

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (the “Agreement”) is entered into by and among Defendant Pepperidge Farm, Incorporated (“Pepperidge Farm”) and Plaintiffs Douglas Brett, Terrence Fox, Steven Pulford and Mark Ryan (the “Named Plaintiffs”) and the class of individuals that Named Plaintiffs seek to represent for settlement purposes only. This Agreement is the further long form settlement agreement contemplated in section 19 of the Memorandum of Understanding entered into between Pepperidge Farm and the Named Plaintiffs, by their counsel, on or about April 16, 2021. Named Plaintiffs, Class Counsel, and Pepperidge Farm hereby stipulate and agree that, in consideration of the promises and covenants as set forth in this Agreement and upon entry by the Court of a Final Order and Judgment, all claims of the Named Plaintiffs and the Qualified Class Members in the Actions shall be settled, compromised, and released upon the terms and conditions contained herein.<sup>1</sup>

### **RECITALS**

WHEREAS, the Named Plaintiffs have filed a putative class action in the Connecticut Superior Court, Docket Number X10-UWY-CV-14-6023215-S (the “Action”) alleging that Pepperidge Farm misclassified them and allegedly similarly situated persons as independent contractors rather than as employees;

WHEREAS, the Action is presently stayed pending the efforts of the Parties to finalize and effectuate the Settlement of the Action;

WHEREAS, Pepperidge Farm denied and continues to deny all of the allegations made by Named Plaintiffs in the Action, and has denied and continues to deny that it is liable or owes damages to anyone with respect to the alleged facts or causes of action asserted in the Action, or that any claims asserted by Named Plaintiffs may proceed on a class action basis. Nonetheless, without admitting or conceding any arguments, issues, liability, or damages whatsoever, or that any claims alleged in the Action may proceed on a class action basis, Pepperidge Farm has agreed to settle the Action on the terms and conditions set forth in this Agreement, to avoid the burden and expense of continuing the Action;

WHEREAS, Class Counsel has analyzed and evaluated the merits of the claims made against Pepperidge Farm in the Action, and the impact of this Settlement on Named Plaintiffs and the entire Settlement Class;

WHEREAS, this Agreement resulted from and is the product of extensive, good faith and arm’s length negotiations. The Parties engaged a prominent mediator with national experience in employee/independent contractor misclassification actions, Mr. Michael Dickstein, to assist in their discussions. The Parties participated in a series of lengthy in-person mediation sessions in

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<sup>1</sup> The capitalized terms herein are defined either in Section 1 (Definitions) or elsewhere in the body of this Agreement.

which appearing counsel, many of the Named Plaintiffs, and senior business people from Pepperidge Farm, participated;

WHEREAS, as a result of these efforts, the Parties entered into this Agreement, subject to preliminary approval and final approval by the Court as required by Connecticut Practice Book § 9.9(c)(1)(C), to fully, finally, and forever resolve, discharge, and release all rights and claims of Named Plaintiffs as set forth in Paragraph 12 below and the rights and claims of Qualified Class Members as set forth in Paragraph 13 below in exchange for Pepperidge Farm's agreement to the terms herein, including its agreement to pay a maximum total amount of Eight Hundred Thirty-Five Thousand Dollars (\$835,000.00) inclusive of all attorneys' fees, litigation costs, claims administration fees, interest, and incentive payments to Named Plaintiffs.

WHEREAS, based upon their analysis and their evaluation of a number of factors, and recognizing the substantial risks of continued litigation with respect to certain claims, including the possibility that the Action, if not settled now, might result in a recovery that is less favorable to the Settlement Classes, and that would not occur for several years, or at all, Class Counsel is satisfied that the terms and conditions of this Agreement are fair, reasonable, and adequate and that this Agreement is in the best interests of the Settlement Class; and

WHEREAS, the Parties understand, acknowledge, and agree that the execution of this Agreement constitutes the settlement and compromise of disputed claims. It is the Parties' desire and intention to affect a full, complete, and final settlement and resolution of all existing disputes and claims as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this Agreement, as well as the good and valuable consideration provided for herein, the Parties hereto agree to a full and complete settlement of the Action on the following terms and conditions:

