Preliminary Approval Date: The date on which the Court enters an order granting Preliminary Approval.

1.24 Request for Exclusion: Election Not to Participate or Opt-out statement by a Class Member, as described further in Paragraph 3.9.

1.25 Released Claims: The claims that Releasing Parties are releasing in exchange for the consideration provided for by this Agreement, which include: any and all actual, potential, filed, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, claims, demands, liabilities, rights, causes of action, controversies, extracontractual claims, damages, debts, judgments, suits, actual, statutory, punitive, exemplary or multiplied damages, expenses, costs, attorneys' fees and/or obligations whether in law or in equity, accrued or unaccrued, direct, individual, derivative, or representative, of every nature and description whatsoever, whether based on any federal, state, local, statutory or common law or any other law, rule or regulation—including but not limited to claims for violation of the Oregon Unlawful Trade Practices Act; injunctive relief; declaratory relief; unjust enrichment—against the Released Parties, or any of them, arising out of or related in any way to the creation, notice, implementation, assessment, imposition or collection of a surcharge on certain non-grocery items, including all facts, transactions, events, matters, occurrences, acts, disclosures, statements, representations, omissions or failures to act regarding the assessment of the surcharge, including

all claims that were brought or could have been brought in the Action. Even if the Settlement Class Member discovers facts in addition to or different from those that he or she now knows or believes to be true or otherwise fails to discover facts, with respect to the subject matter of the Released Claims, those claims will remain released and forever barred.

1.26 Released Parties: Defendant and its past, present, and future parent companies, subsidiaries, affiliates, related entities, divisions, and agents, and all of their respective partners, principals, managers, officers, directors, employees, shareholders, members, advisors, consultants, insurers, personal or legal representatives, accountants, attorneys, trustees, assigns, real or alleged alter egos, predecessors, successors, transferees, managing agents, investors, and agents.

1.27 Releasing Parties: Jointly and severally, and individually and collectively, the Plaintiff, Settlement Class Members and all of their respective present or past heirs, executors, estates, administrators, predecessors, successors, assigns, parent companies, subsidiaries, affiliates, related entities, divisions, banners, and agents, and all of their respective partners, principals, managers, officers, directors, employees, shareholders, members, advisors, consultants, insurers, personal or legal representatives, accountants, attorneys, trustees, assigns, real or alleged alter egos, transferees, heirs, executors, managing agents, investors, agents, independent contractors, financial and other advisors, investment bankers, underwriters, and lenders, of each of the foregoing, and anyone claiming by, through, derivatively, or on behalf of them.

1.28 Settlement Administrator: CPT Group, Inc., the third-party administration company that has been selected jointly by the Parties and will be approved by the Court to perform the duties set forth in this Agreement.

1.29 Settlement Website: A website to be established, operated, and maintained by the Settlement Administrator for purposes of providing notice and otherwise making available to the Settlement Class Members the documents, information, and online claims submission process referenced below in Paragraph 3.3(e).

1.30 Settlement Fund: The settlement fund to be established and controlled by the Settlement Administrator and funded by the Defendant in the amounts set out below in Paragraph 2.1.

2. SETTLEMENT RELIEF AND SETTLEMENT CLASS CERTIFICATION

2.1 Gross Settlement Amount. Subject to the terms and conditions of this Agreement, Defendant will pay the following amounts to the Settlement Fund: (i) Settlement Payment of \$3,365,000.00; and (ii) Administration Costs actually incurred by the Settlement Administrator up to a maximum amount of \$235,000.00, as described below in Paragraph 2.9(d). This is the maximum gross amount Defendant can be required to pay under this Agreement. The Settlement Fund represents the total maximum extent of Defendant's monetary obligations under the Agreement. Defendant shall have no obligation to make further payments to the Settlement Fund.

2.2 Other Relief. As of May 8, 2022, Defendant stopped itemizing the surcharge identified in Plaintiff's complaint on customer receipts and collecting the surcharge at point-of-sale registers.

2.3 Settlement of the Action and All Released Claims. The Final Approval of this Agreement is intended to and will settle and resolve with finality on behalf of Plaintiff and Settlement Class Members, the Action and the Released Claims and other claims that have been brought, could have been brought, or could be brought now or at any time in the future against the Released Parties by the Plaintiff and Settlement Class Members in the Action or any other proceeding arising out of, in any manner related to, or connected in any way with the Released Claims.

2.4 Settlement Class Certification. Solely for the purpose of this Settlement, the Parties stipulate and agree to certification of the claims asserted on behalf of Settlement Class Members. As such, the Parties stipulate and agree that in order for this Settlement to occur, the Court must certify the Settlement Class for the purpose of settlement as defined in this Agreement.

2.5 Conditional Nature of Stipulation for Certification. The Parties stipulate and agree to the certification of the claims asserted on behalf of Plaintiff and Settlement Class

Members for purposes of this Settlement only. If the Settlement does not become Final, the fact that the Parties were willing to stipulate to certification as part of the Settlement shall not be admissible or used in any way in connection with, the question of whether the Court should certify any claims in a non-settlement context in the Action or in any other lawsuit. If the Settlement does not become Final, Defendant reserves the right to contest any issues relating to class certification and liability.

2.6 Appointment of Class Representative. Solely for the purposes of this Settlement, the Parties stipulate and agree Plaintiff Virginia Simonin shall be appointed as the representative for the Settlement Class.

2.7 Appointment of Class Counsel. Solely for the purpose of this Settlement, the Parties stipulate and agree that the Court appoint Class Counsel to represent the Settlement Class.

2.8 Payment of Approved Claims. Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay a cash payment from the Net Settlement Amount (defined below) for Approved Claims from the Settlement Fund, as described in Paragraph 3.4 below.

2.9 Settlement Disbursements. Subject to the terms and conditions of this Agreement, the Settlement Administrator will make the following payments from the Settlement Fund:

(a) **To Class Counsel.** Class Counsel will apply to the Court for a total Attorney's Fee in an amount of 30% of the \$3,365,000 payment to the Settlement Fund (i.e., \$1,009,500) and Costs of no more than \$150,000. The Settlement Administrator will pay the court-approved amounts for the Attorneys' Fee and Cost Award out of the Settlement Fund. IRS Form 1099 will be issued to Class Counsel firm OlsenDaines by the Settlement Administrator for these payments. In the event the Court does not approve the entirety of the application for the Attorneys' Fee and Cost Award, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendant nor the Settlement Administrator shall be responsible for paying the difference to Class Counsel between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Class Counsel for Attorneys' Fees

and Cost Award, the difference shall remain in the Settlement Fund and be available for distribution to Settlement Class Members. The approval by the Court of any such lesser sum(s) shall not be grounds for Plaintiff and/or Class Counsel to terminate the Settlement; however, Class Counsel retain their right to appeal any decision by the Court regarding the Attorneys' Fees and Cost Award.

(b) **To Plaintiff.** Class Counsel will apply to the Court for Plaintiff to be paid a Service Award, in addition to any settlement payment as a result of an Approved Claim pursuant to this Agreement, and in recognition of their efforts on behalf of the Settlement Class, in an aggregate amount of ten thousand dollars (\$10,000.00), paid to Class Counsel firm OlsenDaines. The Settlement Administrator will pay the court-approved amounts for the Service Awards out of the Settlement Fund.

(c) **To Settlement Class Members.** The Settlement Administrator will pay Settlement Class Members pursuant to the Claims Process and Distribution Plan set forth below in Paragraph 3.4. All payments to Settlement Class Members shall be made from the Settlement Fund.

(d) **To the Settlement Administrator.** Defendant will pay up to a total amount not to exceed \$235,000.00 for Administration Costs. If the Administration Costs (reasonable fees and expenses) exceed \$235,000.00, the Settlement Class and Class Counsel may authorize payment from the Settlement Fund of these additional Administration Costs (reasonable fees and expenses) to the Settlement Administrator as approved by the Court.

2.10 Appointment and Responsibilities of the Settlement Administrator. Solely for the purposes of this Settlement, the Parties stipulate that a Settlement Administrator will be appointed based on mutual agreement of the Parties. The Parties have selected CPT Group, Inc., as the Settlement Administrator. Class Counsel is responsible for retaining and managing the Settlement Administrator. The Settlement Administrator shall be responsible for preparing, printing, and distributing the Class Notice and Claim Forms; establishing the Settlement Website that posts notices, Claim Forms, and other related documents by the Notice Date; receiving and processing claims and distributing payments to Settlement Class Members; answering inquiries from Settlement Class Members and/or forwarding such written inquiries to Class Counsel; keeping track of any objections or Requests for Exclusion from Settlement Class Members and

providing copies of such objections or Requests for Exclusion to Class Counsel and Defense Counsel; calculating each Claimant's settlement payment; providing weekly status reports to Class Counsel and Defendant's Counsel, which are to include weekly updates on any objections or Requests for Exclusion that have been received; providing a due diligence declaration for submission to the Court prior to the Final Approval Hearing including copies of objections and exclusions; mailing settlement payments; distributing the Attorneys' Fee and Cost Award to Class Counsel; distributing the Service Awards to Plaintiff; printing and providing Settlement Class Members and Plaintiff with 1099 forms as required under this Agreement and applicable law; providing a due diligence declaration for submission to the Court upon the completion of the Settlement; disbursing any funds remaining in the Settlement Fund as a result of uncashed checks as ordered by the Court, including the administration of related tax items; and for such other tasks as the Parties mutually agree. Within one (1) year after the completion of the Distribution Plan, the Settlement Administrator shall prepare the Final Report, which shall contain cumulative totals of all amounts actually distributed from the Settlement Fund to the Settlement Class Members, the amount actually paid from the Settlement Fund to the Settlement Class Members, and the remaining amount from the Settlement Fund distributed to the Oregon Food Bank, Oregon Consumer Justice, and Oregon Consumer League pursuant to Paragraph 4.4. The Final Report shall be sent to the Court, Class Counsel, and Defendant's Counsel. The Settlement Administrator will carry out any additional duties as set forth in this Agreement or as ordered by the Court.

