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Of Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

**VIRGINIA SIMONIN**  
individually, and on behalf of  
others similarly situated

Plaintiff

vs

**WINCO FOODS, LLC**

Defendant

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

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

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### **L.R. 7-1 CERTIFICATION**

Defendant WinCo Foods, LLC (defendant or WinCo) does not oppose the relief sought in this motion.

### **MOTION**

Plaintiff Virginia Simonin (plaintiff or Class Representative), on behalf of herself and the absent class members she seeks to represent, and WinCo have agreed on a proposed classwide settlement of all claims against defendant as set forth in the Class Action Settlement Agreement (Agreement) filed herewith as **Exhibit A**, the terms and definitions of which are incorporated and made part of this motion.

Unopposed by defendant, plaintiff moves the Court to enter a Preliminary Approval Order under FRCP 23, in substantially the same form as the proposed order attached to the Agreement and filed herewith as **Exhibit 1**: (1) granting certification of the proposed Settlement Class (class) as defined in the Agreement and herein for settlement purposes only; (2) granting preliminary approval of the proposed settlement memorialized in the Agreement as being fair, adequate, and reasonable; (3) approving the class notice and forms attached to the Agreement and filed herewith as **Exhibits 2** and **3** and directing notice to be directed to the Class Members; (4) approving the proposed claims process and claim forms in substantially similar form as attached to the Agreement and filed herewith as **Exhibits 4** and **5**; (5) approving the proposed

Agreement's procedure for Class Members to object to, and to exclude themselves from, the Settlement and the Class; (6) setting a specified date that the Final Approval Hearing will occur; (7) appointing plaintiff as the Class Representative and plaintiff's attorneys as Class Counsel; and (8) appointing CPT Group, Inc. (CPT) as the Settlement Administrator.

In addition to the documents already filed on the docket and in the record, this motion is supported by the Agreement (Exhibit A) and the exhibits attached to the Agreement (Exhibits 1-6), the Declaration of Kelly D. Jones (Jones Decl.), the Declaration of Michael Fuller (Fuller Decl.), the Declaration of Daniel J. Nichols (Nichols Decl.), and the Declaration of Julie N. Green regarding the Notice Plan in Support of Motion for Preliminary Approval of Class Action Settlement (Green Decl.).

## **INTRODUCTION**

### **1. Background**

On November 25, 2019, Rachel Miller filed a putative class action complaint in Multnomah County Circuit Court. Doc. 1. The material allegations of the complaint were that WinCo allegedly violated Oregon's Unlawful Trade Practices Act (UTPA) 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. *Id.*

On December 26, 2019, defendant filed a notice of removal to federal district court. *Id.* On January 28, 2020, defendant filed a motion to dismiss the complaint. Doc. 8. On February 11, 2020, Rachel Miller and plaintiff filed an amended putative class action complaint in U.S. District Court for the District of Oregon. Doc. 11.

On February 25, 2020, defendant filed a motion to dismiss the amended complaint. Doc. 13. After extensive briefing and oral argument, the Court issued a Findings and Recommendation (F&R) on September 3, 2020, denying defendant's motion to dismiss. Docs. 15, 20, 24, 26. An order adopting the F&R and denying defendant's motion was entered on November 12, 2020. Doc. 30.

During 2021, the parties engaged in extensive discovery, exchanging a voluminous amount of documents and conducting the depositions of plaintiff and five of WinCo's employees, including an FRCP 30(b)(6) corporate representative deposition. Jones Decl. ¶ 3.

On December 14, 2021, based on a stipulation of the parties, plaintiff and David Maingot filed a second amended complaint and Rachel Miller was withdrawn as a representative plaintiff. Docs. 44, 45. David Maingot later voluntarily withdrew as putative class representative plaintiff. Doc. 55.

On May 8, 2022, WinCo modified its operations and stopped the allegedly unlawful practices identified in plaintiff's complaint and stopped collecting the surcharge at its point-of-sale registers. Doc. 74 ¶ 3; Exhibit A at 2.

On June 22, 2022, the parties participated in a settlement conference with Judge Kasubhai, but the case did not settle. Doc. 59. Between March 2022 and August 2022, the parties exchanged expert discovery and reports. Jones Decl. ¶ 3.

On October 11, 2022, plaintiff filed a Motion for Class Certification, which was fully briefed by the parties. Docs. 63, 73, 80. On November 18, 2022, defendant filed another, second motion to dismiss, which was also fully briefed by the parties. Docs. 71, 79, 83.

## **2. Summary of the Proposed Settlement and Agreement**

During the pendency of this action, the parties exchanged formal document discovery and other information informally. Jones Decl. ¶ 3. The information exchanged in informal and formal discovery, along with the parties' class certification and motion to dismiss briefing, was sufficient to assess the strengths and weakness of the claims and defenses at issue. *Id.*

On April 18, 2023, the parties attended a second mediation with retired Judge Michael Hogan, but the case did not settle. Jones Decl. ¶ 4. Subsequently, the parties engaged Senior Judge Henry Kantor as

mediator, for a third attempt at mediation. *Id.* With Judge Kantor's help, and following months of phone calls, videoconferences, and exchanges of information, the parties reached the material terms of a settlement on January 4, 2024. *Id.*; Docs. 84, 85. Only after substantive relief for the Class was agreed upon did the parties then negotiate that plaintiff would request a service award for plaintiff of no more than \$10,000, and that Class Counsel would apply for a contingency fee of no more than 30% of the common settlement fund for fees and no more than \$150,000 in incurred costs. Jones Decl. ¶ 4.

Over the next several months the parties worked toward finalizing the precise terms of the settlement and Agreement and agreed on CPT as the parties' chosen class administration entity. *Id.* ¶ 5. The parties then consulted with CPT on aspects of the proposed notice plan, forms, and claims process. *Id.* On February 14, 2024, the Court ordered the motion for preliminary approval of class settlement to be filed by March 29, 2024. Doc. 86.

## **2.1 The Settlement Class**

Consistent with the second amended complaint and the Agreement, plaintiff requests certification, for settlement purposes only, of a Settlement Class defined as: 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. Exhibit A ¶ 1.8. 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. *Id.*

## **2.2 Class Administration**

To ensure that class notice, the claims process, and distribution are accomplished in a proper and effective manner, the parties have agreed on an experienced and respected class action settlement administrator, CPT. CPT is an established provider in the settlement administration industry and has extensive experience in preparing court-approved notice of class actions and administering various types of notice programs and settlements. Green Decl. ¶ 5. In the past 30-plus years, CPT has provided notification and/or claims administration services in thousands of class action cases, has disbursed billions of dollars in settlement funds and serviced tens of millions of class members, and offers a wide range of class action administrative services for developing, managing, and executing all stages of integrated settlement plans. *Id.* CPT has regularly been approved by both federal and state courts throughout the United States to provide notice of

settlement and claim processing services, including actions involving consumer classes. *Id.* ¶¶ 6-7. As described in more detail below, by CPT in its declaration, and as confirmed by reviewing the proposed notices and claim forms, CPT has assisted the parties in drafting and designing a targeted, modernized, and highly effective class notice plan and claims process that will effectively meet the needs of, and provide the best practicable notice for, this case. *Id.* ¶¶ 8-28; Exhibits 2-5.

### **2.3 Class Member Relief and Release**

As part of the settlement, WinCo has agreed to pay \$3,365,000 to establish the common settlement fund, to be held in trust and then disbursed by CPT. Exhibit A ¶¶ 2.1, 4.2(a). WinCo has also agreed to separately pay up to \$235,000 in CPT's administration costs. And WinCo has confirmed that it stopped collecting the surcharge at issue on May 8, 2022, after this action was filed. Doc. 74 ¶ 3; Exhibit A at 2.

Based on the assessment of information and documents exchanged formally and informally in discovery, and with the extensive analysis of retained experts, the parties have jointly agreed that 120,000 is a good faith estimate of the total number of individuals (class members) from whom WinCo collected at least one of the surcharges at issue during the class period. Jones Decl. ¶ 6; Green Decl. ¶ 9.

If 100% of the estimated 120,000 class members filed a valid claim, each class member would receive approximately \$18 from the

provisional settlement fund remainder<sup>1</sup> ( $\$2,195,500/120,000 = \$18.30$ ). Of course, despite the proficient and targeted notice plan and claims process that CPT proposes to implement, a 100% claims rate is far from pragmatic. As discussed in more detail below, CPT estimates a verified claims rate of approximately 7%.<sup>2</sup> Using CPT's estimated claims rate, each valid claimant/class member will receive the maximum \$200 allowed by the UTPA and by the Agreement ( $120,000 \times 7\% = 8,400$ ;  $\$2,195,500/8,400 = \$261$ ). *See* ORS 646.638(1) & (8); Exhibit A ¶ 3.4(a) & (d).

In turn, plaintiff and the class members, and their legal affiliations, will be releasing any claims<sup>3</sup> or additional relief that is based upon, arises out of, or relates to this action or the transactions and occurrences referred to in the action or the surcharge charged by WinCo between June 1, 2019 and May 8, 2022. Exhibit A ¶¶ 2.3, 5.2.

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<sup>1</sup> The provisional settlement fund remainder has been calculated by subtracting 30% of the common fund for Class Counsel's anticipated fee, the \$150,000 maximum in costs, and the maximum \$10,000 representative service award—all subject to Court approval ( $\$3,365,000 - \$1,009,500 - \$150,000 - \$10,000 = \$2,195,500$ ).

<sup>2</sup> Particularly under these circumstances—where virtually all of the class members are currently unknown—a 7% valid claims rate would be considered a very successful outcome. *See, e.g., Shuman v. SquareTrade Inc.*, No. 20-cv-02725-JCS, 2023 WL 2311950, 2023 U.S. Dist LEXIS 34302, at \*9 (N.D. Cal. Mar. 1, 2023) (explaining that the “claims rate of about 6 percent” represented “a healthy response” from the class members and that “[c]ourts have approved settlements with significantly lower claims rates”); *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 945 (9th Cir. 2015) (approving settlement where less than 3.4% of estimated class filed claims); *Keil v. Lopez*, 862 F.3d 685, 697 (8th Cir. 2017) (“Although . . . the low claims rate also means that only 3 percent of the class will receive this benefit, we note that a claim rate as low as 3 percent is hardly unusual in consumer class actions and does not suggest unfairness.”).

<sup>3</sup> *See* Exhibit A ¶ 1.25 for the definition and full scope of “Released Claims” in the Agreement.

Of course, no individual who timely excludes themselves (opts out) of the settlement and Agreement will be releasing any claims against WinCo and may choose to pursue an individual claim in the future if they so choose. *Id.* ¶ 1.8.

Critically, the proposed settlement is not reversionary: meaning that any proceeds that are left in the common settlement fund that are unclaimed by class members will not go back to WinCo. Instead, any amounts remaining in the settlement fund will be paid as a *cy pres*<sup>4</sup> award to qualifying, relevant, and deserving Oregon nonprofits, as approved by the Court. *Id.* ¶ 3.4(e).

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<sup>4</sup> The parties have agreed that any *cy pres* funds should be split between the Oregon Food Bank (1/2), Oregon Consumer Justice (1/4), and Oregon Consumer League (1/4), because these are three local nonprofit organizations focused on consumer protection and food security issues, and this is a local consumer class action dealing with consumer protection issues at a grocery store. Agreement ¶ 17. Plaintiffs do not devote space in this preliminary motion to discuss these *cy pres* recipients but will do so in the motion for final approval, as appropriate.

## LEGAL STANDARDS

The Ninth Circuit has declared a strong judicial policy for the settlement of class actions. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). Nevertheless, where, as here, “parties reach a settlement agreement prior to class certification, courts must peruse the proposed compromise to ratify both [1] the propriety of the certification and [2] the fairness of the settlement.” *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003); *see also In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 949 (9th Cir. 2011).

The approval of a class action settlement prior to certification takes place in two stages: (1) the Court preliminarily approves the settlement pending a fairness hearing, temporarily certifies the Class, and authorizes notice to be given to the Class, then after notice is given to the proposed Class Members, (2) at the final approval (or “fairness”) hearing, the Court will entertain any Class Member objections as to the terms of the proposed Settlement. *See, e.g., Diaz v. Tr. Territory of Pac. Islands*, 876 F.2d 1401, 1408 (9th Cir. 1989); *see also* Manual for Complex Litigation (4th) § 21.632 (noting that if the parties move for both class certification and preliminary approval, the certification hearing and preliminary fairness evaluation can be, and are, typically combined).

## ARGUMENT IN SUPPORT

### 1. The Class Should Be Granted Settlement Certification

Before certifying any class, a court must determine that the proposed class action satisfies four prerequisites: (1) the class is so numerous that joinder of all members is impracticable (numerosity); (2) there are questions of law or fact common to the class (commonality); (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class (typicality); and (4) the representative parties will fairly and adequately protect the interests of the class (adequacy). FRCP 23(a); *see also Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998).

In addition to meeting the numerosity, commonality, typicality, and adequacy prerequisites under FRCP 23(a), the class action must fall within one of the three types specified in FRCP 23(b). Here, the parties move for certification under FRCP 23(b)(3). To satisfy FRCP 23(b)(3), a plaintiff must show that questions of law or fact common to class members “predominate over any questions affecting only individual members” (predominance), and that class resolution is “superior to other available methods for fairly and efficiently adjudicating the controversy” (superiority). FRCP 23(b)(3); *see also Hanlon*, 150 F.3d at 1019. Because the class certification assessment is being made in the context of a settlement, there are no “manageability” concerns to be addressed here.

*See Espinosa v. Ahearn (In re Hyundai & Kia Fuel Econ. Litig.)*, 926 F.3d 539, 556-57 (9th Cir. 2019).

As set forth in more detail below, because the requirements of FRCP 23(a) and (b)(3) have clearly been satisfied, especially for purposes of settlement only, the Court should enter an order preliminarily certifying the proposed Class.