**1. Definitions.**

- a. **Agreement.** "Agreement" shall mean this Settlement Agreement and Release, and all exhibits.
- b. **Action and Court.** "Action" shall mean *Brett et al. v. Pepperidge Farm, Incorporated*, Connecticut Superior Court, Docket No. X10-UWY-CV-14-6023215-S. "Court" shall mean the court that is overseeing the Action.
- c. **Claims Administrator.** "Claims Administrator" shall mean the entity selected by the Parties to provide notice to the Class and administer payment of the Settlement to Class Members.
- d. **Class Counsel and Named Plaintiffs' Counsel.** "Class Counsel" and "Named Plaintiffs' Counsel" shall mean Pulman and Comley, LLC.
- e. **Class Notice.** "Class Notice" shall mean the "Notice of Class Action Settlement" that will be provided pursuant to Paragraph 8 of this Agreement, subject to

approval by the Court, substantially in the form attached hereto as Exhibit 1, as supplemented and amended by any order of the Court.

- f. **Consignment Agreement Revisions.** “Consignment Agreement Revisions” shall mean the revisions to the existing Consignment Agreement of each Qualified Claimant who or that is a Current Distributor and who or that cashes his, her, or its settlement check or makes a claim for settlement funds with a state’s unclaimed property fund and receives payment therefrom. The operative Consignment Agreement Revisions are attached to this Agreement in both “clean” and “redline” forms, as Exhibit 5.
- g. **Current Distributors.** “Current Distributors” shall be defined as Named Plaintiffs and all Settlement Class Members who or that are parties to an operative Consignment Agreement with Pepperidge Farm that covers territory within the State of Connecticut.
- h. **Effective Date.** The “Effective Date” of this settlement shall be the later of: (i) the date of final affirmance of approval of the settlement following an appeal of the Final Order and Judgment, or the expiration of the time for a petition for a writ of certiorari to review the appellate decision affirming the Final Order and Judgment and, if certiorari be granted, the date of final affirmance of the Order and Final Judgment following review pursuant to that grant; or (ii) the date of final dismissal of any appeal from the Final Order and Judgment or the final dismissal of any proceeding on certiorari to review the Final Order and Judgment; or (iii) if no appeal is filed, five days after the expiration date of the time for the filing or noticing of any appeal from the Final Order and Judgment.
- i. **Escrow Account.** “Escrow Account” shall mean the FDIC insured interest-bearing account(s) created and controlled by the Claims Administrator.
- j. **Fairness Hearing.** “Fairness Hearing” shall mean the hearing on the Motion for Final Order and Judgment.
- k. **Final Order and Judgment.** “Final Order and Judgment” shall mean the final Order entered by the Court after the Fairness Hearing approving the settlement and entering Judgment pursuant to this Stipulation and in accordance with Connecticut Practice Book § 9.9(c)(1)(C). A proposed version of the Final Order and Judgment shall be submitted to the Court in the form attached hereto as Exhibit 2.
- l. **Maximum Settlement Amount.** “Maximum Settlement Amount” shall mean Eight Hundred Thirty-Five Thousand Dollars (\$835,000.00) inclusive of all attorneys’ fees, litigation costs, claims administration fees, and incentive payments to Named Plaintiffs.
- m. **Named Plaintiffs.** “Named Plaintiffs” shall mean Douglas Brett, Terrence Fox, Steven Pulford and Mark Ryan.

- n. **Net Settlement Amount.** “Net Settlement Amount” shall mean the remainder of the Settlement Fund after deductions for court-approved attorney’s fees and litigation costs and expenses, court-approved Service Enhancements, court-approved Settlement Administration fees and costs, and the money retained by Pepperidge Farm as a result of any opt outs.
- o. **Order Granting Preliminary Approval.** “Order Granting Preliminary Approval” shall mean the Order entered by the Court preliminarily approving, *inter alia*, the terms and conditions of the Settlement and this Agreement, the manner and timing of providing notice to the Settlement Class Members, and the time period for opt-outs and objections. A proposed version of the Order Granting Preliminary Approval shall be submitted to the Court in the form attached hereto as Exhibit 3.
- p. **Non-Named Plaintiff Settlement Class Members.** “Non-Named Plaintiff Settlement Class Members” shall mean a Settlement Class Member who is not a Named Plaintiff.
- q. **Parties.** “Parties” shall refer to the Named Plaintiffs and Pepperidge Farm.
- r. **Pepperidge Farm.** “Pepperidge Farm” shall mean Pepperidge Farm, Incorporated.
- s. **Pepperidge Farm’s Counsel.** “Pepperidge Farm’s Counsel” shall mean Baker McKenzie and Morgan, Lewis & Bockius LLP.
- t. **Preliminary Individual Settlement Amount and Final Individual Settlement Amount.** The “Preliminary Individual Settlement Amount” shall mean the preliminary payment amount allocated to each Non-Named Plaintiff Settlement Class Member. The “Final Individual Settlement Amount” is the actual payment amount to be made to each Qualified Claimant.
- u. **Qualified Claimant.** “Qualified Claimant” shall mean a Settlement Class Member who is not a Named Plaintiff and who does not opt out of the Settlement pursuant to Paragraphs 9 and 10 of this Agreement.
- v. **Settlement.** The “Settlement” shall mean the settlement memorialized in this Agreement, and all exhibits.
- w. **Settlement Class and Settlement Class Members.** “Settlement Class Members” and, collectively, the “Settlement Class” shall mean the following individuals and/or entities:

All current and former distributors of Pepperidge Farm bakery products in Connecticut who are or have been classified as independent contractors by Pepperidge Farm, whether or not they are or have been explicitly called “SDAs,” at any time between

March 7, 2012 and the date of preliminary approval of the Settlement.

- x. **Settlement Administration Expenses.** “Settlement Administration Expenses” are those expenses incurred and charged by the Claims Administrator in effectuating the Settlement, including any fees or costs associated with the Claims Administrator establishing any interest-bearing account or investment vehicle for the Settlement Fund (or liquidating/closing such account or vehicle).
- y. **Settlement Fund.** The “Settlement Fund” shall be the settlement fund created by the payment by Pepperidge Farm pursuant to this Agreement.

**2. Settlement Amount, Payment and Allocation.**

- a. Pepperidge Farm agrees to pay up to the Maximum Settlement Amount, which shall resolve and satisfy all monetary obligations under this Agreement. Pepperidge Farm shall not pay more than the Maximum Settlement Amount.
- b. Within thirty (30) calendar days following the Effective Date, the Claims Administrator will distribute the following payments:
  - i. Class Counsel’s Court-approved attorneys’ fees and their actual litigation costs. Class Counsel may seek from the Court a maximum of five hundred thousand dollars (\$500,000) in attorneys’ fees, and their actual litigation costs, for serving as Class Counsel, which Pepperidge Farm will not oppose.
  - ii. Named Plaintiffs’ Court-approved incentive payments for serving as a Class Representative (“Service Enhancement”). Named Plaintiffs may each seek from the Court a Service Enhancement not to exceed ten thousand dollars (\$10,000), which Pepperidge Farm will not oppose.
  - iii. From the Maximum Settlement Amount, Settlement Administration Expenses shall be paid to the Settlement Administrator retained by the parties and approved by the Court.
  - iv. The remainder of the Maximum Settlement Amount (after deduction of amounts authorized by the Court pursuant to subsections 2.b.i., 2.b.ii., and 2.b.iii above) shall be allocated among the Qualified Claimants in accordance with the plan of allocation set forth in Exhibit 4 hereto, for claims related to allegedly unpaid and/or owed wages, overtime, premium wages, expenses, deductions, and related fees, interest, damages, and penalties, as well as unjust enrichment or negligent or intentional misrepresentation related to the classification of the Settlement Class as independent contractors. (The total amount paid to the members of the Settlement Class hereunder is referred to as the “Net Settlement Amount.”)