2.11 Performance Standards of Settlement Administrator. The contract with the Settlement Administrator will obligate the Settlement Administrator to abide by the following performance standards:

(a) The Settlement Administrator will accurately and neutrally describe, and will train and instruct its employees and agents to describe accurately and objectively, the provisions of this Agreement in communications with Settlement Class Members;

(b) The Settlement Administrator will provide prompt, accurate, and objective responses to inquiries from Class Counsel and Defendant's Counsel and will periodically report on Claims, objectors, requests for exclusion, etc.

(c) The Settlement Administrator will seek clarification, instruction, or authorization for performance of its duties and expenditure or disposition of the Settlement Fund from Class Counsel and Defendant's Counsel.

(d) The Settlement Administrator shall keep all information regarding the Settlement Class Members confidential except as otherwise provided herein. All data created and/or obtained and maintained by the Settlement Administrator pursuant to this Agreement shall be destroyed eighteen (18) months after the Settlement Administration is complete.

3. PROCEDURES FOR APPROVING SETTLEMENT

3.1 Motion for Preliminary Approval and Conditional Certification. As soon as reasonably practical after execution of this Agreement, Plaintiff will file the Agreement, including the exhibits attached hereto, with the Court; move for an order conditionally certifying the Settlement Class for settlement purposes only, giving Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing, and approving the Class Notice and Claims Process; and submit the Preliminary Approval Order, in substantially the same form as Exhibit 1, to the Court for approval. Class Counsel will provide a draft of the Preliminary Approval motion to Defendant's Counsel for review prior to filing.

3.2 Should the Court decline to Preliminarily Approve all material aspects of the Settlement, the Settlement will be null and void, and the Parties will have no further obligations under it. The Parties agree that if the Court declines to Preliminarily Approve non-material aspects of the Settlement, that the Parties will work cooperatively to make such changes required by the Court.

3.3 Notice Plan. After the Court enters the Preliminary Approval Order, Class Notice will be provided to the Settlement Class in accordance with the following procedures:

(a) **Settlement Website.** Within thirty five (35) calendar days after entry of the Preliminary Approval Order, the Settlement Administrator will provide the long-form Class Notice on the Settlement Website at OregonClassActionSettlement.com, administered and maintained by the Settlement Administrator, and will include the ability to file Claim Forms online, provided that such Claim Forms, if signed electronically, will be binding for purposes of applicable law and contain a statement to that effect. The content and form of the Settlement

Website shall be mutually acceptable to Plaintiff and Defendant, and the Settlement Administrator shall give Plaintiff and Defendant the opportunity to review the Settlement Website and any changes to it. The first day the Class Notice is posted on the Settlement Website shall constitute the **Notice Date**.

(b) **Digital Publication Notice.** By the Notice Date, short-form Class Notice will be provided by digital publication on social media, which will link to the Settlement Website. The final digital notice advertisements, and the overall digital publication notice program to be used, shall be subject to the final approval of the Parties.

(c) **Status Reports.** The Settlement Administrator shall provide a weekly status report to the Parties. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendant's Counsel of the number of Claim Forms received and the number of objections and Requests for Exclusion received.

3.4 Claims Process and Distribution Plan. Each Settlement Class Member will be entitled to submit a claim for cash payment, consistent with this paragraph and as determined by the Court.

(a) **Cash Payment.** Each Settlement Class Member may file a claim that will, if timely and valid, entitle him or her to a cash payment not to exceed \$200.00.

(b) **Method of Payment.** Each Settlement Class Member who files a claim electronically through the Settlement Website may choose to receive his or her cash payment via paper check or electronic means (e.g., Paypal/Venmo, ACH/Direct Deposit, etc.). Payment by paper check will be the default payment method for hard copy claims filed via email or mail or in the event a Settlement Class Member fails to indicate a preferred method of payment or provides incomplete or inaccurate electronic payment information.

(c) **Determining Net Settlement Amount for Distribution.** The Settlement Administrator shall determine the total amount of money available for payout to Settlement Class Members, which is the Gross Settlement Amount less (1) the court-approved Attorney's Fee and Cost Award, (2) any court-approved Service Awards to Plaintiff, and (3) Administration Costs (including any amounts in excess of the maximum \$235,000.00 that Defendant will pay to the Settlement Fund for Administration Costs). In other words, the Net Settlement Amount is

the portion of the Gross Settlement Amount remaining in the Settlement Fund that will be distributed to Settlement Class Members through the Claims Process.

(d) **Settlement Class Distributions from Settlement Fund.** Settlement Class Members who submit Approved Claims will be paid a pro rata distribution of the Net Settlement Amount, not to exceed \$200.00 per Approved Claim. Claims will be paid from the Settlement Fund within thirty (30) calendar days after the date the Agreement becomes Final.

(e) **Pro Rata Adjustment.** If the total value of all Approved Claims exceeds the Net Settlement Amount, then the amount paid on an Approved Claim will be reduced pro rata as necessary.

(e) **Unclaimed Funds.** If the total value of all Approved Claims is less than the Net Settlement Amount, then the remaining funds in the Settlement Fund will be distributed, with one-quarter of the unclaimed funds paid to not-for-profit organization Oregon Consumer League, one-quarter of the unclaimed funds paid to not-for-profit organization Oregon Consumer Justice, and the remaining one-half of the unclaimed funds paid to not-for-profit organization the Oregon Food Bank, as approved by the Court.

3.5 Proof of Claim. A maximum of one claim, submitted on a single Claim Form, may be submitted by each Settlement Class Member. A Claimant must include information in the Claim Form, completed online or in hard copy mailed to the Settlement Administrator, confirming, under penalty of perjury, that the Settlement Class Member purchased at least one of a certain non-grocery item from a WinCo store within the City of Portland between June 1, 2019 and May 8, 2022, and paid a surcharge at least once on a certain non-grocery item that was itemized on a receipt. Claimants must provide the location of the WinCo store(s) where purchases were made, a description of the non-grocery items purchased, and the approximate date(s) of the alleged purchase(s) of non-grocery items and the alleged payment(s) of a surcharge that was itemized on a receipt.

3.6 Review of Claims. The Settlement Administrator will be responsible for reviewing all claims to determine their validity. The Settlement Administrator will reject any claim that does not comply in any material respect with the instructions on the Claim Form or the terms of Paragraphs 1.8, 3.4, and 3.5 above, or is submitted after the Claims Deadline.

3.7 Uncleared Checks. Those Settlement Class Members whose cash benefit checks are not cleared within one hundred eighty (180) days after issuance will be ineligible to receive a cash settlement benefit from the Settlement Fund, and Defendant will have no further obligation to make any payment pursuant to this Agreement or otherwise to such Settlement Class Members. Any unclaimed funds remaining after administration of this Settlement Agreement will be paid pursuant to Paragraph 3.4(e).

3.8 Objections to the Settlement. The Class Notice will provide that any Settlement Class Members (other than the Class Representative) who wish to object to the Settlement should do so in writing, signed, dated, and filed with the Court and also mailed to the Settlement Administrator by the Objection/Exclusion Deadline. Objections may also be made in person at the Final Approval Hearing. Settlement Class Members who fail to make written objections and who do not appear at the Final Approval Hearing to voice their objections shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement.

(a) **Format.** Any written Objection must contain the following information so that the Court and Parties understand who is objecting, whether they have standing to object, and on what basis: (i) the objecting Settlement Class Member's full name, address, and telephone number; (ii) the word "Objection"; (iii) a statement attesting that the objecting Settlement Class Member purchased at least one of a certain non-grocery item from a WinCo store located within the City of Portland, Oregon between June 1, 2019 and May 8, 2022, and paid a surcharge at least once on a certain non-grocery item; (iv) a statement identifying (1) the WinCo store address at which the objecting Settlement Class Member claims they purchased at least one of a certain non-grocery item between June 1, 2019 and May 8, 2022, and paid a surcharge at least once on a certain non-grocery item; (2) the approximate date(s) of the purchase(s) of certain non-grocery items and payment(s) of a surcharge; and (3) a description of the certain non-grocery item(s) purchased on the date(s) provided above and payment(s) of a surcharge itemized on a receipt; (v) a description, in clear and concise terms, of the specific factual and legal grounds for each objection, including why the objector has chosen to object; (vi) an indication of whether the Settlement Class Member is represented by counsel, and, if so, that counsel's full name, address and bar number; (vii) a list of and copies of all documents that

the Settlement Class Member may seek to use at the Final Approval Hearing, and a list of the names of any witnesses that the Settlement Class Member wants to present at the Final Approval Hearing; (viii) a list of all other objections to class settlements submitted by the Settlement Class Member or Settlement Class Member's counsel to any Court within the United States within the last five (5) years, if any, including the total number of such objections and the case and court information in which each such objection was asserted; (ix) indicate whether the Settlement Class Member would like to appear at the Final Approval Hearing; (x) identify the name of the case (*Simonin v. WinCo Foods, LLC*, Case No. 3:19-cv-02094). The objection must be personally signed by the person making the objection.

(b) **Option to Appear.** Settlement Class Members may (though are not required to) appear at the Final Approval Hearing, either in person or through the objector's own counsel. Any counsel representing an objecting Settlement Class Member must file with the Court a notice of appearance and Points and Authorities in support of the objection, which shall contain any and all legal authority upon which the objector will rely and confirm whether the attorney intends to appear at the Final Approval Hearing. Copies of these documents must be filed with the Clerk of Court and delivered to Class Counsel and Defendant's Counsel no later than the Objection/Exclusion Deadline. A written objection will still be considered even if an objecting Settlement Class Member does not appear at the Final Approval Hearing, either in person or through the objector's own counsel.