### **1.1. FRCP 23(a)**

#### **1.1.1 Numerosity is satisfied**

The first requirement for class certification under FRCP 23(a) is that “the class [must be] so numerous that joinder of all members is impracticable.” FRCP 23(a)(1). Joinder is impracticable where it would be difficult or inconvenient for all class members to join in the action. *Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 913-14 (9th Cir. 1964). In this district, there is a “rough rule of thumb” that 40 Class Members are sufficient to meet the numerosity requirement. *See Giles v. St. Charles Health Sys., Inc.*, 294 F.R.D. 585, 590 (D. Or. 2013); *Or. Laborers-Emp’rs Health & Welfare Tr. Fund v. Philip Morris, Inc.*, 188 F.R.D. 365, 372 (D. Or. 1998). Again, after considerable combined efforts, the parties estimate class membership as 120,000 individuals. Jones Decl. ¶ 6; Green Decl. ¶ 9. The numerosity requirement under FRCP 23(a)(1) is easily satisfied here, because joinder of thousands or

tens of thousands of class members would be impracticable, if not impossible.

### **1.1.2 Commonality is satisfied**

Commonality requires a finding that “there are questions of law or fact common to the class.” FRCP 23(a)(2). Commonality is demonstrated when the claims of all class members “depend upon a common contention . . . that is capable of class-wide resolution.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). The common question “must be of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Id.* However, “[e]ven a single common question will do.” *Id.* at 359. When reviewing the legal elements that plaintiff and the class must prove to succeed on their UTPA claim, it is abundantly clear that (although not required) virtually all of these issues are “common contentions” capable of classwide resolution with common evidence. *Id.* at 350; Doc. 45 ¶¶ 22-26. This is because each class member suffered the same type of harm: paying more than the advertised sticker price of the goods when they paid WinCo’s undisclosed surcharges at WinCo’s registers. And all of the class members’ losses were caused by the same course of allegedly unlawful conduct: WinCo’s reckless and knowing collection of its mandatory surcharges it added to the price of its goods

at its registers without disclosing the surcharges in the advertised sticker prices for the goods on its shelves. *See, e.g., Or. Laborers-Emp'rs Health & Welfare Tr. Fund*, 188 F.R.D. at 373 (recognizing that “when the party opposing the class has engaged in some course of conduct that affects a group of persons and gives rise to a cause of action, one or more of the elements of that cause of action will be common to all of the persons affected” (internal quotation marks and citation omitted)).

The commonality requirement of FRCP 23(a)(2) is easily satisfied here.

### **1.1.3 Typicality is satisfied**

To satisfy the typicality requirement, the Court must find that the representative plaintiff's claims are typical of the claims or defenses of the other class members. FRCP 23(a)(3). Under the “permissive standards” of Rule 23(a)(3), the “representative's claims are ‘typical’ if they are reasonably co-extensive with those of absent class members; they need not be substantially identical.” *Hanlon*, 150 F.3d at 1020. “The purpose of the typicality requirement is to assure that the interest of the named representative aligns with the interests of the class.” *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). To assess typicality, courts look to “whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have

been injured by the same course of conduct.” *Id.* (internal quotation marks omitted).

In this case, there is no doubt that plaintiff’s claims are reasonably co-extensive with those of the absent Class Members. Plaintiff and the class members assert identical claims, they suffered the “same or similar injury” resulting from the “same course of conduct” when they paid more for than the advertised prices when WinCo added its surcharges to the price of its nongrocery items at its registers, and they seek the same \$200 in statutory damages under the UTPA. *Id.*

Therefore, FRCP 23(a)(3) typicality is readily met.

#### **1.1.4 Adequacy is satisfied**

FRCP 23(a)(4) provides that the Court must find that “the representative parties will fairly and adequately protect the interests of the class.” The adequacy requirement involves two questions: (1) whether “the named plaintiffs and their counsel have any conflicts of interest with other class members”; and (2) whether “the named plaintiffs and their counsel [will] prosecute the action vigorously on behalf of the class.” *Hanlon*, 150 F.3d at 1020.

Plaintiff shares an obvious common interest with, and does not have any claims adverse to, or conflicts with, the other class members. Plaintiff testified during her deposition that she has no prior relationship with the attorneys in this case, that she is prepared to take

the case to trial, if necessary, on behalf of the class, and plaintiff has assisted in many aspects of this litigation, including complying with discovery obligations, sitting for a lengthy deposition, and remaining apprised of case updates, and being available for multiple mediation sessions. Doc. 75-3 at 70:1-4, 82:11-21.

Plaintiff's counsel have "extensive experience prosecuting [consumer protection and UTPA] class actions and [have] vigorously pursued the interests of the Class by conducting a private investigation, preparing [an amended complaint] in anticipation of [WinCo's] motion to dismiss, opposing [two of WinCo's] motion[s] to dismiss, and participating in [three] mediation[s]." *In re Portland GE Sec. Litig.*, No. 3:20-cv-1583-SI, 2022 WL 844077, 2022 U.S. Dist. LEXIS 51404, at \*12 (D. Or. Mar. 22, 2022); Jones Decl. ¶¶ 7-8; Fuller Decl. ¶ 3, Exhibit 1; Nichols Decl. ¶¶ 3-5, Exhibit 1. In addition to plaintiff's counsel having been appointed lead counsel in numerous consumer class actions in this district and in state court and having extensive experience litigating UTPA cases, one member of the team also has experience in defending against complex class actions and expertise in complex electronic discovery matters. *Id.* The record reflects that plaintiff's counsel have prosecuted this case vigorously and effectively, have adequately protected the interest of the proposed class members, have committed substantial time and resources to this case, and will continue to do so

until the class obtains adequate relief—through this settlement or otherwise.

Because plaintiff and her counsel have shown they can, and will, adequately represent the interests of the class, FRCP 23(a)(4) adequacy is satisfied.

## **1.2 FRCP 23(b)(3)**

In addition to satisfying the requirements of FRCP 23(a), a plaintiff seeking certification of a damages class must also show that “questions of law and fact common to the members of the class predominate over any questions affecting only individual members” (predominance) and that a class action is “superior to other available methods for fairly and efficiently adjudicating the controversy” (superiority). FRCP 23(b)(3).

### **1.2.1 Predominance is satisfied**

Although “there is substantial overlap between” the test for commonality under FRCP 23(a)(2) and the predominance test under FRCP 23(b)(3), the predominance test “is far more demanding, and asks whether proposed classes are sufficiently cohesive to warrant adjudication by representation.” *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1172 (9th Cir. 2010) (internal quotation marks and citation omitted). “To determine whether a class satisfies the requirement, a court pragmatically compares the quality and import of

common questions to that of individual questions.” *Jabbari v. Farmer*, 965 F.3d 1001, 1005 (9th Cir. 2020). When “one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately, such as damages or some affirmative defenses peculiar to some individual class members.” *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016).

Given the overlapping discussion regarding commonality and typicality above, and because predominance has already been extensively briefed in plaintiff’s previously opposed class certification motion and reply, including by addressing arguments WinCo made against predominance in its opposition, plaintiff will not burden the Court by rehashing that extensive briefing here. *See* Doc. 63 at 28-48; Doc. 80 at 31-33. It is apparent that “one or more of the central issues in [this] action are common to the class and can be said to predominate,” that the proposed class is “sufficiently cohesive to warrant adjudication by representation,” and that common, rather than class-member-specific, questions and the application of common evidence and law will resolve most, if not all, of the pertinent issues and elements underlying plaintiff’s class UTPA claim.

Therefore, FRCP 23(b)(3)'s predominance requirement is satisfied here. *Tyson*, 577 U.S. at 453; *Wolin*, 617 F.3d at 1172.

### **1.2.2 Superiority is satisfied**

The superiority requirement under FRCP 23(b)(3) assesses whether “classwide litigation of common issues will reduce litigation costs and promote greater efficiency,” and a court looks to “whether the objectives of the particular class action procedure will be achieved in the particular case” and engages in “a comparative evaluation of alternative mechanisms of dispute resolution.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996). In order to determine whether a class action is a superior method of resolution, a court may consider, *inter alia*: (1) the Class Members’ interests in individually controlling the prosecution of separate actions; (2) the extent of other litigation concerning the controversy; (3) the desirability of concentrating the claims in the particular forum; and (4) the likely difficulties in managing the class action. FRCP 23(b)(3)(A)-(D).

“Where damages suffered by each putative class member are not large,’ the first factor ‘weighs in favor of certifying a class action.’” *Agnes v. Papa John’s Int’l, Inc.*, 286 F.R.D. 559, 571 (W.D. Wash. 2012) (quoting *Zinser v. Accufix Rsch. Inst., Inc.*, 253 F.3d 1180, 1190 (9th Cir. 2001)). This is because “[t]he policy ‘at the very core of the class action mechanism is to overcome the problem that small recoveries do not

provide the incentive’ for individuals to bring claims.” *Id.* (quoting *Amchem Prods. v. Windsor*, 521 U.S. 591, 61 (1997)); *see also Wolin*, 617 F.3d at 1175 (“Where recovery on an individual basis would be dwarfed by the cost of litigating on an individual basis, this factor weighs in favor of class certification.”). Indeed, “[c]lass action certifications to enforce compliance with consumer protection laws are desirable and should be encouraged.” *Capps v. Law Offices of Peter W. Singer*, No. 15-cv-02410-BAS(NLS), 2016 WL 6833937, 2016 U.S. Dist. LEXIS 161137, at \*17 (S.D. Cal. Nov. 21, 2016) (internal quotation marks and citation omitted).

The UTPA provides a meritorious plaintiff the greater of their actual damages<sup>5</sup> or \$200. ORS 646.638(1). Here there can be no doubt that the amount at stake for the class members is far too small to render an individual action superior to a classwide resolution, especially where the proposed Settlement itself will very likely provide each class member who submits a verified claim the same \$200. *See supra*; Green Decl. ¶¶ 9, 27. In any event, “mandatory notice and opt-out provisions under Rule 23(c)(2) will protect the interests of those proposed class members that may wish to pursue individual claims.” *Jacobson v.*

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<sup>5</sup> Although it is probably obvious, it may be worth noting that no class member would have paid one of WinCo’s surcharges that equated to more than \$200.

*Persolve, LLC*, No. 14-CV-00735-LHK, 2015 WL 3523696, 2015 U.S. Dist. LEXIS 73313, at \*25 (N.D. Cal. June 4, 2015).

Plaintiff and her counsel are unaware of any other litigation concerning this same controversy or dispute, brought by putative class members or otherwise. Jones Decl. ¶ 9; Fuller Decl. ¶ 4; Nichols Decl. ¶ 6. Resolving the class UTPA claims in a single action in this forum will avoid the potential for inconsistent results, will decrease the expense of litigation, and will promote judicial economy. *See Valentino*, 97 F.3d at 1234. The conduct at issue in this case occurred not just within Oregon, but at WinCo’s three Portland stores within miles of one another. As to “manageability,” because certification is being assessed in the context of a class settlement, there are no such concerns to address. *Amchem*, 521 U.S. at 620.

There can be no doubt that resolution of the class members’ claims on a commonwide basis in this Court is a superior resolution under FRCP 23(b)(3).

**2. The Proposed Settlement Is Presumptively Fair, Reasonable, and Adequate and Should Be Preliminarily Approved**

FRCP 23(e) provides that “[t]he claims, issues, or defenses of a certified class—or a class proposed to be certified for purposes of settlement—may be settled, voluntarily dismissed, or compromised only with the court’s approval.” FRCP 23(e)(1) states that “[t]he parties must

provide the court with information sufficient to enable it to determine whether to give notice of the proposal to the class.” And this Court may, ultimately, only finally approve the parties’ proposed settlement “after a hearing and only on finding that it is fair, reasonable, and adequate.” FRCP 23(e)(2). Factors used to ultimately assess the “fairness” of a proposed class settlement, at final approval, are whether:

(A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm’s length; (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and, (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other.

FRCP 23(e)(2)(A)-(D).

However, at this preliminary approval stage—before notice is given to the class members, any objections are received, and the final “fairness” hearing occurs—“the inquiry is whether the settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval.” *Schellhorn v. Timios, Inc.*, No. 2:21-cv-08661-VAP-(JCx), 2022 WL 4596582, 2022 U.S. Dist. LEXIS 184949, at \*15 (C.D. Cal. May 10, 2022) (internal quotation

marks and citation omitted); *see also Manouchehri v. Styles for Less, Inc.*, No. 14cv2521 NLS, 2016 U.S. Dist. LEXIS 80038, at \*16 (S.D. Cal. June 20, 2016) (“At the preliminary stage for approval of a settlement agreement the Court need only conduct a brief assessment of the Settlement for the purpose of resolving any glaring deficiencies before ordering the parties to send the proposal to class members.” (internal quotation marks and citation omitted)).

Here, the record shows the settlement is the product of serious, informed, non-collusive negotiation; has no obvious deficiencies; and gives no preferential treatment to any parties, and certainly falls within the range of possible approval. Therefore, at this stage, the settlement is entitled to a presumption of preliminary approval and notice should be provided to the class members to gauge their reaction. Nonetheless, in an abundance of caution and as a prelude to the final approval assessment, plaintiff will at least briefly address why the final approval factors will ultimately be satisfied here as well.

As to “arm’s length negotiations,” the settlement and Agreement were negotiated with the assistance of a well-respected Senior Judge Henry Kanto, only after two previous mediations with Judge Kasubhai and Judge Hogan were unsuccessful, and after extensive discovery, including expert discovery, was conducted, and after vigorous and hotly contested (and unresolved) motions practice. *See Nat’l Rural Telecomms.*

*Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004) (“A settlement following sufficient discovery and genuine arms-length negotiation is presumed fair.”). There can be no question that this settlement was the product of lengthy, informed, non-collusive, and arm’s-length negotiations.