- v. If the Court approves a lesser amount of attorneys' fees, litigation costs, or Service Enhancement than those sought by Named Plaintiffs and their counsel, any amount disallowed by the Court shall be added to the Net Settlement Amount and paid to the Qualified Claimants. The Parties agree that the Settlement shall remain binding with such modification(s) and its terms will be otherwise unchanged.
- c. To the extent consistent with applicable law, the Parties agree that the Escrow Account is intended to be a "Qualified Settlement Fund" under Section 468B of the Internal Revenue Code of 1986, as amended (the "Code"), 26 U.S.C. Section 468B and Treas. Reg. §1.468B-1, 26 C.F.R § 1.468B-1, *et seq.*, and will be administered by the Claims Administrator as such. The Claims Administrator shall apply for an employer identification number ("EIN") for the Escrow Account pursuant to Internal Revenue Service ("IRS") Form SS-4, and in accordance with Treas. Reg. §1.468B-2(k)(4), 26 C.F.R § 1.468B-2(k)(4). With respect to the Escrow Account, the Claims Administrator shall: (1) satisfy all federal, state and local tax reporting, return and filing requirements with respect to the Escrow Account; and (2) satisfy out of the Escrow Account all (i) taxes (including any estimated taxes, interest or penalties) with respect to the interest or other income earned by the Escrow Account, and (ii) fees, expenses and costs incurred in connection with the opening and administration of the Escrow Account and the performance of its duties and functions as described in this Stipulation. The aforementioned taxes, fees, costs and expenses shall be treated as and included in the costs of administering the Escrow Account. The Parties and the Claims Administrator shall elect to treat the Settlement Fund as coming into existence as a Qualified Settlement Fund on the earliest date set forth in Treas. Reg. §1.468B-1(j)(2)(i), 26 C.F.R §1.468B-1(j)(2)(i), and that such election statement shall be attached to the appropriate returns as required by Treas. Reg. §1.468B-1(j)(2)(ii), 26 C.F.R §1.468B-1(j)(2)(ii). The Parties agree to cooperate with the Claims Administrator and one another to the extent reasonably necessary to carry out the provisions of this Section 2(d). The Claims Administrator will agree to indemnify and hold harmless the Parties for and against any claims or liabilities resulting from errors or omissions in its administration of the Escrow Account. Pepperidge Farm (or some other person on behalf of Pepperidge Farm) shall supply to the Claims Administrator and to the IRS the statement described in Treas. Reg. §1.468B-3(e)(2), 26 C.F.R §1.468B-3(e)(2), no later than February 15th of the year following each calendar year in which the Pepperidge Farm (or some other person on behalf of Pepperidge Farm) make a transfer to the Escrow Account.
- d. It is intended that all transfers by Pepperidge Farm to the Escrow Account will satisfy the "all events test" and the "economic performance" requirement of Section 461(h)(1) of the Code, 26 U.S.C. Section 461(h)(1), and Treas. Reg. § 1.461-1(a)(2), 26 C.F.R. § 1.461-1(a)(2). As such, Pepperidge Farm shall not be taxed on any income of the Escrow Account.

3. **Programmatic Relief.**

- a. The parties agree to the revisions to the existing Consignment Agreements of Qualified Claimants who are Current Distributors (“Consignment Agreement Revision”) attached hereto as Exhibit 5, and who do not opt out of the settlement and cash their settlement checks, as described below.
- b. Qualified Claimants who are Current Distributors, and their successors in interest, shall no later than within thirty days of the Effective Date be able to access electronically, such as through an independent distributor website, a downloadable report showing, on a rolling 6-week basis, the difference at each scan-based trading store between net inventory brought into the store and scanned product. Similarly, Qualified Claimants who are Current Distributors, and their successors in interest, shall no later than within thirty days of the Effective Date have access electronically, such as through an independent distributor website, to a downloadable fiscal year-to-date Inventory Reconciliation report.
- c. Pepperidge Farm will establish a centralized, accessible repository for communications about route sales/splits.
- d. For the Named Plaintiffs only, with the exception of Pulford who is a former distributor, in the event that Pepperidge Farm in its sole discretion discontinues using a Pepperidge Farm-leased depot from which any Named Plaintiff receives Consigned Products, Pepperidge Farm will provide a depot within 30-minutes’ drive time (as determined by a commercially available technology) of some point within each of the affected Named Plaintiffs’ territories or, if Pepperidge Farm does not provide an alternative depot, the affected Named Plaintiffs may, collectively, secure their own single depot facility, paid for by the Named Plaintiffs with an allowance from Pepperidge Farm as determined by Pepperidge Farm’s Depot Allowance Program as existing from time to time, assuming that facility meets all safety, health, logistical and any other requirements reasonably determined by Pepperidge Farm and/or mandated by law. To the extent the affected Named Plaintiffs believe that Pepperidge Farm’s Depot Allowance Program does not provide a reasonable allowance to subsidize a portion of the cost of a facility under this subsection, the dollar amount of such allowance shall be subject to the Alternative Dispute Resolution Process contained in the Consignment Agreement Revision.

4. **Scope of the Settlement Class.** This Settlement includes the Settlement Class Members, which for avoidance of doubt, includes the Named Plaintiffs.