(c) **Invalid Objections.** An objection will be invalid and will not be considered if the submission does not provide all of the material requested information in Paragraphs 3.8(a) and (b), is received after the Objection/Exclusion Deadline, or is not timely filed with the Court and mailed to the correct addresses for the Settlement Administrator.

(d) The Class Representative agrees that the Agreement is fair and reasonable to the Settlement Class Members and that they do not, and will not, object to the Agreement, and hereby waive any right that they may have had to do so.

3.9 Request for Exclusion from the Settlement ("Opt-Out"). Settlement Class Members shall have sixty (60) calendar days from the Notice Date to request to opt out. The Class Notice will provide that Settlement Class Members who wish to exclude themselves from the Settlement must mail to the Settlement Administrator a Request for Exclusion. A written

request to opt out should: (1) state the Settlement Class Member's name, mailing address, and email or telephone number; (2) state that the Settlement Class Member wishes to opt out from the Settlement; (3) be signed by the Settlement Class Member; and (4) be postmarked no later than the Objection/Exclusion Deadline. The request for exclusion must be personally signed by the person requesting exclusion. So-called "mass" or "class" exclusion requests shall not be allowed.

(a) **Confirmation of Authenticity.** If there is a question about the authenticity of a signed Request for Exclusion, the Settlement Administrator may demand additional proof of the Settlement Class Member's identity. Any Settlement Class Member who returns a timely, valid, and executed Request for Exclusion will not participate in or be bound by the Settlement and Final Approval Order and General Judgment of Dismissal and will not receive a cash payment. A Settlement Class Member who does not complete and mail a timely Request for Exclusion will automatically be included in the Settlement and will be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Court, and by the subsequent Final Approval Order, regardless of whether he or she has objected to the Settlement.

(b) **Report.** No later than seven (7) calendar days after the Objection/Exclusion Deadline, the Settlement Administrator will provide the Parties with a complete and accurate accounting of the number of Class Notices mailed and emailed to Settlement Class Members, the number of Class Notices returned as undeliverable, the number of Class Notices re-mailed to the Settlement Class Members, the number of re-mailed Class Notices returned as undeliverable, the number of Settlement Class Members who objected to the Settlement and copies of their submitted objections, the number of Settlement Class Members who returned valid Requests for Exclusion and copies of those Requests for Exclusion, and the number of Settlement Class Members who returned invalid Requests for Exclusion. The Settlement Administrator shall file a declaration with the Court, concurrently with the filing of any motion for Final Approval, authenticating a copy of every Request for Exclusion and objection received by the Settlement Administrator.

(c) If a Settlement Class Member submits both a timely and valid Request for Exclusion and timely and valid objection, the objection will be rejected and the Settlement Class Member's Request for Exclusion will be accepted.

3.10 Motion for Final Approval. At or before the Final Approval Hearing, Class Counsel shall apply to the Court for a Final Approval Order substantially in the form attached hereto as Exhibit 6, providing the following:

(a) finally approving this Agreement, adjudging the terms thereof to be fair, reasonable, and adequate as to, and in the best interests of, the Settlement Class Member; directing the Parties and their counsel to implement and consummate the Agreement according to its terms and provisions; and declare the Agreement to be binding on, and have *res judicata* and preclusive effect in all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiff and Releasing Parties;

(b) approving the notice, claims and objections procedures, and finding that the Notice Plan (1) constituted the best practicable notice under the circumstances; (2) constituted notice that was reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action, their right to object to or exclude themselves from the Agreement, and to appear at the Final Approval Hearing; (3) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and (4) met all applicable requirements of the Oregon Rules of Civil Procedure, due process, the United States Constitution, the Oregon Constitution, and any other applicable law;

(c) finding that the Class Representative and Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing the Agreement;

(d) approving and incorporating the Releases provided in Paragraphs 5.1, 5.2 and 5.3 and ordering that, as of the Effective Date, the Released Claims will be released and forever discharged as to the Released Parties;

(e) declaring that the Final Approval Order and General Judgment of Dismissal are binding on Class Representative, Settlement Class Members, and Class Counsel;

(f) stating that the Agreement shall not be offered or admitted into evidence and the Settlement shall not be or referred to in any way (orally or in writing) in any other action, arbitration, or other proceeding, except as allowed by OEC 408 or other similar rules (and specifically excepting the Action and/or a proceeding involving an effort to enforce the Agreement);

(g) permanently barring and enjoining all Settlement Class Members from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in any other lawsuit or action in any jurisdiction based on the Released Claims;

(h) authorizing the Court to enter a General Judgment of Dismissal substantially in the form attached hereto as Exhibit 7; and

(i) retaining continuing and exclusive jurisdiction to enforce the terms of this Agreement.

3.11 If the Court does not grant Final Approval and enter a General Judgment of Dismissal, or if the Court's Final Approval Order and General Judgment of Dismissal is reversed or materially modified on appellate review, then this Settlement will become null and void. If that occurs, the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount or any amounts that otherwise would have been owed under this Agreement. An award by the Court of a lesser amount than sought by Plaintiff and Class Counsel for the Attorney's Fee and Cost Award will not constitute a material modification to the Settlement within the meaning of this paragraph.

3.12 After entry of the Final Approval Order and the General Judgment of Dismissal, the Court shall have continuing jurisdiction over the Action for purposes of: (1) enforcing this Agreement; (2) addressing settlement administration matters; and (3) addressing such post-judgment matters as may be appropriate under Court rules and applicable law.

3.13 Waiver of Right to Appeal. Provided that the Final Approval Order and the General Judgment of Dismissal are consistent with the terms and conditions of this Agreement, if Settlement Class Members do not timely object to the Settlement, then the Parties and their respective counsel waive any and all rights to appeal from the Final Approval Order and the General Judgment of Dismissal, including without limitation all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate or set aside the Final Approval Order and the General Judgment of Dismissal or any extraordinary writ, and the Final Approval Order and the General Judgment of Dismissal will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right of Class Counsel to

appeal any award of their fees and costs that is less than they applied for, or to oppose any appeal, appellate proceeding, or post-judgment proceeding.

3.14 Vacating, Reversing, or Modifying the Final Approval Order or the General Judgment of Dismissal on Appeal. If, after a notice of appeal, the reviewing court vacates, reverses, or modifies the Final Approval Order or the General Judgment of Dismissal such that there is a material modification to the Settlement, and that court's decision is not completely reversed and the Final Approval Order and the General Judgment of dismissal are not fully affirmed on review by a higher court, then this Settlement will become null and void and the Parties will have no further obligations under it. A material modification would include, but not necessarily be limited to, any alteration of the Gross Settlement Amount and an alteration in the calculation of the Net Settlement Amount.

4. DISBURSEMENT OF THE SETTLEMENT FUND

4.1 Disbursement Plan. Subject to the Court finally approving the Agreement, the Settlement Administrator shall distribute funds pursuant to the terms of this Agreement and the Court's Final Approval Order. The maximum amount Defendant can be required to pay under this Settlement for any purpose is the Gross Settlement Amount. The Settlement Administrator shall keep Class Counsel and Defendant's Counsel apprised of all distributions from the Settlement Fund. The Settlement Administrator shall respond to questions from Class Counsel and Defendant's Counsel. No person shall have any claim against Defendant, Defendant's Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on the distributions and payments made in accordance with this Agreement.

4.2 Funding the Settlement Fund. Defendant will make payments to the Settlement Fund established and controlled by the Settlement Administrator in accordance with the following schedule:

(a) **Settlement Payment.** Within seven (7) calendar days after the date the Agreement becomes Final, Defendant will pay an amount equal to Three Million Three Hundred Sixty-Five Thousand Dollars and Zero Cents (\$3,365,000.00) by wiring the funds into the Settlement Fund.

(b) **Administration Costs.** Amounts for the Notice Plan, Claims Process and other Settlement Administration Costs, Defendant will pay to the Settlement Fund within thirty (30) calendar days of when such amounts are invoiced to Defendant and become due and owing, up to a maximum amount of \$235,000.00. All amounts due and owing for Administration Costs in excess of \$235,000.00 will be the responsibility of the Settlement Class and may be paid from other funds held in the Settlement Fund.

(c) **Service Awards.** Within seven (7) calendar days after the date the Agreement becomes Final, Defendant will pay an amount equal to Plaintiff's Service Award, not to exceed \$10,000.00, as ordered by the Court, by wiring the funds into the Settlement Fund.

4.3 Disbursements: Within thirty (30) calendar days after the date the Agreement becomes Final, the Settlement Administrator shall pay from the Settlement Fund (1) the Attorney's Fee and Cost Award, (2) the Service Awards, (3) the Administration Costs incurred to date and reasonably expected to be incurred through completion of the Settlement Administration, and (4) the Approved Claims.

4.4 Disbursements for Uncleared Checks and Unclaimed Funds. Claimants must cash or deposit their cash benefit checks within one hundred eighty (180) days after issuance. Any unclaimed funds remaining in the Settlement Fund after payments to Claimants and to the Settlement Administrator and any amounts unclaimed as a result of failure of a Claimant to cash or deposit a check within 180 days of issuance and any interest accrued on that amount will be paid pursuant to Paragraph 3.4(e).

4.5 Final Report by Settlement Administrator. Within one (1) year after the completion of the Distribution Plan, the Settlement Administrator will serve on the Parties a declaration providing a final report on the disbursements of all funds. Class Counsel will be responsible for submitting a final report to the Court pursuant to the Court's order or request.

5. RELEASE OF CLAIMS

5.1 In addition to the effect of any Final Approval Order and the General Judgment of Dismissal entered in accordance with this Agreement, upon Final Approval of this Agreement, and for other valuable consideration as described herein, Released Parties shall be completely released, acquitted, and forever discharged from any and all Released Claims.