As to the adequacy of the relief to be provided to the class members, courts typically compare the total amount of the settlement to each class member to an estimate of the damages that *could* be recovered if the case were fully litigated. See *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000). However, “[i]t is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair.” *Id.* As discussed *supra*, per the Agreement, WinCo will pay \$3,365,000 into the common settlement fund and will separately pay up to \$235,000 in administration costs to facilitate the settlement. After subtracting Class Counsel’s anticipated request<sup>6</sup> of no more than 30% of the common fund for attorney fees, costs of no more than \$150,000, and plaintiff’s class representative service award of no more than \$10,000, \$2,195,500 will remain to be distributed to the class members on a pro rata basis, not to

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<sup>6</sup> As discussed more extensively below, as is appropriate—because the settlement is not contingent on any such amount or awards and these items can only properly be decided at final approval after the class members are given opportunity to weigh in, Class Counsel’s fee and cost and plaintiff’s service award requests will be more formally addressed by plaintiff in a relevant, forthcoming application.

exceed \$200 per class member.<sup>7</sup> Through its modernized, narrowly tailored notice program, which will provide the best notice practicable given the circumstances and comport with due process, CPT expects to reach approximately 75% of the target audience through a robust notice campaign using various media tactics efforts, resulting in an estimated valid claims rate of 7%. Green Decl. ¶¶ 27-28. Based on these estimates, each class member who submits a valid claim will receive the maximum<sup>8</sup> \$200 UTPA damages award. *See supra*. Any balance of the Settlement Fund remaining after the distributions to the class members will be distributed as *cy pres* to a qualifying Oregon nonprofit organization approved by the Court. Therefore, no amount of the Settlement Fund will revert to WinCo. Even if the settlement proposed to provide class members with only a small fraction of the damages they *could* receive *if* successful at trial such relief may be considered adequate under controlling caselaw. Therefore, a settlement such as the one at hand, which is estimated to provide each verified class member with the maximum they could receive *if* successful at trial, is undoubtedly substantial and adequate.

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<sup>7</sup> This \$200 cap per class member has been imposed because Class Members should not receive more than the maximum they could obtain at trial if successful on the merits. *See* ORS 646.638(1) & (8).

<sup>8</sup> While it is true that plaintiff's complaint alleges the right to seek punitive damages, as they are available under the UTPA. However, *inter alia*, given the heightened standard a potential award of punitive damages by the jury is too speculative as to warrant consideration in this context.

In assessing the “the costs, risks, and delay of trial and appeal” factors in FRCP 23(e)(2)(C)(i), along with the adequacy of the relief provided for in a proposed class settlement, a court need not “reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute, for it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements.” *Officers for Justice v. Civil Serv. Comm’n of the City & Cnty. of S.F.*, 688 F.2d 615, 625 (9th Cir. 1982). Instead, a court “balance[s] the continuing risks of litigation (including the strengths and weaknesses of [p]laintiffs’ case), with the benefits afforded to members of the Class, and the immediacy and certainty of a substantial recovery.” *Baker v. Seaworld Entm’t, Inc.*, No. 14-cv-02129-MMA-AGS, 2020 WL 4260712, 2020 U.S. Dist. LEXIS 131109, at \*21-22 (S.D. Cal. July 24, 2020). To be sure, as has been made apparent by her briefing in this case, plaintiff and her counsel believe that plaintiff would *likely* prevail at trial on the merits of the class UTPA claim. Nonetheless, defendant continues to adamantly deny liability and plaintiff certainly cannot assert there is *no* possibility of losing—whether that be after a ruling on WinCo’s second motion to dismiss, at summary judgment, or at trial. For example, in order for the class members to be awarded \$200 each in UTPA statutory damages, they would have a heightened burden to establish ascertainable economic

loss was caused by defendant's "reckless or knowing use or employment" of practices in violation of ORS 646.608(1)(i) and (s).

There is also the further consideration that WinCo may appeal any trial verdict in the class members' favor. Despite plaintiff's confidence that a jury would find that WinCo engaged in its allegedly unlawful conduct with a knowing or reckless scienter, and that such a verdict would be upheld on appeal, when weighed against the reality that the class Members who file claims are likely to receive the maximum \$200 in statutory damages, even a small potential risk that the jury may find otherwise weighs strongly in favor of the propriety of this settlement as an eminently reasonable resolution for the class. *See Harrison v. Harry & David Operations, Inc.*, No. 1:18-cv-00410-CL, 2022 U.S. Dist. LEXIS 178196, at \*3-4 (D. Or. Sept. 29, 2022) (explaining that "there remains considerable risk, expense, and delay for both sides prior to the conclusion of this case absent a settlement").

In regard to time and expense, this case has already been litigated for well over four years, which has resulted in substantial costs—for both parties. And there can be no doubt that there will be substantial additional resources incurred to prepare this case for trial. In summary, the relevant factors weigh overwhelmingly in favor of the Court ultimately granting final approval of the settlement, and certainly in granting preliminary approval—which is what is at issue in this motion.

As to “the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims” under FRCP 23(e)(2)(C)(ii), because the identities of the class members are unknown, a claims process will be required—whether the case proceeds to trial or this settlement is finally approved. As explained in further detail herein, and more extensively in the Green Decl., the parties and CPT have designed, and will implement, a modernized, targeted, efficient claims and distribution process, for class members to verify their class membership, to opt out of the settlement if they so choose, and to receive payments electronically, if desired. Green Decl. ¶¶ 8-28; Exhibits 2-5.

In regard to “the terms of any proposed award of attorney’s fees, including timing of payment” factor in FRCP 23(e)(2)(C)(iii), Class Counsel have expressed their intent to apply for 30%<sup>9</sup> of the common Settlement Fund. Again, Class Counsel’s fee and cost request is only appropriately assessed after plaintiff and Class Counsel file their application if and once preliminary approval is granted<sup>10</sup> at final

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<sup>9</sup> See *Aquino v. 99 Cents Only Stores LLC*, No. 2:22-cv-01966-SPG-AFM, 2024 U.S. Dist. LEXIS 6950, at \*28 (C.D. Cal. Jan. 2, 2024) (“The average percentage of the fund award in class actions is approximately one-third.”); *Marshall v. Northrop Grumman Corp.*, No. 16-CV-6794 AB (JCx), 2020 WL 5668935, 2020 U.S. Dist. LEXIS 177056, at \*23 (C.D. Cal. Sept. 18, 2020) (“An attorney fee of one third of the settlement fund is routinely found to be reasonable in class actions.”).

<sup>10</sup> Plaintiff intends and proposes to file a separate application for fees, costs, and plaintiff’s service award no later than 21 days after the Court enters the Preliminary Approval Order.

approval, when any objections, or lack thereof, to the requested fees by the class can be considered. In any event, neither the preliminary approval assessment nor the settlement in general is tied to or conditioned on the eventual amount of Class Counsel's fee and cost allocation. See Exhibit A ¶ 2.9(a)

In summary, the proposed settlement is presumptively reasonable and readily meets the standards for preliminary approval. As such, the Court should direct notice be provided to the class members to gauge their reaction to the terms of the settlement, so that class members can file claims, and so that any class members who wish to exclude themselves from the class and settlement can do so.

### **3. The Proposed Class Notice Plan and Claims Process Should Be Approved**

FRCP 23(c)(2)(B), which sets forth the notice requirements for a FRCP 23(b)(3) damages class, provides that “the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Specifically, notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time

and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3). FRCP 23(c)(2)(B). Additionally, due process requires notice “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

The essential framework and timelines of the proposed notice plan is set forth in the Agreement and additional technical, specific aspects of the plan are explained by CPT in its declaration. See Green Decl. ¶¶ 9-28. To summarize, the Agreement provides that within 35 days after the Court’s entry of the Preliminary Approval Order, CPT will provide the long-form Class Notice (*see* Exhibit 2) on the Settlement Website, administered and maintained by CPT, and will include the ability to file Claim Forms (*see* Exhibits 4 and 5) online. Exhibit A ¶ 3.3(a). On the same day, the short-form Class Notice (*see* Exhibit 3) will be provided by digital publication on social media, which will link to the Settlement Website. Ex. A ¶ 3.3(b).

Class members will have 60 days from the notice date to file claims, and this date will be clearly set forth in the Preliminary Approval Order (which will be posted to the Settlement Website) as well as in the class notices (short and long versions) and claim forms (mail and online versions). *Id.* ¶ 1.7; Exhibits 2-5. Class members will have

the same 60 days in which to object to, or exclude themselves from, the class and the settlement, and the deadline and procedures for doing so will be clearly explained in the Preliminary Approval Order, in long form notice, and on the Settlement Website. Exhibit A ¶¶ 1.9, 1.21, 3.3(a), 3.8, 3.9; Ex. 2; Green Decl. ¶ 19.

In its declaration, CPT explains, in very specific detail, the Digital Notice Program that it has designed and will implement to reach the target audience—the class members—in this case. The Notice Program will include a targeted 60-day digital advertising campaign, a press release, social media and paid ads, the launching and maintenance of the settlement website that will provide class members with all of the relevant information and documents regarding the settlement and how to opt out and object and file claims, and the IVR/toll-free number to assist class members with filing a claim and requesting exclusion, and filing an objection to any terms of the settlement or Agreement. Green Decl. ¶¶ 14-22.

With this targeted and tech-driven Notice Program/Plan, CPT expects to reach approximately 75% of the target audience (Class Members) and aims for an effective claims rate of approximately 7%. *Id.* ¶¶ 9-30. This claims rate, if achieved, would be a great outcome in these circumstances, and well beyond acceptable. *See, e.g., c v. SquareTrade Inc.*, No. 20-cv-02725-JCS, 2023 WL 2311950, 2023 U.S. Dist. LEXIS

34302, at \*9 (N.D. Cal. Mar. 1, 2023) (recognizing the success of a 6% claims rate and noting that courts have approved settlements with significantly lower claims rates, even as low as 2%); *see also Keil v. Lopez*, 862 F.3d 685, 696-97 (8th Cir. 2017) (explaining that “a claim rate as low as 3 percent is hardly unusual in consumer class actions and does not suggest unfairness”); *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 945 (9th Cir. 2015) (approving settlement where less than 3.4% of estimated class filed claims).

In summary, because the parties’ agreed claims process, proposed Claim Forms, and overall Notice Plan adequately satisfy the criteria set forth in FRCP 23(c)(2)(B) and due process, and will provide the best notice that is practicable under the circumstances,<sup>11</sup> the Court should provisionally approve the proposed notice plan, notice and claim forms, claims process as set forth in the Agreement, Exhibits 2-5, and in the Green Decl., and order CPT deliver notice to the class members accordingly.

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<sup>11</sup> *See also Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1129 (9th Cir. 2017) (“[T]he lack-of-notice concern presumes that some harm will inure to absent class members who do not receive actual notice. In theory, inadequate notice might deny an absent class member the opportunity to opt out and pursue individual litigation. But in reality that risk is virtually nonexistent in . . . low-value consumer class actions. Such cases typically involve low-cost products and, as a result, recoveries too small to incentivize individual litigation.”).

**4. Plaintiff Should Be Appointed as Class Representative and Plaintiff's Attorneys Should Be Appointed as Class Counsel**

Appointment of class counsel turns on whether counsel: (1) has investigated the class claims; (2) is experienced in handling class actions and complex litigation; (3) is knowledgeable regarding the applicable law; and (4) will commit adequate resources to representing the class. FRCP 23(g). These requirements are satisfied here. Plaintiff's attorneys have substantial experience in class action and consumer protection litigation, including UTPA claims, and have been appointed as Class Counsel in numerous certified class action cases in this district and by Oregon State courts. Jones Decl. ¶¶ 7-8 ; Fuller Decl. ¶ 3, Exhibit 1; Nichols Decl. ¶¶ 3-5, Exhibit 1. As the filings and briefings in this case hopefully make clear, plaintiff's counsel have thoroughly investigated the class claim, have extensive knowledge of this area of the law, and devoted over four years of substantial time and resources to litigate this hard fought case to date. As discussed above, and in even greater detail in plaintiff's earlier Motion for Class Certification (*see* Doc. 63 at 23-27), plaintiff has provided everything that has been needed of her and has steadfastly demonstrated that she will adequately represent and protect the interests of the absent class members. Accordingly, plaintiff respectfully requests that she be appointed as the Class Representative and that her attorneys, Kelly D. Jones of the Law Office of Kelly D.

Jones, Michael Fuller of OlsenDaines, P.C., and Daniel J. Nichols of JurisLaw, LLP, be appointed as Class Counsel.

### **CONCLUSION**

For the foregoing reasons, unopposed by defendant, plaintiff respectfully moves the Court grant the relief requested above and enter an order in substantially similar form to the proposed Preliminary Approval Order filed with this motion as Exhibit 1 to the Agreement.

March 29, 2024

**RESPECTFULLY FILED,**

s/ Kelly D. Jones

**Kelly D. Jones, OSB No. 074217**

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**LR 7-2(b) CERTIFICATE OF COMPLIANCE**

This brief complies with the applicable word-count limitation under LR 7-2(b), because it contains 7,774 words, including headings, footnotes and quotations, but excluding the caption, table of contents, table of cases and authorities, signature block, exhibits, and any certificates of counsel.

March 29, 2024

s/ Kelly D. Jones  
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**CERTIFICATE OF SERVICE**

I certify that this document was served on all necessary parties through this Court's ECF system.

March 29, 2024

s/ Kelly D. Jones \_\_\_\_\_  
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## **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](http://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

Settlement Agreement and Release

Simonin v. WinCo Foods LLC, Case No. 3:19-cv-02094

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



CLASS COUNSEL:

Dated: 3/27/24



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: \_\_\_\_\_

Settlement Agreement and Release

*Simonin v. WinCo Foods LLC*, Case No. 3:19-cv-02094

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

## 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
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**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.