5. **Provisional Certification of the Class for Settlement Purposes.** Plaintiffs will move for certification of the Settlement Class for settlement purposes only. Pepperidge Farm will not oppose that motion. Pepperidge Farm’s non-opposition to this Settlement Class shall not be construed as an admission or acknowledgment of any kind that any class should be certified or given class action treatment. If for any

reason the Court does not approve the Settlement, or does not enter a Final Order and Judgment, or if the Settlement is lawfully terminated for any other reason, any preliminary certification of the class shall become null and void, and the fact of certification shall not be cited to, used, or admissible in any judicial, administrative, or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural.

6. **Selection and Compensation of Claims Administrator.** The Notice and Claims Administrator shall be CPT Group of Irvine, California. Pepperidge Farm shall timely provide the Claims Administrator with a copy of the Class Notice and all necessary data within ten (10) days of the Order Granting Preliminary Approval. Pepperidge Farm shall provide the names, last known addresses, last known telephone numbers, and (if available to Pepperidge Farm) last known email addresses of Settlement Class Members in electronic format. This list shall not be shared with the Named Plaintiffs or any Settlement Class Member. If the actual cost of Settlement Administration is less than estimated, those funds shall be deemed Residual Funds to be disbursed as set forth in Paragraph 23. If the Settlement is not given final approval by the Court, Pepperidge Farm shall bear Settlement Administration fees and expenses.
7. **Calculation of Settlement Amounts.** The “Net Settlement Amount” will be preliminarily allocated to Non-Named Plaintiff Settlement Class Members consistent with the plan attached hereto as Exhibit 4. The Settlement Administrator will calculate the Total Possible Settlement Payment to each Non-Named Plaintiff Settlement Class Member. Non-Named Plaintiff Settlement Class Members who do not opt out of the Settlement will be considered “Qualified Claimants” eligible to receive Final Individual Settlement Amounts.
8. **Settlement Administration.** Once preliminary approval is granted, the Settlement Administrator will (i) mail a physical Notice of Class Action Settlement (“Class Notice”) and, for Current Distributors, a Revised Consignment Agreement (including a redlined version showing the changes to the Distributors’ current Consignment Agreement, to the Settlement Class Members informing them of (a) the nature of the Action, (b) the terms and conditions of the settlement, (c) the Preliminary Individual Settlement Amount allocated to the Class Member under the Plan of Allocation attached hereto as Exhibit 4, (d) the fact that Current Distributors who cash settlement checks will be deemed to have executed and agreed to be bound by the Revised Consignment Agreement, (e) their right to opt-out of the Settlement Class, and (f) their right to object to the settlement; and (ii) send an email copy of the same materials to the last known email address of each Settlement Class Member for whom Pepperidge Farm has such information. Class data shall only be used by the Settlement Administrator for the purpose of finding and notifying the Settlement Class of the settlement. The Settlement Administrator shall run the Settlement Class Member list through the National Change of Address database, and will use the most recent address for each Settlement Class Member – either from Pepperidge Farm’s records or the National Change of Address database – when mailing the Class Notice.



The Settlement Administrator shall also take reasonable steps including skip tracing to locate any Settlement Class Member whose Class Notice is returned as undeliverable.

For avoidance of doubt, all costs associated with Class Notice shall be paid from the Settlement Fund.

9. **Opt-Out Period.** Settlement Class Members shall have forty-five (45) days from the date of mailing of the Class Notice to opt out of the Settlement. If the 45th day falls on a Sunday or holiday, the deadline to opt-out will be the next business day that is not a Sunday or holiday. Settlement Class Members who do not opt out shall be deemed Qualified Claimants. Any Preliminary Individual Settlement Amount amount that will not be paid to a Settlement Class Member because he or she or it opted out shall be retained by Pepperidge Farm.
10. **Opt-Outs.** Named Plaintiffs are bound by this Agreement and shall not opt out of the Settlement.

To “opt out” of and be excluded from the Settlement, Settlement Class Members must submit a written request for exclusion from the Settlement bearing a post-mark from a date within the Opt-Out Period. The request to opt-out must include (a) the Settlement Class Member’s name, (b) a statement that the Settlement Class Member desires to be excluded from the Action, and (c) the Settlement Class Member’s social security number (or Employer Identification Number). If a Settlement Class Member submits a deficient opt-out, the Settlement Administrator shall notify the Settlement Class Member of the deficiency within five (5) business days of receipt. The Settlement Class Member shall have until the end of the Opt-Out Period or five (5) business days after the close of the claims period if the notice of deficiency is sent by the Notice Administrator within (5) business days of the end of the Opt-Out Period period to cure said deficiencies, at which point such Settlement Class Member’s request for exclusion will be rejected if not received. Settlement Class Members submitting untimely or deficient Requests for Exclusion shall be bound by the Settlement and its releases and will be considered Qualified Claimants for settlement distribution purposes.