5.2 As of the Effective Date, and with the approval of the Court, all Releasing Parties hereby fully, finally, and forever release, waive, discharge, surrender, forego, give up, abandon, and cancel any and all Released Claims against Released Parties. As of the Effective Date, all Releasing Parties will be forever barred and enjoined from prosecuting any action against the Released Parties asserting any and/or all Released Claims. All Releasing Parties, and anyone else purporting to act on behalf of, for the benefit of, or derivatively for any of them, are permanently barred from filing, commencing, prosecuting, intervening in, participating in (as class members or otherwise), or receiving any benefits or other relief from any other lawsuit, arbitration, or administrative, regulatory, or other proceeding, in any jurisdiction or forum, that is based upon, arises out of, or relates to any Released Claim, including, without limitation, any claim that is based upon, arises out of, or relates to (i) the Action or the transactions and occurrences referred to in the Action or (ii) the surcharge charged by Defendant between June 1, 2019 and May 8, 2022.

5.3 Termination of Settlement. In the event that the Settlement Agreement is terminated, cancelled, declared void or fails to become effective in accordance with its terms, or to the extent termination, cancellation, or voiding of the Settlement Agreement is otherwise provided, no payments shall be made or distributed to anyone in accordance with the terms of this Agreement. The Parties will bear their own costs and fees with regard to the efforts to obtain Court approval, and this Agreement shall be deemed null and void with no effect on the Action whatsoever. In such event, the terms and provisions of the Agreement shall have no further force and effect with respect to the Parties and shall not be used in this litigation or any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Agreement shall be treated as vacated. In the event of a termination of Settlement, each party should bear its own costs and attorney's fees.

6. MISCELLANEOUS TERMS

6.1 No Admission of Liability. Defendant makes no admission of liability or wrongdoing by virtue of entering into this Agreement. Defendant reserves the right to contest any issues relating to class certification and liability if the Settlement is not approved. Defendant denies that: it has engaged in any unlawful activity; has failed to comply with the law in any respect; has any liability to anyone under the claims asserted in the Action; or that but for the

Settlement, a Class should be certified in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant of liability or wrongdoing. This Settlement and the Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation, other than solely in connection with enforcing this Settlement, including to establish that Defendant is entitled to dismissal of Released Claims as a result of the Settlement Agreement.

6.2 Change of Time Periods. The time periods and/or dates described in this Agreement with respect to the giving of notices and hearings are subject to approval and change by the Court or by the written agreement of Class Counsel and Defendant's Counsel, without notice to Settlement Class Members. The Parties reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extension of time that might be needed to carry out any provision of this Agreement.

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

6.4 Publicity; nondisparagement; confidentiality. The Parties acknowledge and agree that the confidential mediation communications, including non-public information about the business practices and business records of Defendant disclosed solely during the scope of confidential mediation proceedings and settlement negotiations, and records marked confidential and produced pursuant to the Stipulated Protective Order in this matter ("Confidential Information") will not be disclosed to any third parties and will be returned to Defendant, with no copies retained after the Court issues Final Approval of the Settlement. The Parties further acknowledge and agree that such confidential mediation communications and Confidential Information have not and will not be used for any purpose other than for evaluating claims for purposes of entering into this Settlement Agreement. The Parties agree that if they make any written press release, announcement, disclosure or public statement, including on their websites or any social media accounts or statements to the media about the Settlement or its terms before the conclusion of the Claims Deadline, the Parties agree any such statement will be accurate and

consistent with the information contained in the Class Notice and will not include or reference confidential mediation communications or Confidential Information not contained in the public record. Class Counsel and the Class Representative agree that each of them will not make or cause to be made any statement at any time, directly or indirectly, orally, electronically or in writing, publicly or privately, post, publish, make or express any comment, view or opinion that defames, impugns, or disparages the Released Parties. If contacted by a Settlement Class Member, Class Counsel may provide advice or assistance and accurate information regarding any aspect of the Settlement requested by the Settlement Class Member. Neither Class Counsel nor the Class Representatives will solicit or otherwise encourage directly or indirectly any Settlement Class Member to object to the Settlement, request exclusion from the Settlement, or appeal from the Final Approval Order or General Judgment of Dismissal.

6.5 Integrated Agreement. No oral representations, warranties, covenants, or inducements have been made to any Party concerning this Agreement or its exhibits, other than the representations, warranties, covenants, and inducements expressly stated in this Agreement, and its exhibits. Notwithstanding any course of dealing to the contrary, no modification or amendment of this Agreement shall be effective until reduced to writing and signed by the Parties.

6.6 Authorization to Enter into Settlement Agreement. Class Counsel and Defendant's Counsel warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties under this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement this Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court, and in all cases, all such documents, supplemental provisions, and assistance of the Court will be consistent with this Agreement.

Additionally, each signatory to this Agreement who signs on behalf of another hereby warrants that it, he, or she has the authority to sign on behalf of such person or entity.

6.7 Exhibits and Headings. The terms of this Agreement include the terms set forth in the attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Agreement are an integral part of the Settlement and must be approved substantially as written.

6.8 Interim Stay of Proceedings. The Parties agree to stay and hold all proceedings in the Action in abeyance, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval Hearing to be conducted by the Court.

6.9 Amendment or Modification of Agreement. This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by counsel for all Parties or their successors-in-interest.

6.10 Agreement Binding on Successors and Assigns. This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties, as previously defined.

6.11 No Prior Assignment. Plaintiff hereby represents, covenants, and warrants that they have not directly, or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged.

6.12 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of Oregon, without giving effect to any conflict of law principles or choice of law principles.

6.13 Fair, Adequate, and Reasonable Settlement. The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.

6.14 No Tax or Legal Advice. The Parties understand and agree that the Parties are neither providing tax or legal advice nor making representations regarding tax obligations or consequences, if any, related to this Agreement; that Settlement Class Members will assume any such tax obligations or consequences that may arise from this Agreement; and that Settlement

Class Members shall not seek any indemnification from the Parties or any of the Released Parties in this regard. The Parties agree that, in the event that any taxing body determines that taxes are due from any Settlement Class Member, such Settlement Class Member assumes all responsibility for the payment of such taxes. The Parties further agree that Defendant shall have no legal obligation to pay, on behalf of the Settlement Class Members, any taxes, deficiencies, levies, assessments, fines, penalties, interests, or costs, which may be required to be paid with respect to settlement payments.

6.15 Jurisdiction of the Court. The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders in connection therewith.

6.16 Invalidity of Any Provision; Severability. Before declaring any provision of this Agreement invalid, the Parties request that the Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement shall be found unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.

6.17 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

6.18 Execution in Counterpart. This Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile or PDF signatures will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

6.19 Notices. All notices to the Parties or their respective counsel required by this Agreement will be made in writing and communicated by email and mail to the following addresses: Michael Fuller, OlsenDaines, 111 SW 5th Avenue, Suite 3150, Portland, Oregon

97204, Michael@underdoglawyer.com; Thomas Sand, Miller Nash LLP, 1140 SW Washington St., Ste 700, Portland, OR 97205, tom.sand@millernash.com.

7. EXECUTION BY THE PARTIES

The Parties hereby execute this Agreement.

CLASS REPRESENTATIVE:

Dated: 3/26/2024

Virginia P. Simonin

CLASS COUNSEL:

Dated: 3/27/24

[Signature]

Dated: 3/27/24

Daniel J. Nichols

Dated: 3/27/24

MS

DEFENDANT

WINCO FOODS, LLC

Dated: _____

By: _____

DEFENDANT'S COUNSEL

MILLER NASH LLP

APPROVED AS TO FORM:

Dated: _____

By: _____

97204, Michael@underdoglawyer.com; Thomas Sand, Miller Nash LLP, 1140 SW Washington St., Ste 700, Portland, OR 97205, tom.sand@millernash.com.

7. EXECUTION BY THE PARTIES

The Parties hereby execute this Agreement.

CLASS REPRESENTATIVE:

Dated: _____

CLASS COUNSEL:

Dated: _____

Dated: _____

Dated: _____

DEFENDANT

WINCO FOODS, LLC

Dated: 3/27/24

By: 

DEFENDANT'S COUNSEL

MILLER NASH LLP

APPROVED AS TO FORM:

Dated: 3/27/2024

By: 

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

VIRGINIA SIMONIN
individually and on behalf of
others similarly situated

Plaintiff

Case No. 3:19-cv-02094-AR

**PRELIMINARY APPROVAL
ORDER**

vs

WINCO FOODS, LLC

Defendant

Class Counsel has filed with the Court a Motion for Preliminary Approval of the Class Action Settlement, seeking an Order preliminarily approving the proposed Settlement (the “Settlement”), conditionally certifying a class for purposes of the Settlement, and ordering notice pursuant to the Notice Plan, in accordance with the Settlement Agreement (the “Agreement”), entered into by the Parties on _____.

Based on the consents of the Parties, and after review and consideration of the Motion, the Agreement, and the exhibits attached thereto, and the related submissions,

IT IS HEREBY ORDERED that:

1. The Court, for purposes of this Order, adopts all defined terms set forth in the Agreement and incorporates them by reference as if fully set forth herein.
2. The Court preliminary approves the Settlement embodied by the Agreement, subject to further consideration at the Final Approval Hearing, described below. The Court finds that the requirements of FRCP 23 are satisfied with respect to the “Settlement Class Members” (as defined below and in the Agreement) and finds that the Agreement provides substantial relief to the Settlement Class without the risk, cost, or delay associated with continued litigation.
3. The Court finds that the Settlement has been reached as a result of intensive, serious, and non-collusive arms-length negotiations, facilitated and overseen by Senior Judge Henry J. Kantor. The Court further finds that the Parties have conducted thorough investigation and research, and that the attorneys for the Parties are able to reasonably evaluate their respective positions.
4. The Parties’ Settlement is granted preliminary approval as it meets the criteria for preliminary settlement approval under FRCP 23. The Court finds that it is appropriate to notify the members of the proposed Settlement Class of the terms of the proposed Settlement.