<b>YOU MAY OBTAIN ADDITIONAL INFORMATION BY</b>	
<b>CALLING</b>	<ul style="list-style-type: none"> <li>• Call the Settlement Administrator toll-free at 1-____-____-____ to ask questions and receive copies of documents.</li> </ul>
<b>E-MAILING</b>	<ul style="list-style-type: none"> <li>• Email the Settlement Administrator at _____@_____.com</li> </ul>
<b>WRITING</b>	<ul style="list-style-type: none"> <li>• Send your questions by mail to: WinCo Surcharge Settlement, [ADDRESS]</li> </ul>
<b>VISITING THE SETTLEMENT WEBSITE</b>	<ul style="list-style-type: none"> <li>• Visit <a href="http://www._____.com">www._____.com</a>, where you will find answers to common questions about the Settlement plus other information to help you.</li> </ul>
<b>REVIEWING LEGAL DOCUMENTS</b>	<ul style="list-style-type: none"> <li>• 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</li> </ul>

**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.](http://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]

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**PART ONE: CLAIMANT INFORMATION**

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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:

Payment Options

 <p><b>mastercard.</b></p> <p>Most widely accepted prepaid card ⓘ Use with Apple Pay, Google Pay, Samsung Pay</p> <p><b>GET A PREPAID MASTERCARD</b></p>	 <p><b>PayPal</b></p> <p>No bank account required ⓘ</p> <p><b>USE PAYPAL</b></p>	 <p><b>venmo</b></p> <p>No bank account required ⓘ</p> <p><b>USE VENMO</b></p>
 <p><b>DIRECT DEPOSIT</b></p> <p>Direct to your bank account ⓘ</p> <p><b>USE DIRECT DEPOSIT</b></p>	 <p><b>zelle</b></p> <p>Direct to your bank account ⓘ</p> <p><b>USE ZELLE</b></p>	<p><b>Paper Check By Mail</b></p> <p>Allow 1-3 extra weeks for delivery ⓘ</p> <p><b>USE PAPER CHECK</b></p>

**\* 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]

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**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.**

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**PART THREE: ATTESTATION UNDER PENALTY OF PERJURY**

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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: \_\_\_\_\_

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

**VIRGINIA SIMONIN**  
individually and on behalf of  
others similarly situated

Plaintiff

vs

**WINCO FOODS, LLC**

Defendant

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

**DECLARATION OF JULIE  
N. GREEN REGARDING  
THE NOTICE PLAN IN  
SUPPORT OF MOTION  
FOR PRELIMINARY  
APPROVAL OF CLASS  
ACTION SETTLEMENT**

I, Julie N. Green, declare and state as follows:

1. I am the Senior Vice President of Operations, Class Action Services of CPT Group, Inc. ("Settlement Administrator" or "CPT"). The following statements are based on my personal knowledge, the information provided to me by Counsel for the parties and other CPT employees working on this matter, and records of CPT generated and maintained in the usual course of its business. If called on to do so, I could and would testify competently thereto.

2. For this matter, CPT is able and willing to provide Notice and Claims Administration services as provided in the Settlement Agreement and Release ("Settlement Agreement"), if the parties' motion is approved by the court.

3. CPT is located at 50 Corporate Park, Irvine, CA 92606.

4. I have been employed by CPT for 19 years, managing the operations department and supervising multiple notice and claims administration programs. As Senior Vice President of Operations, I am responsible for the oversight, supervision, and evaluation of all departments and positions related to the administration of class action matters to ensure superior quality and successful execution of each component required to complete the settlement process. In my career at CPT, I have been responsible for the design and/or implementation of hundreds of class action administration plans. I submit this declaration at the request of Counsel in support of the Motion for Preliminary Approval of Class Action Settlement

**CPT'S EXPERIENCE RELEVANT TO THIS CASE**

5. CPT is an established provider in the settlement administration industry and has extensive experience in preparing Court-approved notice of class actions and administering various types of notice programs and settlements. In the past 30-plus years, CPT has provided notification and/or claims administration services in thousands of class action cases. Throughout our history, CPT has disbursed billions of dollars in settlement funds and serviced tens of millions of class members. CPT offers a wide range of class action administrative services for developing, managing, and executing all stages of integrated settlement plans. A true and correct copy of CPT's company resume is attached as **Exhibit A**, which provides detailed information concerning our class action settlement and claims administration qualifications and experience.

6. As a class action settlement claims administrator, CPT has regularly been approved by both federal and state courts throughout the United States to provide notice of settlement and claim processing services, including actions involving consumer classes. In this capacity, CPT handles all services related to the implementation of class action settlements, including: (a) issuing all types of legal notice by way of direct mail, email notification, and supplemental media including, but not limited to, print publication, digital display, television, radio, informational press release, paid search, and social media advertisement; (b) establishing dedicated URLs and case websites with online claim filing capabilities; (c) providing call support through a dedicated toll-free number with interactive voice response (IVR); (d) providing electronic and hard copy claims processing; (e) receiving/processing other communications about the settlement; (f) providing secure data management and reporting; (g) distributing paper and digital payment through physical check, gift card, mobile wallet, merchandise credits, direct deposit and other means; (h) providing Qualified Settlement Fund reporting and banking services; (i) filing applicable tax returns; (j) filing any required reports with the court; and (k) handling other tasks related to the administration of class action settlements that may be requested by the parties or court.

7. CPT has been entrusted by counsel and appointed by courts to handle complex nationwide and statewide class action settlements. Some of our recent multi-state representative matters include: *Williamson v. Curaleaf, Inc.*, Case No. 3:22-cv-00782-IM, United States District Court for the District of Oregon, *Long, et al v. Safeway, Inc.*, Case No. 19CV4542, Multnomah County Circuit Court; *Broomfield v. Craft Brew Alliance, Inc.*, Case No. 5:17-cv-01027-BLF (N.D. Cal);

*Livingston v. MiTAC Digital Corporation*, Case No. 3:18-cv-05993-JST (N.D. Cal); *Gold, et al. v. Lumber Liquidators, Inc.*, Case No. 3:14-cv-05373-RS (N.D. Cal.); *Thompson v. 1-800 Contacts, Inc., Vision Direct, Inc., Walgreens Boots Alliance, Inc., Walgreen Co., Arlington Contact Lens Service, Inc., National Vision, Inc., Luxottica of America, Inc. (f/k/a Luxottica Retail North America, Inc.)*, Case No. 2:16-cv-01183 (D. Utah); *Mael v. Evanger's Dog and Cat Food Co., Inc.*, Case No. 3:17-cv-05469-RBL (W.D. Wash); *Coleman, et al. v. Boys Town National Research Hospital*, Case No. D01CI18008162 (Douglas County, Nebraska); *Jacobo, et al., v. Ross Stores, Inc.*, Case No. 2:15-cv-04701-MWF-AGRx (C.D. Cal); *Bokelman v. FCH Enterprises, Inc.*, Case No. 18-cv-00209-RJB-RLP (D. Haw); *Hartranft, et al. v. TVI, Inc. d/b/a/ Savers, Inc., Apogee Retail, LLC*, Case No. 8:15-cv-01081 CJC-DFM (C.D. Cal.); *Lim, et al. v. Vendini, Inc.*, Santa Clara County Superior Court, Case No. 1-14-CV-259897; *Manouchehri v Styles For Less, Inc.*, Case No. 14cv2521 NLS (S.D. Cal.); *Kerr, et al. v. Zacks Investment Research, Inc., et al.*, Case No. 16-CV-01352 GPC BLM (S.D. Cal.); *Hinshaw v. Vizio, Inc.*, Case No. SA CV14-00876-DOC (ANx) (C.D. Cal.); *Abdullah v U.S. Security Associates, Inc.*, Case No. CV 09-9554 PSG-E (C.D. Cal.); *Hightower, et al. v. JPMorgan Chase Bank, N.A.*, Case No. 11-CV-01802-PSG-PLAx (C.D. Cal.); and *Michigan Finance Authority, et al. v. Kiebler, et al.*, Michigan Court of Claims Case No. 13-000166-MZ. Some of our recent single-state representative matters include: *Helmick v. Air Methods Corp.*, Alameda Superior Court, Case No. RG 13665373; *Krinsk, et al. v Monster Beverage Corporation, et al.*, San Diego Superior Court, Case No. 37-2014-00020192-CU-BT-CTL; *Mount v. Wells Fargo Bank*, Los Angeles County Superior Court, Case No. BC395959; *Wackenhut Wage and Hour Cases*, Los Angeles County Superior Court,

Case No. JCCP Np. 4545; *Augustus et al, v. American Commercial Security Services, Inc. ("ABM")*, Los Angeles County Superior Court, Case No. BC336416; *Sanchez v McDonald's Restaurants of California*, Los Angeles County Superior Court, Case No. BC499888; and *Kerr v. The New York Times Co., et al.*, San Diego Superior Court Case No. 37-2016-000010125-CU-MC-CTL.

### **CASE BACKGROUND**

8. CPT understands that the Settlement Class is defined as follows:

All persons who, between June 1, 2019, and May 30, 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; and (3) the legal representatives, successors, or assigns of any such excluded persons.

9. CPT further understands there to be no contact information obtainable for the proposed Settlement Class. Pursuant to estimation from counsel, we expect there to be approximately 120,000 potential class members who shopped at the three WinCo stores located within the City of Portland, Oregon during the covered period and paid a surcharge on certain non-grocery items. CPT will target these unidentified class members and attempt to reach them through

alternative noticing efforts, as further described below. The objective of the following Notice Program is to provide adequate notice of the settlement to all potential members of the Settlement Class as defined above in paragraph 8.

### **IDENTIFICATION OF TARGET AUDIENCE**

#### **UNKNOWN CLASS MEMBERS**

10. To establish the target audience and determine the media consumption and habits of the affected consumer, CPT used MRI-Simmons “MRI”<sup>1</sup> and other research and analytic tools based on people that live in Oregon and purchased non-consumable products at a grocery store.

11. To identify the best media channels to serve notice to the target audience, CPT reviewed the media quintiles, which measured the degree to which the target audience used media relative to the general population. The courts and advertising industry accept this methodology to select the appropriate media channels that will best reach the target audience. By leveraging MRI data, it aids in understanding the target audience and their consumer attitudes, behaviors, demographics, psychographics, and media data.

12. MRI data indicated that 53.26% of the audience is female, and 46.74% are male, most likely to be either 65+ or 25-34. Media

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<sup>1</sup> CPT frequently uses and relies on MRI data and based on our experience and MRI’s reputation in the industry, considers it a reliable source. MRI describes its data as follows, and CPT agrees with this description: “MRI’s Survey of the American Consumer® is the largest and most authoritative study of adult consumers in the United States. No other organization, not even the U.S. Census Bureau, can tell you more about Americans as consumers. All information collected in the Survey comes from a single set of respondents, ensuring data integrity and reliability. MRI interviews approximately 24,000 consumers every year in towns, cities, and counties across the contiguous 48 states. Crucial to the Survey’s success is the relationship MRI develops with respondents. Interviews are conducted in consumers’ homes, face-to-face, and followed up with a comprehensive self-administered survey. In a national probability study such as the Survey of the American Consumer, the higher the response rate, the more reliable the data. MRI’s highly trained interviewers consistently generate the highest response rates in the industry”. (GfK US MRI, LLC. D/B/A MRI-Simmons, 2019, p.1/para.1)

consumption data indicated a high consumption of Facebook, Instagram, and Reddit.

13. The class size and target audience are estimated to be approximately 120,000 based on our research and count provided by the parties. The target geography for the audience is Oregon, USA with hyper-targeting in Portland, Oregon.

#### **DIGITAL NOTICE PROGRAM**

14. The proposed notification plan was developed and customized to reach and inform individuals potentially affected by this settlement. CPT will stay fully immersed in the notice process continuously monitoring and optimizing towards the highest performing areas, media channels, and audiences. CPT will run two creative options on digital media channels where each design was created with the goal in mind to reach the target audience and bring awareness to the settlement. Mid-point through the notice period, we will modify the creatives to include a reminder statement that the claims deadline is approaching. The proposed notice plan includes the following components:

15. **Programmatic Display:** CPT and its strategic partner will implement a digital banner advertising campaign through a DSP (accessible via desktop and mobile devices) utilizing user interests, demographics, behaviors, and affinity audiences to serve ads on contextually relevant sites and apps to the target audiences. Display ads will run as a rotating display and drive users to the landing page. Key targeting will include, for example, discount grocery shoppers and purchasers from WinCo.

16. **Social Media:** CPT will deliver advertisements through Facebook, Instagram, and Reddit's Ad Exchange platforms. These social

media channels have some of the most sophisticated and accurate audience targeting capabilities available. Ads will appear on a rotating basis with other advertising campaigns as a Sponsored Ad. CPT will run a Portland-focused campaign and will optimize toward the highest performing areas and audiences. Additionally, CPT will run a retargeting campaign that will target people who have visited the website but have not completed an action such as a form-fill or call, among others.

17. **Paid Search:** To further increase the campaign's effectiveness and help class members locate the settlement website, CPT will purchase sponsored links on Google AdWords and Bing Ads. When a user searches a relevant keyword, the text ad will have the opportunity to appear on a rotating basis with other advertising campaigns as a Sponsored Ad. Paid Search will run as an Oregon-only campaign. Keywords will be determined by CPT and together with Counsel and may include such terms as WinCo lawsuit, WinCo Class Action, and Portland WinCo.

18. **Informational Press Release:** To bolster the digital notice campaign efforts and provide notice to unknown class members, CPT will disseminate a press release on PR Newswire Oregon Newswire. The press release should draw media attention and gain additional publicity as the release will contain sufficient information for any interested news organization or authors to write a news story. A press release helps bring awareness to the settlement and generates additional media coverage for a low cost. The release will highlight the toll-free number and settlement website.