5. The following persons are conditionally certified as Settlement Class Members solely for the purpose of entering a settlement in this matter:

All persons who, between June 1, 2019 and May 8, 2022, purchased certain non-grocery items from a WinCo store located within the City of Portland, Oregon and paid to WinCo a surcharge on certain non-grocery items related to the Clean Energy Surcharge enacted by the City of Portland, effective January 1, 2019. Excluded from the Settlement Class are: (1) any Judge presiding over this Action and members of their families; (2) persons who properly execute and file a timely request for exclusion from the Settlement Class; (3) David Maingot; and (4) the legal representatives, successors, or assigns of any such excluded persons.

6. The Court finds that Plaintiff Virginia Simonin is adequate and does not have interests adverse to the Settlement Class, and the Court appoints Plaintiff Virginia Simonin as Class Representative. The Court also finds that Plaintiff's counsel are adequate, as they are experienced in consumer class action litigation and have no conflicts of interest with absent Settlement Class Members, and that they adequately represented the interests of absent Class Members in the Litigation. The Court therefore appoints Michael Fuller of OlsenDaines, Kelly Jones of the Law Office of Kelly D. Jones, and Dan Nichol of JurisLaw LLP as Class Counsel.
7. The Court approves, as to form and content, the proposed class action notice (the "Class Notice") (attached to the Settlement Agreement as Exhibit 2). The Parties' proposed Notice Plan complies with FRCP

23(d), is constitutionally sound, and such notice is the best notice practicable under the circumstances. The Class Notice is sufficient to inform Settlement Class Members of the terms of the Settlement, their rights under the Settlement, their rights to object to the Settlement, their right to make a claim to receive a payment under the Settlement or elect not to participate in the Settlement and the processes for doing so, and the date and location of the Final Approval Hearing.

8. The Court hereby appoints CPT Group, Inc. to act as the Settlement Administrator to supervise, administer, and carry out the Notice Plan and Claims Process as set out in the Agreement. The deadline for posting the Class Notice on the Settlement Website and providing Class Notice by digital publication on social media shall be thirty five (35) calendar days from the date of this order. The deadline by which all Claim Forms must be postmarked or received by the Settlement Administrator shall be sixty (60) calendar days from the initial posting and publishing of Class Notice to Settlement Class Members. All Administration Costs shall be submitted to the Court for approval and paid from the Settlement Fund.
9. The Court orders the Parties and Settlement Administrator to administer the Notice Plan and Claims Process in accordance with the terms of the Agreement.

10. Neither the Agreement nor any document referred to or contemplated therein, nor any negotiations, statements or proceedings in connection therewith shall be construed as, or be deemed to be evidence of, an admission, concession, or indication by or against Defendant or any of the Released Parties of any fault, wrongdoing, or liability whatsoever, and shall not be offered or admitted into evidence or referred to in any way (orally or in writing) in any other action, arbitration, or other proceeding, except as allowed by Rule 408 of the Oregon Evidence Code and Federal Rules of Evidence or other similar rules (and specifically excepting the Action and/or a proceeding involving an effort to enforce the Settlement, as well as reference to the Settlement or Agreement in any SEC disclosure).
11. The Agreement shall have no precedential, collateral estoppel, or res judicata effect on Defendant in any manner or proceeding other than in (a) this Action and/or (b) a proceeding involving an effort to enforce the Agreement.
12. Settlement Class Members will be bound by the Agreement unless they submit a timely and valid written Request for Exclusion from the Settlement in accordance with the terms of the Agreement.
13. Any Request for Exclusion shall be submitted to the Settlement Administrator, rather than filed with the Court, by the Objection/Exclusion Deadline, which is sixty (60) calendar days from

the posting and publication of Class Notice to Settlement Class Members. Settlement Class Members are not required to send copies of the Request for Exclusion to counsel. The Settlement Administrator shall file a declaration concurrently with the filing of any motion for final approval, authenticating a copy of every Request for Exclusion or objection received by the Settlement Administrator.

14. Any of the Settlement Class Members (other than the Class Representative) who has not timely elected to be excluded from the Settlement Class, and who wishes to object the approval of the Settlement, including any application for attorney's fees and costs and service awards to Plaintiffs, should submit any objection in writing in accordance with the Agreement by the Objection/Exclusion Deadline, which is sixty (60) calendar days from the initial publication and posting of Class Notice to Settlement Class Members. The Settlement Administrator shall file a declaration concurrently with the filing of any motion for final approval, authenticating a copy of every objection received by the Settlement Administrator. Any Settlement Class Member who does not make an objection to the Settlement in the manner provided in the Agreement and who does not appear at the Final Approval Hearing to voice their objection shall be deemed to have waived any such objection by appeal, collateral attack, or otherwise.

15. The Court will conduct the Final Approval Hearing on _____ at ____, to rule on any timely objections filed by a Settlement Class Member, final approval of the Agreement and issuance of the General Judgment of Dismissal. The Court reserves the right to continue the date of the Final Approval Hearing without further notice to Settlement Class Members. Class Counsel shall give notice to any objecting party of any continuance of the Final Approval Hearing.
16. All discovery and other pretrial proceedings in this Action are stayed and suspended until further order of this Court, except such actions as may be necessary to implement the Agreement and this Order.
17. Counsel for the Parties are hereby authorized to utilize all reasonable procedures in connection with the administration of the Settlement which are not materially inconsistent with either this Order or the terms of the Settlement Agreement.
18. Class Representative and the Settlement Class Members are hereby enjoined from prosecuting any claim in the Action and from filing actions or proceedings against Defendant related to the Action.
19. In the event that the Settlement as provided in the Agreement is not finally approved by the Court, or for any reason the parties fail to obtain a Final Approval Order and General Judgment of Dismissal as contemplated in the Agreement, or the Agreement is terminated pursuant to its terms, then the Agreement and all orders entered in

connection therewith shall become null and void and of no further force and effect, and shall not be deemed an admission or offered or admitted into evidence or referred to in any way (orally or in writing) in this Action or any other action, arbitration, or other proceeding, for any purpose. In such event, the Agreement and all negotiations and proceedings relating thereto shall be withdrawn without prejudice as to the rights of any and all parties thereto.

20. Neither the Agreement nor any term or provision contained in the Agreement, nor any negotiations, statements or proceedings in connection therewith shall be construed as, or be deemed to be evidence of, an admission or concession of the Class Representative, any Settlement Class Member, Defendant, or any of the Released Parties of any liability or wrongdoing by them, or any of them, and shall not be offered or received into evidence in any action or proceeding or be used in any way as an admission, concession, or evidence of any liability or wrongdoing of any nature, and shall not be construed as, or deemed to be evidence of, an admission or concession that the Class Representative, any Settlement Class Member, or any other person has or has not suffered any damage.

Date: _____

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON
SIMONIN v. WINCO FOODS, LLC, CASE NO. 3:19-CV-02094

If you were charged and paid a surcharge on certain non-grocery items at a WinCo store located within the City of Portland, Oregon between June 1, 2019 and May 8, 2022, you could get compensation from a class action settlement.

An Oregon federal court authorized this Notice. You are not being sued. This is not a solicitation from a lawyer.

- A settlement has been reached in a class action lawsuit with WinCo Foods, LLC (“WinCo”), the Defendant in this case (the “Settlement”). Plaintiff Virginia Simonin (the “Class Representative”) alleges that WinCo improperly collected a surcharge by omitting the amount of the surcharge as itemized on its customer receipts in its advertised prices, at its point-of-sale registers at its stores located within the City of Portland, Oregon between June 1, 2019 and May 8, 2022. WinCo denies these allegations.
- You may be a Settlement Class Member if you purchased certain non-grocery items at a WinCo store located within the City of Portland and paid a surcharge on those non-grocery items between June 1, 2019 and May 8, 2022.
- Those individuals included in the Settlement will be eligible to make a claim to receive up to \$200.00 cash payment.
- You have to take action on or before [Date] in order to exercise certain legal rights and options in the Settlement, which are set forth in this Notice. Your legal rights are affected whether you act or don’t act. Read this Notice carefully.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT	
FILE A CLAIM BY [CLAIMS DEADLINE]	<ul style="list-style-type: none">• The only way to receive a cash payment is to submit a timely and valid Claim.
EXCLUDE YOURSELF BY [EXCLUSION DEADLINE]	<ul style="list-style-type: none">• Excluding yourself means you will get no payment from this Settlement, but you will retain any rights you currently have to sue the Defendant about the claims in this case.
OBJECT TO THE SETTLEMENT BY [OBJECTION DEADLINE]	<ul style="list-style-type: none">• If you do not exclude yourself, you may write to the Court about why you do not like this Settlement.
GO TO THE FINAL APPROVAL HEARING ON [DATE]	<ul style="list-style-type: none">• Ask to speak in Court about your opinion of this Settlement.
DO NOTHING	<ul style="list-style-type: none">• If you do nothing, you will get no payment from this Settlement and will give up your rights to sue the Defendant about the claims in this case.

BASIC INFORMATION

1. Why did I get this Notice?

You are receiving this Notice because your rights may be affected by the settlement of a class action lawsuit.

A Court authorized this notice because you have a right to know about a proposed settlement of this class action lawsuit and about all of your options, before the Court decides to give final approval to the Settlement. This Notice explains the lawsuit, the Settlement and your legal rights.

The lawsuit is *Simonin v. WinCo Foods, LLC*, Case No. 3:19-cv-02094 (the “Lawsuit”), currently pending in U.S District Court for the District of Oregon. The Court has granted preliminary approval of the Settlement and has conditionally certified the Settlement Class for purposes of settlement only.

2. What is this lawsuit about?

The Class Representative alleges that WinCo improperly collected a surcharge by omitting the amount of the surcharge as itemized on its customer receipts in its advertised prices, at its point-of-sale registers at its stores located within the City of Portland, Oregon between June 1, 2019 and May 8, 2022. WinCo denies all allegations of wrongdoing, and the Court has not determined who is right. Rather, the Parties have agreed to settle the Lawsuit to avoid the uncertainties and expenses associated with ongoing litigation.

3. Why is this lawsuit a class action?

In a class action lawsuit, one or more people, called “Class Representatives” (in this case, Plaintiff Virginia Simonin), sue on behalf of people who have similar claims. All these people together are a “Class” or “Class Members.” In a settlement of a class action, one court resolves the issues for all Class Members, except for those who choose to exclude themselves from the Class.

4. Why is there a settlement?

The Court has not determined who is right. Rather, both sides have agreed to settle the Lawsuit to avoid the uncertainties and expenses of continuing the Lawsuit. By agreeing to settle, both sides avoid the cost and risk of a trial, and Settlement Class Members will get a chance to receive benefits sooner rather than, if at all, after the completion of a trial. The Class Representative and her attorneys think this Settlement is best for all Settlement Class Members. This Settlement does not mean that WinCo did anything wrong.

WHO IS IN THE SETTLEMENT

5. How do I know if I am part of this Settlement?

If you purchased certain non-grocery items at a WinCo store located within the City of Portland and were charged a surcharge on non-grocery items, then you may be member of the Settlement Class.

THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY

6. What does this Settlement provide?

If approved, a Settlement Fund will be created totaling up to \$3,365,000.00. Settlement Class Member cash payments will come out of this Settlement Fund. The Defendant will also pay up to \$235,000.00 for the costs to administer the Settlement and to inform people about the Settlement. Any additional costs to administer the Settlement and to inform people about the Settlement will be paid from the Settlement Fund. Class Counsel’s attorney’s fees, up to \$1,009,500 (30% of the Settlement Fund) and costs, up to \$150,000, and a service award to the Class Representative, up to \$10,000, will be paid from the Settlement Fund, as approved by the Court.

A detailed description of the settlement benefits can be found in the Settlement Agreement, a copy of which is accessible on the Settlement Website at [\[URL\]](#).

In exchange for these benefits, Settlement Class Members will release (i.e., discharge) WinCo from all claims of liability relating to the surcharge that were made or could have been made in the Lawsuit or in other legal proceedings or forums. These releases are set forth in specific detail in the Settlement Agreement.

7. How will payments be calculated?

You **must** submit a Claim Form (see instructions below) to receive a share of the Settlement Fund. You may be entitled to receive a cash payment up to \$200.00, if you paid a surcharge at least once on certain non-grocery items at a WinCo store located within the City of Portland between June 1, 2019 and May 8, 2022. This cash payment may be subject to a pro rata adjustment depending on the number of valid claims that are filed.

If the Settlement is approved by the Court, then, in accordance with the settlement terms set forth in the Settlement Agreement and summarized above, each Settlement Class Member who makes a timely and valid claim is entitled to a cash payment.

8. How much will my payment be?

The exact amount of cash payments cannot be calculated until: (a) the Court approves the Settlement; (b) the number of valid Claims are determined; and (c) amounts are deducted from the Settlement Fund for attorney's fees and costs and any additional notice and administration costs.

HOW YOU GET A PAYMENT—PARTICIPATING IN THE SETTLEMENT

9. How can I get a payment?

You must submit a Claim Form to receive a payment from the Settlement Fund. You may submit a Claim Form either electronically on the Settlement Website [\[URL\]](#), or by printing and mailing in a paper Claim Form, a copy of which is available for download here [\[URL\]](#). Claim Forms must be submitted online by 11:59 p.m. Pacific Time on [\[Claims Deadline\]](#) or postmarked and mailed by [\[Claims Deadline\]](#).

10. When will I get my payment?

The hearing to consider the fairness of the Settlement is scheduled for [\[Final Approval Hearing Date\]](#). If the Court approves the Settlement, Settlement Class Members who have submitted timely and valid Claims, will receive their payment after the Settlement has been finally approved and/or any appeals process is complete. The payment will be made in the form selected when submitting a Claim (e.g., paper check, Paypal/Venmo, ACH/Direct Deposit, etc.), and all forms of payment will expire and become void 180 days after they are issued.

11. What am I giving up to get benefits and stay in the Settlement?

If this Settlement receives final approval from the Court, this Settlement will be legally binding on all Settlement Class Members, including Settlement Class Members who object, unless you exclude yourself from the Settlement. This means you will not be able to sue WinCo for the claims being released in this Settlement. This Notice is only a summary. The specific claims that you are giving up against WinCo are described in detail in the Settlement Agreement. You will be “releasing” WinCo and all related entities (the “Released Parties”) as described in the Settlement Agreement, regardless of whether you submit a claim or not. Again, the Settlement Agreement is available at [www.____.com](#) or by calling 1-____-____.

The Settlement Agreement describes the released claims with specific descriptions, so read it carefully. If you have any questions, you can talk to Class Counsel listed below or you can, of course, talk to your own lawyer if you have questions about what this means.

12. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must mail a letter by [\[Objection/Exclusion Deadline\]](#). Your letter must state that you want to be excluded from the *Simonin v. WinCo Foods, LLC*, Case No. 3:19-cv-02094 Settlement. Your letter

must also include your name, mailing address, and email or telephone number, must be personally signed by you and must be mailed and postmarked by [Objection/Exclusion Deadline], to:

WinCo Surcharge Settlement
Attention: Exclusion Requests
[ADDRESS]

13. If I do not exclude myself, can I sue the Defendant for the same thing later?

No. Unless you exclude yourself from the Settlement, you give up any right to sue the Defendant for the claims that are resolved by the Settlement.

14. If I exclude myself, can I get a payment from the Settlement?

No. If you exclude yourself from the Settlement, you will not be able to get any payments from the Settlement and you cannot object to the Settlement. You will not be legally bound by anything that happens in the Settlement.

THE LAWYERS IN THE CASE

15. Do I have a lawyer in the case?

Class Counsel

The Court has appointed the law firms listed below to represent you and other Settlement Class Members in the Settlement. These lawyers are called Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

If you want to contact Class Counsel about this Settlement, they can be reached as set out below, or through the Settlement Administrator by calling 1-____-____-____ or sending an email to _____@_____.com.

Please be advised, if you decide to object, which is your right and is explained in more detail below, Class Counsel cannot assist you with your decision to object, and if that is what you choose to do, you should obtain your own lawyer.

Michael Fuller OlsenDaines 111 SW 5th Avenue Suite 3150 Portland, OR 97204 Michael@underdoglawyer.com	Kelly Jones Law Office of Kelly D. Jones 819 SE Morrison Street Suite 255 Portland, OR 97214 kellydonovanjones@gmail.com	Daniel J. Nichols JurisLaw LLP Three Centerpointe Drive Suite 160 Lake Oswego, OR 97035 dan@jurislawyer.com
--	---	--

16. How are Class Counsel being paid? Are the Class Representatives being paid?

Subject to approval by the Court, Class Counsel will ask the Court for an award of attorney's fees up to a maximum of \$1,009,500 (30% of the Settlement Fund), costs up to a maximum of \$150,000, and a service award for the Class Representative up to a maximum of \$10,000 for her services in helping to bring and resolve this case.

The Court will determine the appropriate amounts to award. The Settlement is *not* conditioned upon Court approval of any of the attorneys' fees and costs or Class Representative service award amounts.

OBJECTING TO THE SETTLEMENT

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

If you are a Settlement Class Member and you do not exclude yourself, you may object to the Settlement. To object, you must file your objection with the Court on or before **[Objection deadline]**. The Court's address is

U.S. District Court of Oregon
Clerk of the Court- Civil Division
1000 S.W. Third Avenue
Portland, OR 97204

You must also mail a copy of your objection to the Settlement Administrator at the following address:

WinCo Surcharge Settlement
Attention: Objection
[ADDRESS]

You must include the following information:

- Your full name, address, and telephone number;
- The word "Objection";
- To show you are a Settlement Class Member and have standing to object:
 - A statement attesting that you purchased at least one of a certain non-grocery items from a WinCo store located within the City of Portland, Oregon between June 1, 2019 to May 8, 2022, and paid a surcharge at least once on a certain non-grocery item; and
 - A statement identifying (1) the WinCo store address at which you claim you purchased certain non-grocery items and paid a surcharge at least once on non-grocery items; (2) the approximate date(s) you claim you purchased non-grocery items and paid a surcharge; and (3) a description of the non-grocery item(s) you purchased on the date provided above and were charged a surcharge;
- A description, in clear and concise terms, of the grounds for objection (what you think is wrong with the proposed settlement, etc.);
- A statement as to whether the Settlement Class Member is represented by counsel, and, if so, that counsel's full name, address and bar number;
- A statement of all other objections to class settlements submitted by the Settlement Class Member or the Settlement Class Member's counsel to any Court within the United States within the last 5 years, if any, including the total number of such objections and the case and court information in which each such objection was asserted;
- A statement indicating whether the Settlement Class Member would like to appear at the Final Approval Hearing;
- A statement identifying the name of the case and the case number (*Simonin v. WinCo Foods, LLC*, Case No. 3:-19-CV-02094); and
- Your personal signature.