19. **Website:** CPT will maintain and administer a dedicated settlement website with a case-specific Domain/URL that will be

informative and easy for potential members of the Settlement Classes to navigate. The website will be optimized for mobile users and maximize search engine optimization through keywords and metadata to increase search engine rankings. The settlement website will include links to the Settlement Agreement, Preliminary Approval Order, Long Form Notice, "FAQs", applicable deadlines, all papers filed in support of the proposed settlement, orders of the Court pertaining to this settlement, and contact information for the Settlement Administrator, including a toll-free support line, e-mail address, and U.S. mailing address. In addition, the website will provide the information necessary to file a claim form electronically. The website address or a hyperlink will also be displayed on all notification formats described in this declaration.

20. **Toll-Free Number/IVR/Live Class Member Support:** CPT will establish a dedicated 24-hour, toll-free support line with Interactive Voice Response ("IVR") capabilities to provide potential members of the Settlement Class with: (a) general and detailed information about the Action; (b) answers to frequently asked questions; and (c) information relating to filing a claim form or opt out; and (d) bilingual, live class member support during normal business hours.

21. Based on the information provided by Counsel and the terms of the parties' Settlement Agreement, CPT believes this notice program will provide reasonable, fair, and adequate notice and constitutes the best notification plan under the circumstances of this case. According to the Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide, "a reasonable reach is between 70-95% with a median reach on approved notice plans at 87%." With Counsel's guidance, CPT's goal is to reach approximately 75% of the

Target Audience with a frequency of 2.5-3X over 60-days, via a combined effort of all media tactics stated above.

22. It is CPT's experience that the notification plan as outlined within this declaration is consistent with other class action notice plans that have been approved by both state and federal courts nationwide, including: *Williamson v. Curaleaf, Inc.*, Case No. 3:22-cv-00782-IM, United States District Court for the District of Oregon; *Long, et al v. Safeway, Inc.*, Case No. 19CV4542, Multnomah County Circuit Court; *Pope v Cura, Inc.*, Case No. 20CV05932, Multnomah County Circuit Court; *Broomfield v. Craft Brew Alliance, Inc.*, Case No. 5:17-cv-01027-BLF (N.D. Cal); *Jacobo, et al., v. Ross Stores, Inc.*, Case No. 2:15-cv-04701-MWF-AGR<sub>x</sub> (C.D. Cal.); *Smith v. ANI*, Case No. 2:18-CV-04004-MDH (W.D. MO); *Bokelman v. FCH Enterprises, Inc.*, Case No. 18-cv-00209-RJB-RLP (D. Haw); and *Krinsk, et al. v Monster Beverage Corporation, et al.*, San Diego Superior Court, Case No. 37-2014-00020192-CU-BT-CTL.

### NOTIFICATION TIMELINE

23. CPT will implement the Notice Plan as set forth in the following timeline:

Item Description	Date
Commencement of 60-day digital advertising campaign, settlement website live date, and IVR/Toll-Free number live.	Within 35 calendar days of entry of Order Granting Preliminary Approval
Notice campaign complete.	60 days after commencement.

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///

**CLAIMS, OBJECTIONS AND REQUESTS FOR EXCLUSION**

24. CPT understands that Claim Forms may be submitted through the settlement website or by mail up to and through the claim form deadline. Each approved claimant will be paid \$200, or less depending on how many claims are submitted and deemed valid.

25. CPT further understands that requests for exclusion (i.e., opt-outs) may be submitted by Settlement Class members through mail or email and CPT will maintain a record of all opt-outs received keeping the parties apprised throughout the notice and administration process.

26. Objections must be in writing and filed with the court and mailed to CPT. CPT will maintain a record of and promptly inform the parties of any objections received.

**ADMINISTRATION FEES**

27. CPT estimates its costs for the notice and administration of this Settlement will be \$185,500.00 based on 120,000 class members and a valid claim filing rate of 7%.

**CONCLUSION**

28. The Notice Plan described herein, referenced in paragraphs 10-22 above, is consistent with similar effective, court-approved notice programs and will provide the best notice practicable given the circumstances. CPT expects to reach approximately 75% of the target audience through a robust notice campaign using various media tactics efforts, including digital display advertisement, social media advertisement, paid search, and a press release. Based on our experience with similar cases, this notice program is designed to provide the Settlement Class members with notice of their legal rights and comports with due process requirements.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 29, 2024, at Irvine, California.

  
JULIE N. GREEN

# **EXHIBIT A**

# CURRICULUM VITAE



50 Corporate Park  
Irvine, CA 92606



www.CPTGROUP.com



1 (800) 542-0900

## COMPANY PROFILE

CPT Group, Inc. ("CPT"), founded in 1984, is a leading provider of notice and settlement class action administration services and has been appointed as the third-party administrator by all major courts. Throughout our history, CPT has disbursed billions of dollars in settlement funds, serviced over 250,000,000 class members, and administrated over 7,000 cases. CPT offers a wide range of class action administrative services for developing, managing, and executing all stages of integrated notice plans and settlements. This includes pre-certification and discovery mailings, class-certification mailings, claims processing and administration, data management, data reporting, settlement fund administration, legal noticing campaigns, website design, and web hosting. The project management team, call center, data entry center, IT, and production facilities are all located at the corporate headquarters in Irvine, CA.

## QUALITY ASSURANCE & SECURITY

The integrity of CPT's work and our stringent quality assurance protocols are strengthened by the staff's ability to operate in close proximity keeping the work managed in-house. With a commitment to rigorous security protocols and controls, CPT upholds an obligation to its clients to maintain data and cyber security practices that comply with AICPA SOC 2 - Type II.

## DIVERSITY & INCLUSION

CPT believes that promoting diversity starts with a commitment to building understanding and awareness. Diversity is not just cultural or ethnic, it includes people of all ages and backgrounds. We are guided by a commitment to removing barriers to the recruitment, retention, and advancement of talented individuals from historically excluded populations. CPT recruits and rewards team members based on capability and performance, regardless of race, gender, sexual orientation, gender identity or expression, lifestyle, age, educational background, national origin, religion, or physical ability.

## AREAS OF EXPERTISE

- **PROJECT MANAGEMENT** - At the heart of our administrative capabilities is the ability to manage and process our cases as a neutral TPA with efficiency, accuracy, and in compliance with the terms of the parties' agreement. Our skilled approach in the use of technology, effective management, and quality assurance is the core of our operation.
- **Claims Administration** - CPT conducts extensive Quality Assurance processes throughout the duration of the claims period. Any responses received from Class Members are processed according to our strict internal procedures and in accordance with the Settlement Agreement. Counsel is provided with all required reporting, including, where applicable, a list of approved claimants and the settlement calculations for each.
- **Call Center** - CPT's case support representatives stand ready to service all case inquiries offering live, multi-lingual, 1-1 response, 5 days a week during business hours (extended hours available). Interactive Voice Response (IVR) assures that class members receive the assistance and support they require 24 hours a day. A proprietary call tracking system combined with highly trained representatives ensures an accurate class member history for each and every call.
- **Data Management/Reporting** - Through programmatic analysis, CPT will standardize the class data to compile a master mailing list. CPT prepares weekly status reports for each case that summarize the status of returns and responses such as mail pieces and claim form submissions. CPT is SOC 2 Type II certified, which ensures necessary measures are taken to safeguard all class member data.
- **Noticing Expertise** - CPT's legal notice experts have a combined experience of over 25 years in the industry and come together to plan a successful notice campaign based on the requirements of the Settlement. After strategizing and consulting with Counsel, our team will determine the best method of notification to reach your intended target audience. Whether notification will be through means of a known or unknown data set, CPT will execute the campaign with precision and accountability.
- **Settlement Fund Administration** - CPT's team of tax and accounting professionals manages all fund distributions through a rigorous and supervised process. Stringently following the terms of the Court Order, CPT maintains its Qualified Settlement Fund (QSF) accounts through federally insured banks with access restricted to authorized personnel only. On behalf of the QSF, CPT will handle all remittances and reporting to local, state, and federal tax authorities.



## EXPERIENCE

CPT has extensive experience providing court-approved notice and administration services in complex, large fund, and top-tier class action settlements across a broad spectrum of unique subject matters. Below are highlights from a few relevant cases we handled:

- ***Helmick v. Air Methods Corp., Alameda County Superior Court, Case No. RG13665373***: (*Top Settlements, 2020*) Administration of this \$78,000,000 employment settlement included direct mailed notice to class members, production and maintenance of a settlement website, and distribution of over \$48,000,000 to eligible claimants.
- ***Wackenhut Wage and Hour Cases, Los Angeles County Superior Court, Case No. JCCP Np. 4545***: (*Top Settlements, 2019*) To notify potential class members in this \$130,000,000 wage and hour settlement, CPT provided email and text notice in both English and Spanish, maintained a dedicated settlement website with an online claims portal, and a toll-free support hotline. CPT's outreach efforts resulted in a 57.14% filing rate.
- ***Sanchez v McDonald's Restaurants of California, Los Angeles County Superior Court, Case No. BC499888***: (*Top Settlements, 2019*) Notice methods in this \$26,000,000 wage and hour settlement included both mailed notice in both English and Spanish and email notification, as well as a settlement website and toll-free case support hotline.
- ***Augustus et al. v. American Commercial Security Services, Inc., Los Angeles County Superior Court, Case No. BC336416***: (*Top Settlements, 2018*) Administration duties in this \$110,000,000 employment settlement included direct mailed notice to class members in both English and Spanish and distributing over \$72,000,000 in settlement funds to valid claimants.
- ***Abdullah v U.S. Security Associates, Inc., Case No. 2:15-cv-09-00984 PSG-E (C.D. Cal.)***: (*Top Settlements, 2018*) Administration of this \$21,000,000 wage and hour settlement included direct mailed notice to class members, class member support hotline and distribution of over \$13,000,000 to eligible claimants.
- ***Thompson v. 1-800 Contacts, Inc., Vision Direct, Inc., Walgreens Boots Alliance, Inc., Walgreen Co., Arlington Contact Lens Service, Inc., National Vision, Inc., Luxottica of America, Inc. (f/k/a Luxottica Retail North America, Inc.), Case No. 2:16-cv-01183 (D. Utah)***: This \$40 million-dollar anti-trust settlement comprised of four settlement classes required design and implementation of a robust, multi-faceted two-part notice program with a multi-layered media campaign combining the use of various digital advertisement platforms, a press release, a dedicated settlement website with an online claims portal, and a toll-free support hotline. The notice program also included an e-mail notice campaign to approximately 10,000,000 potential class members. Combined notice efforts resulted in over 140,000 claimants.
- ***Broomfield v. Craft Brew Alliance, Inc., Case No. 5:17-cv-01027-BLF (N.D. Cal.)***: CPT's outreach efforts in this \$20 million consumer settlement included a multi-media channel approach to notice which employed direct mailed notice and a digital, social, and mobile media campaign which reached an impressive 91.43% of the targeted 8,000,000 class members. CPT processed both electronic and hard copy claim forms and valid claimants were paid via paper checks, e-Check, and ACH.
- ***Livingston v. MiTAC Digital Corporation, Case No. 4:18-cv-05993-JST (N.D. Cal.)***: In this matter, CPT was charged with distributing direct notice via email and mail as well as the design and execution of a multi-media channel supplemental notice campaign that combined the use of various digital advertisement platforms, a nationwide press release, print publication, a dedicated settlement website, and a toll-free support hotline. Combined, these efforts reached 82% of the targeted audience. Claims processing included claim forms submitted both digitally and hard copy and valid claimants received paper checks.
- ***Lim, et al. v. In re Vendi, Inc., Superior Court of the State of California, County of Santa Clara, Case No. 1-14-CV-259897***: In this \$3 million data breach settlement, CPT notified approximately 9,000,000 potential class members through a combination of email, postcard, and publication notice. Claims processing included claim forms submitted both digitally and hard copy, and valid claimants received paper checks.

## EXPERIENCE

- ***Mael v. Evanger's Dog and Cat Food Co., Inc., et al. Case No. NO. 3:17-cv-05469-RBL (W.D. Wash):*** Notice efforts included a multi-media program designed to reach settlement class members through a combination of direct and supplemental notification methods. Email, internet banner and social media advertisements, a dedicated settlement website, and a toll-free support hotline were used to effectively reach 87% of the target audience nationwide. CPT processed both electronic and hard copy claim forms and valid claimants were paid cash awards or product certificates.
- ***Jacobo, et al. v. Ross Stores, Inc., Case No. 2:15-cv-04701-MWF-AGRx (C.D. Cal.):*** In this \$4.85 million consumer settlement, CPT notified approximately 9,000,000 potential class members via direct email notice and a media campaign that combined the use of various digital advertisement platforms, a nationwide press release, print publication in People magazine, a dedicated settlement website, and a toll-free support hotline. Ultimately, CPT processed 285,000 claims and disbursed \$3,000,000 in merchandise certificates.
- ***Gold, et al. v. Lumber Liquidators, Inc., Case No. NO. 3:14-cv-05373-RS (N.D. Cal.):*** The Notice Plan for this matter relied heavily on direct notice, but to ensure effective reach also encompassed supplemental notice efforts including digital advertisements, a nationwide press release, a dedicated settlement website, and a toll-free support hotline. CPT processed claims submitted electronically, and hard copy and valid claimants were paid via a combination of paper checks and vouchers.
- ***Bokelman, et al. v. Zippy's/FCH Enterprises, Inc., United States District Court for the District of Hawaii, Case No. 18-00209-RJB-RLP:*** Notice efforts for this data breach settlement included a multi-media program designed to reach settlement class members through a combination of direct mail, email, in-store notice, and supplemental media. The digital notice campaign served impressions for 8-weeks across Google Display Network (GDN), programmatic display, press releases, Facebook, Instagram, Twitter, print publication, and Google Ads. Overall, the supplemental notice campaign alone reached 72% of the target audience nationwide.
- ***Coleman, et al. v. Boys Town National Research Hospital, District Court of Douglas County, Nebraska, Case No. D01C118008162:*** Notice to 98,957 class members in this data breach settlement was mailed in April 2020 when CA businesses were under stay-at-home orders. CPT was able to execute and carry out all administrative duties outlined in the settlement agreement without any disruption due to our robust Pandemic Policy that was immediately put into practice once the Governor gave executive orders.
- ***Christofferson, et al., v. Creation Entertainment, Inc., Superior Court of the State of California, County of Los Angeles, Case No. 19STCV11000:*** Notice efforts for this data breach settlement included a multi-media program designed to reach settlement class members through direct mail, email, and supplemental media. The digital notice campaign served impressions across Google Display Network (GDN), programmatic display, PR Newswire national Newswire, Facebook, Instagram, Twitter, print publication, Google Ads and Bing Ads. CPT's supplemental notice program reached 75% of the target audience nationwide. In addition, CPT served notice to 94.6% of the class members for whom the defendant provided an email address and 99.5% by mail. CPT reported a 3.79% filing rate.





## QUALIFICATIONS & EXPERIENCE OF KEY PERSONNEL

### **JULIE N. GREEN,** **Senior Vice President of Operations** **Notice Expert**

With 17 years at CPT, Julie Green is a driving force behind the company's ongoing success. Through oversight responsibilities for the entire operation, she has an expert hand in all aspects of notice administration and demands quality and success for each step of the process. Making informed recommendations to meet the goals of complex and unique settlements, Julie has been responsible for the design and or implementation of thousands of class action notice programs. She understands the necessary mechanics to ensure that effective notice is executed while making certain neutrality and client confidentiality is continually maintained. In her position, Julie leverages the Operations Team's abilities to meet the goals and objectives of the Business Development Team, while ensuring that CPT's clients are met with exceptional service and a successful notice program. Julie holds a BA in Drama and Psychology & Social Behavior from the University of California, Irvine.

### **RANDI J. MARTZ,** **Director of Marketing & Business Development** **Notice Expert**

Ms. Martz serves as Director of Marketing and Business Development and has been with CPT Group for more than 14 years. Randi is responsible for critically analyzing the requirements of a settlement for legal notification through secondary market research, data analysis, planning, and execution. Upon consulting with clients to determine the needs of the Settlement parties, Randi finds ways to increase efficiencies to implement cost savings for the RFPs. She is also tasked with researching and analyzing target markets to develop strategic and tactical plans to grow the business. As the liaison between the Business Development and Operations Teams, Randi collaborates on identifying critical business development and marketing opportunities to strengthen the Settlement and Client's core objectives. Randi received her B.A. in Business Administration, a Professional Concentration, from California State University of Fullerton.

### **JACQUELINE N,K. HITOMI,** **Director of Settlement & Treasury Services**

Jackie Hitomi is the Director of Settlement & Treasury Services at CPT Group. With 15 years of experience in the class action industry, Jackie oversees the distribution process and is responsible for ensuring the accuracy of settlement calculations and compliance with court-approved agreements. Jackie manages a team of disbursement and tax administrators and provides guidance to the case management team for complex settlements. As a Director, Jackie serves as a trusted contact for clients and assists with the effectuation of multifaceted projects. She is also a key contributor to the development and execution of the settlement administration process. Jackie began her legal career as a Paralegal at the Orange County District Attorney's Office and has also held Senior Paralegal positions in several law firms in Orange County and Los Angeles. She received her B.A. in International Relations and Law & Public Policy, from the University of Southern California, and completed the ABA Paralegal Studies from the University of California, Los Angeles.

### **ABEL E. MORALES,** **Director of Operations**

Abel Morales is the Director of Operations at CPT Group. Since joining CPT in 2010, Abel has handled hundreds of class action cases from inception through distribution and has become an expert in complex settlements. He is the primary client contact and is well trusted for his expertise in the class action industry. Abel oversees the Claims Processing Department, Production Department, and Class Member Support Services. His wide range of expertise provides valuable insight into all facets of the Administration process. Prior to CPT Group, Abel was a Senior Analyst for 9 years at a prominent Fortune 500 mutual insurance holding company. Abel also holds a B.A. in International Finance from the California State University of Fullerton. He is bilingual in Spanish.

### **J. LES GAINOUS,** **Software Development Manager**

J. Les Gainous has over 30 years of experience in developing and architecting enterprise-level software applications, with 10 of those years as a solutions architect with the Microsoft Corporation. At Microsoft, Les was involved with major software application projects at many Fortune 50 companies, including corporations such as Motorola, Toyota America, Merck Pharmaceuticals, Chevron, VISA America, and Charles Schwab. At CPT his team is primarily responsible for architecting and engineering CPT's Line of Business software application. The application allows cross-case functionality via a centralized system-of-record data store. Having this cross-case functionality, the application allows for automating sets of processes around the administration of class action cases. Along with automation, his team minimizes data redundancies. Les is a graduate of Florida State University with a BS in Business Administration and a minor degree in Computer Science.



## **QUALIFICATIONS & EXPERIENCE OF KEY PERSONNEL**

### **ALEJANDRA ZARATE, Supervising Case Manager**

Alejandra Zárate de Landa is CPT Group's Case Quality Assurance Manager. In her role, she is responsible for analyzing the Stipulations of Settlement as well as the Court Orders to ensure compliance in all aspects of case administration as well as the allocation of settlement funds to class members. Alejandra started with CPT Group over 15 years ago in the claims department and became a Case Manager in 2009. She was promoted into her current role in 2016. Alejandra received her degree in Computer Engineering from Autonomous University of Baja California in Ensenada, B.C. Mexico. While earning her degree, she worked as a web development assistant and helped develop a web page for students interested in taking off-campus classes.

### **TARUS DANCY Supervising Case Manager**

As a Supervising Case Manager at CPT Group, Tarus leads a team of Case Managers that oversee a breadth of cases, including Wage & Hour, pre-settlement Belaire, and Class Certification matters. With over a decade of experience in project management, Tarus brings a track record of guaranteeing projects are completed on schedule and in accordance with case specifications. In addition, his exceptional communication and leadership abilities support the continuity of the various projects he oversees. Tarus holds an M.B.A. in Project Management from the Florida Institute of Technology and a B.A. in Communications from the University of Memphis.

### **JULIAN HUYNH Supervising Disbursement Administrator**

Julian Huynh is the Supervising Disbursement Administrator at CPT and oversees the disbursement team in implementing the settlement distribution process. In his role, Julian ensures the quality of the settlement calculations and payments made through the Qualified Settlement Fund to class members, counsel, and state and federal government agencies are timely and accurate for every case. In addition, Julian maintains the bank ledger reconciliations, confirming that the cleared payments are authentic and free from fraudulent activity.

Prior to joining the CPT team, Julian worked at the Orange County Registrar of Voters to conduct fair and accurate elections. He also was a prior member of the Army National Guard stationed out of Bell, CA. Julian holds a B.A. in Political Science and History from the University of California, Santa Barbara.

### **TIM CUNNINGHAM, Supervising Case Manager**

Tim Cunningham has successfully managed over 400 cases in his 11 years at CPT Group. As Supervising Case Manager, under his direction, a team of Case Managers and Assistants are trained and guided to oversee all case activity—from administrative conception to disbursement. Tim and his team are also the primary contact between the firm and Counsel while also working closely throughout administration with the IT, Mailing, Claims, and Call Center departments. Prior to CPT Group, Tim was a Lead Relationship Manager for 10 years at a prominent Fortune 500 mutual insurance holding company. Tim earned his B.A. in Public Administration with a minor in English from California State University San Diego.

### **CAROLE THOMPSON, Supervising Case Manager**

Carole Thompson is a Supervising Case Manager at CPT Group. In this role, she leads a team of Case Managers and Assistants and ensures the proper guidance and supervision is upheld for high accuracy levels and prompt adherence to court-ordered deadlines. She is also responsible for overseeing all case activities and having a comprehensive understanding of each case her team handles. Carole initially joined CPT in 2010 as a Case Manager. In her career prior, she spent 12 years in the Financial Industry at a prominent Fortune 500 annuities company. Then, when an opportunity took her family to Minot, North Dakota, she had to leave CPT, but gained 5 years of Human Resources expertise, first as Benefits Specialist at Trinity Health and then as a Benefits Coordinator at Food Management Investors, Inc. Upon returning to California in 2016, Carole rejoined CPT, providing a strong professional background to the team.

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## **EXHIBITS**

EXHIBIT 1. CPT'S INFORMATION SECURITY STATEMENT

EXHIBIT 2. CPT'S DATA AND SETTLEMENT FUND TRANSMISSION METHODS

# **EXHIBIT 1**



## INFORMATION SECURITY STATEMENT Confidential

CPT Group, Inc. ("Company" or "CPT") maintains a comprehensive, written Information Security Program that complies with all applicable laws and regulations and is designed to (a) ensure the security, privacy and confidentiality of Class Member Information, (b) protect against any reasonably anticipated threats or hazards to the security or integrity of the Class Member Information, and (c) deny unauthorized access to, use, deletion, or modification of Class Member Information. As part of an ongoing effort, throughout its business CPT has implemented the following security controls and procedures:

- 1) Company uses Class Member Information only for the purposes for which Client provided it, as described in any Agreements and/or Court Order's governing the provisions of the Company's services on any particular engagement.
- 2) Company has designated one or more specifically named employees to be responsible for the administration of its Information Security Program.
- 3) Company has and maintains processes for identifying, assessing, and mitigating the risks to Class Member Information in each relevant area of the Company's operations and evaluating the effectiveness of the safeguards for controlling these risks.
- 4) Company utilizes an EDR that runs and analyzes daily Risk Assessment and Threat Intelligence scans on all company computer stations, servers and protected network subnets. These scans search for any software vulnerabilities along with data containing sensitive information ("SI").
- 5) All computers are provisioned with an advanced security stack. Company's Endpoint Protection centrally reports activity, handles patch management and security policies. Company's security stack is based on DNS and content filtering, deep packet inspection at the firewall level, antivirus/antimalware, email filtering and user behavior analysis. Each endpoint is monitored with modern Data Loss Prevention ("DLP") software. Company's DLP system prevents connection to unauthorized external storage, or cloud systems. It actively blocks screen prints and will not allow confidential user information to be sent out of our trusted network.
- 6) Login access to Company email or systems requires two factor authentication, which requires not only a password and username but also something physical, like user location, secure ID token or biometrics.
- 7) Company regularly monitors, tests and updates its Information Security Program.
- 8) Company restricts access to Class Member Information only to those employees, agents, or subcontractors who need to know the information to perform their jobs.
- 9) Company performs an annual audit of its Information Security Program and maintains compliance with **AICPA SOC 2 Type II**. This includes a review of the controls: vulnerability scans, secure software development life cycle, patch management, intrusion detection and prevention, encryption of storage media and devices. Company makes reasonable changes to its Information Security Program to ensure it can maintain safeguards that are appropriate for the Class Member Information at issue.
- 10) At Client's request, but only when and in a manner consistent with applicable Agreements and/or Court Orders, Company will securely destroy or return all Class Member Information in its possession and certify to Client in writing that Company has done so. If Company destroys Class Member Information rather than return it, Company will use destruction methods in compliance with all applicable state and federal laws and regulations, including NIST Special Publication 800-88, Revision 1 (2015). This obligation to return or destroy information shall not apply to Class Member Information that is stored in backup or other disaster recovery systems, archives or other storage systems that make it impractical to destroy the information, but if Company retains Class Member Information for these reasons, its obligation under the Settlement Agreement will continue to apply for so long as it retains the information. Additionally, the Company will retain all hard copy documents (i.e. Claim Forms, etc.) for a period of 6 months, at which time they are scanned and shredded on Company premises in compliance with NIST and SOC Cybersecurity Framework.
- 11) Company performs extensive background checks (County Criminal, County Civil and National Criminal Database Search) of all its employees, including a review of their references, employment edibility, and education verification to ensure they do not pose a risk to the security of Class Member Information or Clients employees. Company will provide, upon request, a copy of its background check requirements for Clients review and approval. Nothing in this document shall compel Company to disclose the results of such background information of its employees.

## INFORMATION SECURITY STATEMENT

### Confidential

12) Company conducts a monthly third-party credentialed vulnerability assessment with Trustwave. Vulnerabilities rated as high are patched/resolved within 48 hours, medium within 1 week, and low within 2 weeks. If a vulnerability cannot be resolved within our standard timeframe, a compensating control will be introduced to protect the vulnerable systems. To ensure Company receives timely information regarding new threats and vulnerabilities, Company subscribes to US-CERT notices as well as notices are received from Sonicwall and CrowdStrike. New threats are communicated to our executive and leadership team to disseminate to all employees within the company.

13) Company has implemented the following safeguards for systems that process, store or transmit Class Member Information:

- Identify and Access Management.
- Windows password complexity with a specific length, history, upper and lower characters, numbers, expiration every 45 days.
- Two-Factor authentication for remote access.
- Removable media devices, personal web-based email, instant message, or online storage (i.e. Dropbox, Google Drive, iCloud, etc.) are blocked and restricted.
- Company uses the Microsoft Office 365 to host corporate email.
- Company uses the HTTPS or SFTP standard for all data transmissions and ensures that all Client Data is encrypted while in transmission between Company's data center and the Company's computer system or other devices (as applicable) and at rest, consistent with SOC 2 Type II standard, but no less than a 128-bit key for symmetric encryption and a 1024-bit key for asymmetric encryption.
- Company requires its clients and self to transfer files with sensitive Class Member Information via a secure transmission protocol through Citrix Sharefile FTP which secures file during transfer with SSL/TFL encryption protocols and in storage using AES 256-bit encryption. Links to files expire after 7 days. Company requires all files transferred in this method to be password protected during transmission and password to be provided telephonically. Files are retrieved by Company, and then deleted manually upon successful download (or auto deleted after 7 days from upload by system).
- Upon hire and annually thereafter, security training of all employees using the online security training platform Knowbe4. Users are required to complete one hour of security training per year. Users are required to take tests online to ensure they've retained the knowledge. Topics covered are spear phishing emails, compromised website, social engineering, strong passwords, ransomware, handling sensitive information, mobile device security.
- Company actively tests security defenses. Staff participate in simulated phishing exercises to reinforce previous training. Company also conducts monthly external penetration tests and daily internal vulnerability scans to ensure the integrity of our security measures.
- Terminated employees are immediately prevented from accessing Class Member Information.
- Appropriately configured and updated firewall, antivirus, and spyware software;
- Separation of Duties.
- Business Continuity Planning.
- Disaster Recovery Planning.
- Pandemic Recovery Planning

14) Company's physical security requires that employees use an encoded card-key to gain access to the facility as all doors are mechanically locked at all times. Employees can only enter or exit through a front door or back door, both of which are protected by security cameras. Inside the facility, secure areas in the office that contain checks or sensitive material are also protected by electronic card-key badge access and limited to select employees. Security cameras monitor the areas that contain the sensitive material and audits are conducted periodically on the area. Access to the server room is strictly limited to only five individuals and protected by the encoded card-key badge access. Security cameras monitor the inside and outside of the secured area with audits being conducted periodically.