18. What's the difference between objecting and excluding yourself?

Objecting is telling the Court that you do not like something about the Settlement. You can object to a settlement only if you stay in that settlement. Excluding yourself is telling the Court that you do not want to be part of the Settlement. If you exclude yourself, you have no right to object, because the case no longer affects you. If you object, and the Court approves the Settlement anyway, you will still be legally bound by the result.

THE COURT'S FINAL APPROVAL HEARING

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

The Court will hold a Final Approval Hearing to decide whether to finally approve the proposed Settlement. The Final Approval Hearing will be held on [REDACTED], 2024, at [REDACTED]:00 [REDACTED].m. before Judge _____ at the U.S. District Court for District of Oregon, Courtroom X, 1000 S.W. Third Avenue, Portland, Oregon 97204.

If you want to attend the Final Approval Hearing, keep in mind that the date and/or time may be changed after this Notice is sent and attendance may require compliance with certain measures to maintain social distancing, so you should check the Settlement Website (www.[REDACTED].com) before making travel plans.

At the Final Approval Hearing, the Court will consider whether the proposed Settlement and all of its terms are adequate, fair, and reasonable. If there are objections, the Court will consider them. The Court may listen to people who have asked for permission to speak at the Final Approval Hearing. The Court may also decide how much to award Class Counsel for fees and costs, and whether and how much to award the Class Representatives for representing the Settlement Class (the Service Award).

There is no set timeline for either the Court's final approval decision, or for any appeals that may be brought from that decision, so it is impossible to know exactly when the Settlement will become final.

The Court may change deadlines listed in this Notice without further notice to the Settlement Class. To keep up on any changes in the deadlines, please contact the Settlement Administrator or review the Settlement Website.

20. Do I have to come to the Final Approval Hearing?

No. Class Counsel will answer any questions asked by the Court.

If you filed an objection with the Court, you do not have to come to Court to talk about it. So long as you filed your written objection with the Court on time and complied with the other requirements for a proper objection, the Court will consider it. You may also pay another lawyer to attend, but it's not required.

21. May I speak at the Final Approval Hearing?

Yes. You or your lawyer may, at your own expense, come to the Final Approval Hearing and ask the Court for permission to speak. You must also file with the Court a Notice of Intention to Appear, which must also be mailed to the Settlement Administrator so that it is **postmarked no later than [Objection Deadline]**, and it must be **filed** with the Clerk of the Court by that same date at the address indicated above. If you intend to have a lawyer appear on your behalf, your lawyer must enter a written notice of appearance of counsel with the Clerk of the Court no later than **[Date]**. See above for the addresses of the Court and the Settlement Administrator. You cannot speak at the Final Approval Hearing if you excluded yourself.

GETTING MORE INFORMATION

22. How do I get more information about the Settlement?

This Notice is only a summary of the proposed Settlement of this Lawsuit. More details are in the Settlement Agreement which, along with other documents, can be obtained at [www.\[REDACTED\]](http://www.[REDACTED]). You can also contact the attorneys whose information is included in *Question 15* or use the resources listed below.

YOU MAY OBTAIN ADDITIONAL INFORMATION BY	
CALLING	<ul style="list-style-type: none"> • Call the Settlement Administrator toll-free at 1-____-____-____ to ask questions and receive copies of documents.
E-MAILING	<ul style="list-style-type: none"> • Email the Settlement Administrator at _____@_____.com
WRITING	<ul style="list-style-type: none"> • Send your questions by mail to: WinCo Surcharge Settlement, [ADDRESS]
VISITING THE SETTLEMENT WEBSITE	<ul style="list-style-type: none"> • Visit www._____.com, where you will find answers to common questions about the Settlement plus other information to help you.
REVIEWING LEGAL DOCUMENTS	<ul style="list-style-type: none"> • You may also review the Court's file during regular court hours at: U.S. District Court, District of Oregon 1000 S.W. Third Avenue Portland, Oregon 97204

PLEASE DO NOT CALL THE JUDGE OR THE COURT CLERK TO ASK QUESTIONS ABOUT THE LAWSUIT, THE SETTLEMENT, OR THIS NOTICE.

THE COURT WILL NOT RESPOND TO LETTERS OR TELEPHONE CALLS. IF YOU WISH TO ADDRESS THE COURT, YOU MUST FILE AN APPROPRIATE PLEADING OR MOTION WITH THE CLERK OF THE COURT IN ACCORDANCE WITH THE COURT'S USUAL PROCEDURES.

Notice of Class Action Settlement

A settlement has been reached in a class action lawsuit alleging that WinCo Foods, LLC improperly collected a surcharge by omitting the amount of the surcharge as itemized on its customer receipts in its advertised prices, at its point-of-sale registers at its stores located within the City of Portland, Oregon between June 1, 2019 and May 8, 2022. WinCo denies the allegations and any wrongdoing. The Court has not decided who is right.

Am I a Settlement Class Member? You may be a Settlement Class Member if you purchased at least one of certain non-grocery items at a WinCo store located within the City of Portland between June 1, 2019 and May 8, 2022, and paid a surcharge at least once on a certain non-grocery item.

What Are the Settlement Terms? If approved by the Court, a Settlement Fund will be created totaling up to \$3,365,000.00, which will be used to pay claims submitted by Settlement Class Members, Class Counsel's attorney's fees up to \$1,009,500.00 (30% of the Settlement Fund) and costs up to \$150,000, and a service award to the Class Representative up to \$10,000, as approved by the Court. WinCo will also pay up to \$235,000.00 for the costs to administer the Settlement and to provide notice. Any additional costs to administer the Settlement and provide notice will be paid from the Settlement Fund. Please visit www. ("Settlement Website") to learn more.

How Do I Get a Settlement Payment? You **must** complete and submit a Claim Form to receive a share of the Settlement Fund. You may be entitled to receive a cash payment up to \$200.00 if you paid a surcharge at least once on certain non-grocery items at a WinCo store located within the City of Portland between June 1, 2019 and May 8, 2022. This cash payment may be subject to pro rata adjustment depending on the number of valid claims that are filed. You may submit a Claim Form either electronically on the Settlement Website, or by printing and mailing in a paper Claim Form, copies of which are available for download on the Settlement Website. Claim Forms must be submitted online by 11:59 p.m. Pacific Time on **[Claims Deadline]** or postmarked and mailed by **[Claims Deadline]**.

What are My Other Options? You may exclude yourself from the Settlement Class by sending a letter to the settlement administrator no later than **[objection/exclusion deadline]**. If you exclude yourself, you cannot get a settlement payment, but you keep any rights you may have to sue WinCo over the legal issues in the lawsuit. You and/or your lawyer have the right to appear before the Court and/or to object to the proposed settlement. Your written objection must be filed with the Court and mailed to the settlement administrator no later than **[objection/exclusion deadline]**. Specific instructions about how to object to, or exclude yourself from, the Settlement are available at the Settlement Website. If you file a claim or do nothing, and the Court approves the Settlement, you will be bound by all of the Court's orders and judgments. You will lose the right to sue WinCo regarding any issues relating to this lawsuit.

When Will the Court Consider the Proposed Settlement? The Court will hold the Final Approval Hearing at **[] .m. on [date]** before Judge **[]** at the Oregon Federal Courthouse, Courtroom **X**, 1000 SW Third Avenue, Portland, Oregon 97204. At that hearing, the Court will hear any objections concerning the fairness of the Settlement; determine the fairness of the Settlement; decide whether to approve Class Counsel's request for attorney's fees and costs; and decide whether to award the Class Representative an amount for their services in helping to bring and settle this case.

How Do I Get More Information? For more information, including a more detailed Notice, Claim Form, a copy of the Settlement Agreement and other documents, go to the Settlement Website or call the settlement administrator at **1- - -**.

Simonin v. WinCo Foods, LLC
U.S. District Court, District of Oregon
Case No. 3:19-cv-02094
Settlement Claim Form

If you are a Settlement Class Member and wish to receive a payment, your completed Claim Form must be postmarked on or before [REDACTED], or submitted online at [website] on or before [REDACTED].

Please read the full notice of this settlement (available at [website]) carefully before filling out this Claim Form.

To be eligible to receive any benefits from the settlement obtained in this class action lawsuit, you must submit this completed Claim Form online or by mail:

ONLINE: Visit [website] and submit your claim online.

MAIL: [ADDRESS]

PART ONE: CLAIMANT INFORMATION

Provide your name and contact information below. It is your responsibility to notify the Settlement Administrator of any changes to your contact information after the submission of your Claim Form.

FIRST NAME

LAST NAME

CURRENT STREET ADDRESS

CURRENT CITY

CURRENT STATE

CURRENT ZIP CODE

EMAIL ADDRESS

To qualify for a cash payment, you must have purchased at least one certain non-grocery item from a WinCo store within the City of Portland, Oregon and paid a surcharge at least once on a certain non-grocery item between June 1, 2019 and May 8, 2022.

Please provide the WinCo store address at which you claim you purchased a certain non-grocery item and paid a surcharge on this non-grocery item.

STREET ADDRESS OF WINCO STORE YOU CLAIM YOU PURCHASED NON-GROCERY ITEMS AND WERE CHARGED A SURCHARGE

CITY

STATE

ZIP CODE

QUESTIONS? VISIT [website] OR CALL [NUMBER] TOLL-FREE

Please provide the approximate date you claim you purchased non-grocery items and paid a surcharge:

Please provide a description of the non-grocery item(s) you purchased on the date provided above and paid a surcharge:

POTENTIAL CASH PAYMENT*: You may be entitled to receive a cash payment of up to \$200.00 if you purchased at least one certain non-grocery item from a WinCo store within the City of Portland and paid a surcharge at least once on a certain non-grocery item between June 1, 2019 and May 8, 2022.