## **INFORMATION SECURITY STATEMENT**

### **Confidential**

15) Company staff are required to maintain in compliance with the Information Security Policies, Compliance Manual, and Non-Disclosure Agreement. The matters covered in the Code of Business Conduct and Ethics are of the utmost importance to the Company and are essential to the Company's ability to conduct its business in accordance with its stated values. We expect all officers, directors, employees, agents, contractors and consultants to adhere to these rules in carrying out their duties for the Company. The Company will take appropriate action against any officer, director, employee, agents, contractor or consultant whose actions are found to violate these policies or any other policies of the Company. Disciplinary actions may include immediate termination of employment or business relationship at the Company's sole discretion. If the Company has suffered a loss, then it may pursue its remedies against the individuals or entities responsible. If laws have been violated, then the Company will fully cooperate with the appropriate authorities.

### **Definitions**

- 1) **"Class Member Information"** means Class Member name, address, or other contact information and class member claim filing information necessary for Company to perform services required by applicable Agreements or Court Orders in context to the Administration of a Settlement or other Class Action litigation.
- 2) **"Client"** means collectively Plaintiff Counsel and Defense Counsel, Plaintiff and Defendant.
- 3) **"Client Data"** means proprietary or personal data regarding Client or any of its Class Members under the Settlement Agreement, as provided by Client.
- 4) **"Company"** means CPT Group, Inc. a reputable third-party Claims Administrator selected by all the Parties (Plaintiff and Defense Counsel) to administer the Settlement or Notification Mailing.
- 5) **"Sensitive Personal Information"** means any non-public information of CPT or Client disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other party may have access, which a reasonable person would consider confidential and/or which is marked "confidential" or "proprietary" or some similar designation by the disclosing party. Confidential Information shall not include any information which the recipient can establish: (i) was or has become generally known or available or is part of the public domain without direct or indirect fault, action, or omission of the recipient; (ii) was known by the recipient prior to the time of disclosure, according to the recipient's prior written documentation; (iii) was received by the recipient from a source other than the discloser, rightfully having possession of and the right to disclose such information; or (iv) was independently developed by the recipient, where such independent development has been documented by the recipient.



# **EXHIBIT 2**



## **TRANSMISSION METHODS FOR SENSITIVE INFORMATION**

CPT Group, Inc. ("CPT") maintains strict guidelines for the submission, transfer, and protection of Client Data and Wire Information.

### **A. CLIENT DATA TRANSMISSION METHODS**

Counsel shall submit all Client Data to CPT as follows:

1. Link provided by CPT to secure FTP (sharefile) for transfer of data files.
2. All files uploaded should be password protected.
3. Password provided to CPT personnel telephonically.
4. Once files are uploaded to and retrieved, files are deleted (files set on autodelete after 7 days of upload).

Counsel agrees and acknowledges that the above method is the only method authorized by CPT to receive Client Data. Attempts to transmit Client Data by other means are customarily not accepted. In the event Counsel utilizes other means to transmit or attempt to transmit Client Data, CPT disclaims all responsibility for such transmissions or attempted transmissions.

### **B. BANK WIRE INFORMATION**

*Incoming from Defense Counsel to QSF.*

CPT provides Qualified Settlement Fund bank account wire instructions to Defense Counsel as follows:

1. Wire instructions are printed in PDF format, are uploaded with password protection, and are made available to Defense Counsel via secure Sharefile.
2. CPT will call Defense Counsel directly and provide the password telephonically.
3. Defense Counsel is requested to then call CPT prior to wiring funds to confirm receipt of all applicable information.

Defense Counsel agrees and acknowledges that the above method is the only method authorized by CPT to communicate QSF wire instructions. CPT will decline attempts by Defense Counsel to receive such instructions by other means. In the event Defense Counsel utilizes other means to transmit or attempt to transmit wire instructions, CPT disclaims all responsibility and liability for such transmissions or attempted transmissions including without limitation for any unauthorized access, acquisition, destruction, or loss of such wire instructions.

*Outgoing from QSF to Plaintiff Counsel.*

1. CPT does not send passwords via email either internally or externally.
2. For wire instructions for Plaintiff Counsel, such instructions should be communicated to CPT either by phone or by secure Sharefile.
3. CPT will confirm wire information on file with the bank name and last four digits of the account number only.

Plaintiff Counsel agrees and acknowledges that the above method is the only method authorized by CPT to communicate wire instructions. CPT will decline attempts by Plaintiff Counsel to receive such instructions by other means. In the event Plaintiff Counsel utilizes other means to transmit or attempt to transmit wire instructions, CPT disclaims all responsibility and liability for such transmissions or attempted transmissions including without limitation for any unauthorized access, acquisition, destruction, or loss of such wire instructions.

# **EXHIBIT 3**



Class Action Administrators

The Industry's Premier  
Class Action Administrator

**CPT Group is the Nation's premier Class Action Claims Administrator handling a broad spectrum of cases with value-added, single-source expertise, and premier service.**



Putting CPT Group in place as your Administrator influences every element of the process thereafter. Rely on us to analyze, plan, and administrate with integrity, drawing from a broad base of administration experience with class action settlement and beyond.

#### **Value Added Philosophy**

CPT Group's cadre of experts understands how each piece of the administrative puzzle fits seamlessly into the big picture. Dynamic, capable, and service-centric our elite staff delivers peak productivity and value. The longevity of our Administrators, stringently tested Case Managers, and trusted Consultants merge to assure neutrality, attention to detail and quality for "true-number" proposals and no costly surprises.

#### **Best In Class Service**

From informed Case Managers who are your single point of contact, to secure in-house resources, we work as one to bring you superior service you can rely on. Count on us to be fully up to date, aware of all contingencies, and espond with speed and accuracy.

#### **Capabilities**

Selecting CPT Group is the first step in determining the outcome of your settlement. Multifaceted capabilities, the distinct advantage of experience, particularly in cross category settlements, require that all pieces are organized, positioned correctly and put into place.

#### **One team. One purpose. We put you first.**

#### **Proprietary Technology and Superior Workflow**

Without doubt, the security of settlement information is of the utmost importance.

### **AdminLink: Internal Case Information Access Management**

Exclusive proprietary technology offers access to real time reports, response rates and more, 24/7. With AdminLink, our operations staff can access current case information in one single location, ensuring every CPT staff member involved in your case is up to date and has all the information they need at their fingertips.

### **Comprehensive Marketing**

Our onsite print/mail house and web development team not only affords you greater value and tighter security, we assure full legal compliance in all materials and up to date information for all class members, thereby reducing demands on client time and resources.

### **Comprehensive Service**

#### **Pre-Settlement Consulting**

Entrusting class action administration to CPT Group is the first step in the confident achievement of the goals of the lawsuit. Our full spectrum consultation services address every critical area of need, providing clear and actionable planning combined with cost-effective administration.

- Preliminary Approval Declarations
- Settlement Agreement Consultation
- Timelines
- Scheduling
- Statistical Reporting
- Notice Campaign Planning
- Neutral Third Party Administrator

#### **Legal Notification**

CPT Group is adept at third-party data hosting and communication services using proprietary technology across multiple platforms, including print, media and online. Clear-language

documents, translated according to class member needs, support and guide members through a seamless case rollout, regardless of scope or complexity.

- Pre-Certification/Belaire West/Privacy Mailing
- Class Certification Noticing
- Settlement Notification
- Formatting Legal Notices
- Electronic Notification email/website
- Translation Services
- In-House Production
- Expert Legal Noticing Campaigns
- In-House Translation Services

#### **Data Management**

Quality, accuracy, speed and security are the cornerstones of CPT's proprietary technology and data management systems. We developed our specialized data management, analysis and reporting tools to move the skillset up, innovate new and better solutions and create a superior workflow with complete and timely accountability and efficiency.

- Data Analysis
- Data Entry
- Data Management
- Secure Data Transfer
- Data Reporting

#### **Class Member Assistance**

Customer response and targeted outreach receive multilevel attention. We have a massive capacity to handle this all-important aspect of settlement administration. Our multilingual call center offers class members 1:1 responsiveness. Interactive Voice Response assures that class members receive the assistance and support they require. Our proprietary, case-specific call tracking system uses dedicated toll-free numbers, and highly trained



representatives to document and maintain an accurate class member history of interaction.

- Live Call Center Support (multilingual)
- Interactive Voice Response (IVR) capabilities
- Proprietary Call Tracking System

### Claims Administration

At the heart of CPT's administrative capabilities is our ability to process claims accurately, efficiently and in full compliance. Our skilled approach to using technology and controlling management costs is the bedrock of our effectiveness. Regardless of class size or case intricacy, we address all aspects of administration to provide comprehensive and complete solutions.

- In-House Secure Data Processing
- Track & Process Undeliverable Mail
- Claims Processing (mail/online)
- Host & Maintain Case Websites
- Secure Claims Validation

### Settlement Fund Administration

CPT's centralized fund distribution process manages fully audited and securely supervised accounts, handling all aspects of Federal and State tax filings and forms printing and distribution to all recipients.

- Secure Disbursement Processing

- Qualified Settlement Fund (QSF) Management (establish/maintain)
- Federal and Multi-State Tax Reporting (W2/1099)
- Physical Checks, ACH, eCheck, Merchant eGift Cards, Merchant Physical Gift Cards, and Prepaid Debit Cards Options
- Escheatment of Unclaimed Settlement Funds
- Cy Pres Distribution

### Widespread Experience

- FLSA
- Wage & Hour
- Labor & Employment
- PAGA
- Consumer
- Product Liability
- Data Breach Notification
- Government Services
- Insurance
- Securities
- Finance
- Antitrust
- ERISA

### Contact Us 800.542.0900

CPT Group, Inc. is not just part of the solution. It is the solution. Please allow us to answer your questions and discuss your immediate and future needs.

**Kelly D. Jones, OSB No. 074217**

Law Office of Kelly D. Jones

819 SE Morrison St.

Suite 255

Portland, Oregon 97214

kellydonovanjones@gmail.com

Direct 503-847-4329

Of Attorneys for Plaintiff

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

**DECLARATION OF  
KELLY D. JONES**

vs

**WINCO FOODS, LLC**

Defendant

## DECLARATION

I, Kelly D. Jones, declare the following under penalty of perjury:

1. I am one of the attorneys for plaintiff in this action and make this declaration based on my personal knowledge and if called to testify to the following facts I could and would competently do so.

2. I submit this declaration in support of plaintiff's Unopposed Motion for Preliminary Approval of Class Settlement and Certification.

3. During 2021, the parties engaged in extensive discovery, exchanging a voluminous amount of documents and conducting the depositions of plaintiff and five of WinCo's employees, including a FRCP 30(b)(6) corporate representative deposition. Between March 2022 and August 2022, the parties exchanged expert discovery and reports. During the pendency of this action, the parties exchanged formal document discovery and other information informally. The information exchanged in informal and formal discovery, along with the parties' class certification and motion to dismiss briefing, was sufficient to assess the strengths and weakness of the claims and defenses at issue.

4. On April 18, 2023, the parties attended a second mediation with retired Judge Michael Hogan, but the case did not settle. Subsequently, the parties engaged Senior Judge Henry Kantor as mediator, for a third attempt at mediation. With Judge Kantor's help, and following months of phone calls, videoconferences, and exchanges of information, the

parties reached the material terms of a settlement on January 4, 2024. Only after substantive relief for the Class was agreed upon did the parties then negotiate that plaintiff would request a service award for plaintiff of no more than \$10,000, and that Class Counsel would apply for a contingency fee of no more than 30% of the common settlement fund for fees and no more than \$150,000 in incurred costs.

5. Over the next several months after reaching material terms, the parties worked toward finalizing the precise terms of the settlement and Agreement and agreed on CPT as the parties' chosen class administration entity. The parties then consulted with CPT on aspects of the proposed notice plan, forms, and claims process.

6. Based on the assessment of information and documents exchanged formally and informally in discovery, and with the extensive analysis of retained experts, the parties have jointly agreed that 120,000 is a good faith estimate of the total number of class members from whom WinCo collected at least one of the surcharges at issue during the class period.

7. I have significant experience prosecuting consumer protection and UTPA litigation, including class actions, and have vigorously pursued the interests of the class members by conducting private investigation, drafting complaints filed in this matter briefing WinCo's

two motions to dismiss and the previous motion for class certification motion to dismiss, and participating in the three mediations in this case.