Please select a payment method:

The image shows a 'Payment Options' screen with six payment methods arranged in a 2x3 grid. Each method has a logo, a brief description, and an orange button. The methods are: Mastercard (Most widely accepted prepaid card, Use with Apple Pay, Google Pay, Samsung Pay), PayPal (No bank account required), Venmo (No bank account required), Direct Deposit (Direct to your bank account), Zelle (Direct to your bank account), and Paper Check By Mail (Allow 1-3 extra weeks for delivery). The buttons are labeled: GET A PREPAID MASTERCARD, USE PAYPAL, USE VENMO, USE DIRECT DEPOSIT, USE ZELLE, and USE PAPER CHECK.

*** The cash payments set out herein represent the maximum that you can receive under the settlement. The actual cash paid may be reduced depending on the aggregate total of claims submitted by all Settlement Class Members.**

PART THREE: ATTESTATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury under the laws of the United States of America that: (i) I purchased at least one non-grocery item from a WinCo store located within the City of Portland, Oregon and paid a surcharge on a non-grocery item at least once between June 1, 2019 and May 8, 2022; and (ii) all of the information on this Claim Form is true and correct to the best of my knowledge. I understand that my Claim Form may be subject to audit, verification, and Court review.

SIGNATURE

DATE

Please keep a copy of your Claim Form for your records.

QUESTIONS? VISIT [\[website\]](#) OR CALL [\[NUMBER\]](#) TOLL-FREE

Simonin v. WinCo Foods, LLC

U.S. District Court, District of Oregon

Case No. 3:19-cv-02094

Settlement Claim Form

If you are a Settlement Class Member and wish to receive a payment, your completed Claim Form must be postmarked on or before [redacted], or submitted online at [website] on or before [redacted].

Please read the full notice of this settlement (available at [website]) carefully before filling out this Claim Form.

To be eligible to receive any benefits from the settlement obtained in this class action lawsuit, you must submit this completed Claim Form online or by mail:

ONLINE: Visit [website] and submit your claim online.

MAIL: [ADDRESS]

PART ONE: CLAIMANT INFORMATION

Provide your name and contact information below. It is your responsibility to notify the Settlement Administrator of any changes to your contact information after the submission of your Claim Form.

FIRST NAME

LAST NAME

CURRENT STREET ADDRESS

CURRENT CITY

CURRENT STATE

CURRENT ZIP CODE

EMAIL ADDRESS

To qualify for a cash payment, you must have purchased at least one certain non-grocery item from a WinCo store within the City of Portland, Oregon and paid a surcharge at least once on a certain non-grocery item between June 1, 2019 and May 8, 2022.

Please provide the WinCo store address at which you claim you purchased a certain non-grocery item and paid a surcharge on this non-grocery item.

STREET ADDRESS OF WINCO STORE

CITY

STATE

ZIP

Please state the non-grocery item you purchased and paid a surcharge and the approximate date of purchase:

NON-GROCERY ITEM

DATE OF PURCHASE

POTENTIAL CASH PAYMENT*: You may be entitled to receive a cash payment of up to \$200.00 if you purchased at least one certain non-grocery item from a WinCo store within the City of Portland and paid a surcharge at least once on a certain non-grocery item between June 1, 2019 and May 8, 2022.

The cash will be sent in the form of a paper check to the address listed on page 1 of this Claim Form. Please provide updated information to the Settlement Administrator, if needed.

If you would like payment in a different form, for example, Paypal, Venmo or Direct Deposit, please file your Claim Form electronically through the Settlement Website at [\[website\]](#).

*** The cash payments set out herein represent the maximum that you can receive under the settlement. The actual cash paid may be reduced depending on the aggregate total of claims submitted by all Settlement Class Members.**

PART THREE: ATTESTATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury under the laws of the United States of America that: (i) I purchased at least one non-grocery item from a WinCo store located within the City of Portland, Oregon and paid a surcharge on a non-grocery item at least once between June 1, 2019 and May 8, 2022; and (ii) all of the information on this Claim Form is true and correct to the best of my knowledge. I understand that my Claim Form may be subject to audit, verification, and Court review.

SIGNATURE

DATE

Please keep a copy of your Claim Form for your records.

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

VIRGINIA SIMONIN
individually and on behalf of
others similarly situated

Case No. 3:19-cv-02094

FINAL APPROVAL ORDER

Plaintiff

vs

WINCO FOODS, LLC

Defendant

On _____, 2024, this Court held a hearing on Plaintiff's motion for final approval of the Settlement in this pending class action litigation (the "Action"), in accordance with the Settlement Agreement dated _____, 2024 (the "Agreement"). Due and adequate notice having been given to the "Settlement Class Members" (as defined in Paragraph 4 of this Order and the Agreement) pursuant to the Preliminary Approval Order, and FRCP 23 D, and this Court having considered the Agreement, all papers filed and proceedings held herein, and all oral and written comments received and permitted by this Court regarding the Agreement in accordance with the Preliminary Approval Order, including any objections to the Settlement by any Settlement Class

Member in accordance with such Preliminary Approval Order and the Agreement, and good cause appearing,

IT IS HEREBY ORDERED that:

1. The Court, for purposes of this Final Approval Order (the “Order”), adopts all defined terms set forth in the Agreement, and incorporates them herein by reference as if fully set forth herein and having the full force and effect of an Order of this Court.

2. This Court has jurisdiction over the subject matter of this action, the Class Representative, the Settlement Class Members, and Defendant.

3. This Order and the General Judgment of Dismissal entered pursuant to Paragraph 12 of this Order (the “General Judgment of Dismissal”) are binding upon the Class Representative and the Settlement Class Members.

4. The Court finds, solely for purposes of considering this Settlement and for settlement purposes only, that the requirements of FRCP 23 and applicable law are satisfied with respect to the following Settlement Class:

All persons who, between June 1, 2019 and May 8, 2022, purchased certain non-grocery items from a WinCo store located within the City of Portland, Oregon and paid to WinCo a surcharge on certain non-grocery items related to the Clean Energy Surcharge enacted by the City of Portland, effective January 1, 2019. Excluded from the Settlement Class are: (1) any Judge presiding over this Action and members of their families; (2) persons who

properly execute and file a timely request for exclusion from the Settlement Class; (3) David Maingot; and (4) the legal representatives, successors, or assigns of any such excluded persons.

5. The Settlement resolves the claims of the Class Representative and the Settlement Class Members, as defined by the Agreement.

6. The Court finds that the Agreement reflects a good-faith settlement of the claims of the Class Representative and the Settlement Class Members reached voluntarily after consultation with experienced legal counsel and as the result of extensive arm's length negotiations with a qualified mediator, Senior Judge Henry J. Kantor.

7. A full opportunity has been afforded to the Settlement Class to participate in the Final Approval Hearing and all Settlement Class Members and other persons wishing to be heard have been heard. The Settlement Class Members also have had a full and fair opportunity to exclude themselves from the Settlement.

8. The Court finds that the Notice Plan was effected in accordance with the Preliminary Approval Order, dated _____, 2024, was made pursuant to FRCP 23, and fully met the requirements of the Federal Rules of Civil Procedure, due process, the United States Constitution, and any other applicable law.

9. Settlement Class Members have objected to the terms of the Settlement. The Court has fully considered and overrules the objections to the Settlement filed by _____, and finds that they do not

merit denial of final approval of the Settlement or Plaintiff's motion for attorneys' fees and costs, and service award.

10. Pursuant to and in accordance with the requirements of FRCP 23, this Court finally approves all terms of the Settlement in this Action as set forth in the Agreement, including, without limitation, the settlement consideration, and each of the releases set forth therein, as fair, just, reasonable, and adequate to the Parties. The Parties and the Settlement Administrator shall effectuate the Agreement according to its terms.

11. The Court hereby orders the Parties and the Settlement Administrator to administer the Claims Process and Distribution Plan in accordance with the terms of the Agreement.

12. This Court approves of the entry of the General Judgment of Dismissal.

13. As of the Effective Date of the Agreement, the Class Representative and all members of the Settlement Class shall have, by operation of this Order and the General Judgment of Dismissal, fully, finally, and forever released, relinquished, and discharged Defendant from all Released Claims pursuant to the Agreement. Upon the Effective Date, Class Representative and all members of the Settlement Class shall be permanently barred and enjoined from the institution or

prosecution of any and all claims released under the terms of the Agreement.

14. The Court grants Plaintiff's request for Service Awards. Consistent with the terms of the Agreement, Defendant will pay a total amount of \$10,000.00 to the Settlement Fund to be distributed by the Settlement Administrator to Plaintiff, care of Class Counsel firm OlsenDaines, pursuant to the Distribution Plan.

15. The Court grants Class Counsel's application for attorney's fees in the amount of \$_____ and costs in the amount of \$_____, for a combined total of \$_____. Consistent with the terms of the Agreement, the Settlement Administrator will pay this Attorney's Fees and Cost Award from the Settlement Fund pursuant to the Distribution Plan, to Class Counsel firm OlsenDaines.

16. This Order does not constitute an expression by this Court of any opinion, position, or determination as to the merit or lack of merit of any of the claims or defenses of the Parties, on appeal or otherwise. The case has been settled on a compromise basis, without a final determination of the merits. Neither this Order, the General Judgment of Dismissal, nor the Agreement, is an admission or indication by Defendant of the validity of any claims in this Action or of any liability or wrongdoing or any violation of law.

17. The Class Representative and the Settlement Class Members are hereby further enjoined from prosecuting any claim in the Action and from filing actions or proceedings against Defendant related to the Action.

18. The Agreement shall not be offered or admitted into evidence and the Settlement shall not be or referred to in any way (orally or in writing) in any action, arbitration, or other proceeding, except as allowed by Rule 408 of the Federal Rules of Evidence, and specifically excepting the Action and/or a proceeding involving an effort to enforce the Settlement, as well as reference to the Settlement or Agreement in any SEC disclosure.

Date: _____