8. I am a member in good standing with the Oregon State Bar. I have been a practicing attorney since 2007. I have been lead or co-counsel on at least 70 civil cases filed in this District—some of which are pending or certified and resolved class actions. I have been formally approved and appointed as class counsel in more numerous Oregon state court judges and in the following consumer-related class actions in this District:

- *Villanueva v. Liberty Acquisitions Servicing, LLC*, 319 F.R.D. 307, 331 (D. Or. 2017) (FDCPA settlement class certified and granted final approval).
- *Byrne v. Or. One, Inc.*, No. 3:16-cv-01910-SB (FDCPA certified and final approved settlement class).
- *MacCartney v. Gordon, Aylworth & Tami, P.C.*, No. 3:18-cv-00568-AR, 2022 WL 1462821, 2022 U.S. Dist. LEXIS 83342, at \*1 (D. Or. Apr. 19, 2022) (FDCPA and UTPA settlement class certified and granted final approval).
- *Russell v. Ray Klein, Inc.*, No. 1:19-cv-00001-MC, 2022 WL 1639560, 2022 U.S. Dist. LEXIS 92881 (D. Or. May 24, 2022) (FDCPA, UTPA, and OUDCPA settlement class certified and granted final approval).
- *Williamson v. Curaleaf, Inc.*, No. 3:22-cv-00782-IM (UTPA certified and finally approved settlement class).

9. I am unaware of any other litigation concerning this same controversy or dispute, brought by putative class members or otherwise.

10. I know the facts I am testifying about based on my personal knowledge. Under 28 U.S.C. § 1746, I declare under penalty of perjury that this declaration is true and correct.

March 29, 2024

s/ Kelly D. Jones \_\_\_\_\_  
**Kelly D. Jones, OSB No. 074217**  
Law Office of Kelly D. Jones  
819 SE Morrison St.  
Suite 255  
Portland, Oregon 97214  
kellydonovanjones@gmail.com  
Direct 503-847-4329

Of Attorneys for plaintiff

**CERTIFICATE OF SERVICE**

I caused this document to be served on all parties through the CM/ECF system.

March 29, 2024

s/ Kelly D. Jones  
**Kelly D. Jones, OSB No. 074217**  
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819 SE Morrison St.  
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Of Attorneys for plaintiff

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Direct 503-847-4329

Of Attorneys for Plaintiff

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

**DECLARATION OF  
MICHAEL FULLER**

vs

**WINCO FOODS, LLC**

Defendant

## DECLARATION

I, Michael Fuller, declare the following under penalty of perjury:

1. I am the lead trial attorney for plaintiff in this action and make this declaration based on my personal knowledge and if called to testify to the following facts I could and would competently do so.
2. I submit this declaration in support of plaintiff's Unopposed Motion for Preliminary Approval of Class Settlement and Certification.
3. Attached is a true and correct copy of my biography, demonstrating my adequacy to be appointed as class counsel in this matter.
4. I am unaware of any other litigation concerning this same controversy or dispute, brought by putative class members or otherwise.
5. I know the facts I am testifying about based on my personal knowledge. Under 28 U.S.C. § 1746, I declare under penalty of perjury that this declaration is true and correct.

March 29, 2024

s/ Michael Fuller  
**Michael Fuller, OSB No. 09357**  
michael@underdoglawyer.com

**CERTIFICATE OF SERVICE**

I caused this document to be served on all parties through the CM/ECF system.

March 29, 2024

s/ Kelly D. Jones

**Kelly D. Jones, OSB No. 074217**

Law Office of Kelly D. Jones

819 SE Morrison St.

Suite 255

Portland, Oregon 97214

kellydonovanjones@gmail.com

Direct 503-847-4329

Of Attorneys for plaintiff

# Michael Fuller

## BIOGRAPHY

**Michael Fuller** is an American trial lawyer, law professor, and motivational speaker.

In 2023, the *Portland Business Journal* put Michael on its '40 Most Influential Leaders under 40' list.

Michael worked for Senator Gordon Smith in Washington, DC prior to law school.

His cases have been covered by *The Today Show*, *ESPN*, *Fox News*, and *The New York Times*.

Called "Portland's underdog lawyer" by the *Portland Business Journal*, Michael fights for the little guy against Wall Street and Corporate America.

His private client list includes NFL players, UFC fighters, politicians, and journalists.

Michael has been recognized by *Super Lawyers Magazine* every year for the past decade. His Martindale-Hubbell rating is preeminent.

## EDUCATION

**Juris Doctor – Order of Barristers**  
Willamette University College of Law

**Bachelor of Science – Philosophy**  
Oregon State University

## PROFESSIONAL LICENSES

**Licensed Attorney**  
Oregon State Bar

**Licensed Substitute Teacher**  
Oregon TSPC

**Licensed Boxing Coach**  
USA Boxing

Exhibit 1- 1 of 3



## UNDERDOG LAW OFFICE



 US Bancorp Tower  
111 SW 5th Ave., Suite 3150  
Portland, Oregon 97204

 503-222-2000

 underdoglawyer.com

 team@underdoglawyer.com

 \$565 per hour

## MAIN PRACTICE AREAS

Class Actions

Civil Rights

Wrongful Death

Complex Civil  
Litigation Defense

# PHILANTHROPY

## BOARD OF DIRECTORS

Michael serves on the 2024 Oregon State Bar House of Delegates, the City of West Linn Historic Review Board, and the Odighizuwa Family Foundation Board of Directors.



He is the 2024 chair of the Oregon Trial Lawyers Association Consumer Law Section, and past chair of the Oregon State Bar Consumer Law Section.

## CLASSROOM GRANTS

Michael's annual classroom grants honor local public school teachers who go above and beyond for their students.



The teachers are given full authority to use their \$5,000 classroom grants as they see fit.

## BOXING COACH

In 2020, Michael sponsored the construction of a boxing gym in Portland for at-risk youth.

Michael is a volunteer licensed boxing coach with USA Boxing. His boxing scholarships provide free equipment, training, and travel stipends to the gym's high school fighters.



## SUBSTITUTE TEACHER

Michael was the first in his family to go to college. Now he gives back as a licensed substitute K-12 public school teacher.



Michael is a donor and past board member of the Hillsboro Schools Foundation.

# RECENT CASES

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## CLASS ACTIONS

Over the past decade, courts across the country have appointed Michael to represent the interests of millions of consumers in class action cases.

### **WinCo Foods (2024)**

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

- \$3.6 million settlement
- Lead class counsel

### **Safeway (2023)**

Case No. 19CV45421

- \$8.95 million settlement
- Lead class counsel

### **Professional Credit (2022)**

Case No. 1:19-cv-1-MC

- \$2 million settlement
- Lead class counsel

### **CenturyLink (2021)**

MDL No. 2795

- \$18.5 million settlement

### **Burgerville (2020)**

Case No. 18CV53295

### **Sonic Drive-In (2019)**

MDL No. 2807

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## JURY TRIALS

Michael loves civil jury trials, representing both plaintiffs and defendants in Oregon state and federal courts.

### **Hume v Guardian (2024)**

Federal Court Case No. 3:21-cv-00517-SI

- 8-person jury

### **Alarcon v Polo (2024)**

Mult. Co. Case No. 22CV10396

- 12-person jury

### **Smith v Pinestreet (2023)**

Mult. Co. Case No. 19CV20048

- 12-person jury

### **Summerville v Mult. (2022)**

Mult. Co. Case No. 21CV21482

### **Krech v Pacificap (2022)**

Mult. Co. Case No. 21CV09001

### **Bohorquez v Powe (2022)**

Mult. Co. Case No. 21CV04730

### **Boyd v Cascade (2022)**

Mult. Co. Case No. 19CV42308

### **Lanter v Cuniff (2021)**

Mult. Co. Case No. 20CV27653

**Kelly D. Jones, OSB No. 074217**

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Of Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

**VIRGINIA SIMONIN**  
individually, and on behalf of  
others similarly situated

Plaintiff

vs

**WINCO FOODS, LLC**

Defendant

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

**DECLARATION OF  
DANIEL J. NICHOLS**

## DECLARATION

I, Daniel J. Nichols, declare the following under penalty of perjury:

1. I am one of the attorneys for plaintiff in this action and make this declaration based on my personal knowledge and if called to testify to the following facts I could and would competently do so.
2. I submit this declaration in support of plaintiff's Unopposed Motion for Preliminary Approval of Class Settlement and Certification.
3. I am a member in good standing with the Oregon State Bar, the California State Bar, and the Washington State Bar. I have been a practicing attorney since 2005, when I was admitted to the California State Bar. In 2010, I was admitted to the Oregon State Bar.
4. I have spent most of my career defending companies and individuals in complex litigation, including class action lawsuits. I have extensive experience in electronic discovery in complex matters, a topic on which I regularly lecture. I am an adjunct professor at the Lewis & Clark Law School, where I teach electronic discovery. In this case, I have served primarily, but not exclusively, as discovery counsel.
5. A true and correct copy of my C.V. is attached as Exhibit 1 to this declaration.
6. I am unaware of any other litigation concerning this same controversy or dispute, brought by putative class members or otherwise.

7. I know the facts I am testifying about based on my personal knowledge. Under 28 U.S.C. § 1746, I declare under penalty of perjury that this declaration is true and correct.

March 29, 2024

s/ Daniel J. Nichols  
**Daniel J. Nichols, OSB No. 101304**  
dan@jurislawyer.com

**CERTIFICATE OF SERVICE**

I caused this document to be served on all parties through the CM/ECF system.

March 29, 2024

s/ Kelly D. Jones  
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Of Attorneys for plaintiff

## Daniel J. Nichols

Dan is a seasoned litigator, serving clients in large and small matters and through all aspects of legal disputes. Dan's extensive experience guiding matters from inception through all phases of discovery, motions practice, settlement negotiations, and trial provides him with a practical understanding of how to find the right strategy to meet his client's needs.



Dan has a diversity of practice areas, including complex civil litigation, class actions, environmental, professional liability, commercial, and consumer protection. Dan has practiced extensively in the field of Information Law, and he teaches Electronic Discovery at Lewis & Clark Law School as an adjunct professor.

Prior to joining the firm, Dan was a partner at the AmLaw 100 firm of Gordon Rees Scully & Mansukhani LLP, focusing his practice on complex litigation, and he was a partner at Redgrave LLP, the country's leading firm in Information Law, focusing his practice on electronic discovery and information governance.

## Admissions

- Oregon
- Washington
- California
- U.S. District Court for the District of Oregon
- U.S. District Court for the Western District of Washington
- U.S. District Court for the Northern District of California
- U.S. Court of Appeals for the Ninth Circuit

## Work History

- JurisLaw LLP, Lake Oswego, Oregon, formerly known as Harris Berne Christensen LLP (March 2021 to the Present)
- Redgrave LLP, San Francisco, California, Partner (September 2018 – February 2021), Of Counsel (April 2016 – August 2018)
- Lewis & Clark Law School, Portland, Oregon, Adjunct Professor of Law (August 2017 – present)
- Gordon & Rees LLP, Portland, Oregon and San Francisco, California, Partner (December 2013 – March 2016), Senior Counsel (December 2012 – December 2013), Associate (December 2009 – December 2012)
- Filice Brown Eassa & McLeod LLP, Oakland, California, Associate (August 2005 – December 2009)

## Professional Experience (selected)

- *Long, et al. v. Safeway, Inc.* (Or. Cir. Ct.): Approved as class counsel in settled consumer Oregon UTPA class action.
- *Johnson v. Maker Ecosystem Growth Holdings, Inc., et al.* (N.D. Cal.): Approved as class counsel in settled consumer cryptocurrency class action.
- Served as National Discovery Counsel for a Fortune 200 company in state and federal courts across the United States, as well as assisting the client with privacy and information governance issues.
- Led a team for a Fortune 100 company addressing discovery strategy and disputes in state and federal courts across the United States as well as in connection with various state and federal government inquiries and investigations, addressing issues such as preservation, search, format of production, privilege, and protective orders regarding confidentiality.
- Preparing key witnesses for a Global 100 company in multi-district litigation addressing contentious discovery issues including large data collections, spoliation, and document destruction allegations.
- Led a team for a Fortune 100 company addressing the complex intersection of rules, laws, and best practices guiding the timely

destruction of information with the rules and laws requiring retention and preservation, ultimately developing a strategy to enable a client to better manage large volumes of data across the enterprise.

## Education

- J. Reuben Clark Law School, Brigham Young University (J.D. 2005), magna cum laude
- Southern Oregon University (B.A. 2002), magna cum laude

## Thought Leadership (selected)

- “Cost, Confidence, and Control with an End-to-End Platform and Process,” Xchange Conference, Moderator, September 19-21, 2023.
- “Legal Hold Revisited: Notification, Compliance, and Collaboration,” ACEDS/Zapproved Webinar, Moderator, October 20, 2022.
- “Legal Hold Notification: Revisited,” PREX Conference, Moderator, September 19-21, 2022.
- “Getting the Greenlight: How to Secure Legal Project Funding,” PREX Conference, Moderator, September 28, 2021.
- “Assessing Your Data Maps in a Newly Distributed World,” PREX Summit Series, Moderator, July 21, 2020.
- “Rule 30(b)(6) Depositions in Litigation: Deposing or Defending Corporate Witness Depositions,” Thomson Reuters, Panelist, June 11, 2020.
- “Responding to Civil Investigative Demands (DID) and Subpoenas,” Government Investigations & Civil Litigation Institute, Moderator, October 8-10, 2018.
- Speaker and panelist on various eDiscovery topics at PREX 2018 and PREX 2019.
- “Technology Disruption in the Ethical Practice of Law,” Oregon Association of Defense Counsel, Panelist, June 16, 2018.
- “E-Discovery 2018: Key Issues and Practical Guidance on E-Discovery for Corporate and Outside Counsel,” Thomson Reuters, Panelist, May 10, 2018.

- “eDiscovery Overview or How I Learned to Stop Worrying and Love ESI,” Inns of Court, Southern Oregon, Speaker, April 12, 2018.
- “Authentication of Evidence 2.0,” Legalweek West Coast, Panelist, June 12, 2017.
- “Proportionality, Early Preservation, Production and Sanctions Under the New Rules Developing New Techniques Early in the Matter to Avoid Costly Missteps,” Innovation in E-Discovery Conference presented by Sandpiper LLC, Moderator, February 15, 2017.
- “New Rules of E-Discovery: Everything You Need to Know,” Thompson Reuters, Panelist, January 23, 2017.
- “Making the Business Case for Defensible Disposition,” Co-author, Information Law Journal, Summer 2016.