11. **Objections.** Only Settlement Class Members who have not opted out of the settlement may object to the settlement. For avoidance of doubt, this means that Settlement Class Members who or that opt-out of the Settlement cannot object to the Settlement. All objections must be filed with the Court and served upon all counsel of record by no later than forty five (45) days after the mailing of the Class Notice, and this provision applies notwithstanding any argument regarding non-receipt of the Class Notice. Unless otherwise ordered by the Court, any Settlement Class Member who fails to file and serve timely written objections in this manner shall be deemed to have waived any objections and shall be foreclosed from making any objection to the settlement and from filing any appeal from any final approval order issued by the Court. The parties may file a response to any objections submitted by objecting

Settlement Class Members at or prior to the hearing for final approval of the Settlement. Named Plaintiffs shall not object to the Settlement.

- 12. General Releases by Named Plaintiffs.** Upon the entry of the Final Order and Judgment, Named Plaintiffs, including any entities owned, controlled or managed in whole or in part by Named Plaintiffs hereby generally release Pepperidge Farm, its affiliates, divisions, subsidiaries, parents (including, without limitation, Campbell Soup Company), predecessors, any merged entity or merged entities and/or its or their present, former, and future officers, partners, directors, employees, agents, shareholders and/or successors, assigns, trustees, heirs, administrators, executors, representatives and/or principals thereof (hereinafter referred to as “Settling Defendants”), from all claims, actions, causes of action, lawsuits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, bonuses, controversies, promises, claims, charges, complaints and demands whatsoever, whether in law or equity, known or unknown, against the Settling Defendants, that the Named Plaintiffs and the Named Plaintiffs’ heirs, executors, administrators, successors, assigns, may now have or hereafter later determine that they have or had upon, or by reason of, any cause or thing whatsoever relating to or arising out of their contractual and/or alleged employment relationship with Pepperidge Farm, including, but not limited to, any and all wage and hour claims under the Fair Labor Standards Act (“FLSA”), Connecticut, or any other state and local law, that accrued or accrue prior to the date of the Order Granting Preliminary Approval, including claims under any legal theory for failure to pay minimum wage, failure to pay overtime compensation, failure to pay for all hours worked, failure to provide meal and rest periods, failure to timely pay wages or compensation or final wages or compensation, failure to reimburse or pay for business expenses, making illegal deductions from wages or compensation, failure to furnish accurate wage statements or other notices, failure to keep accurate records, and any and all claims for recovery of compensation, overtime pay, minimum wage, premium pay, employment benefits, out-of-pocket expenses, and/or penalties, claims for unjust enrichment, claims for negligent or intentional misrepresentation, claims under the Employee Retirement Income Security Act (“ERISA”) that are related or derivative of the claims released in this Paragraph, other penalties, related tort and punitive, treble, and liquidated damages claims, claims for interest and/or prejudgment interest, and/or violations of any other state or local statutory and common law (the “General Release”).

This General Release is intended to include in its effect all claims identified in this Paragraph, including claims that Named Plaintiffs do not know or suspect to exist in their favor against Settling Defendants at the time of the release. Named Plaintiffs shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits they may otherwise have had relating to the claims identified in this Paragraph. For the purpose of implementing a full and complete release, Named Plaintiffs hereby expressly waive and relinquish all claims described in this section, as well as under any other statute or common law principle of similar effect which provides any remedy of any kind, and acknowledge that the Release set forth in this Agreement is intended to include the discharge of all

claims which Named Plaintiffs do not know or suspect to exist at the time this Agreement is effective. Named Plaintiffs agree and acknowledge that theirs is a knowing and voluntary waiver. Each Named Plaintiff further covenants that he will not participate in any other legal actions against Settling Defendants relating to claims released by this General Release, and will not opt-in, will withdraw any opt-in, will dismiss the action or himself from the action in actions where he is a claimant, plaintiff or appellant, and will opt-out of those actions if he becomes aware of such actions.

Notwithstanding anything that could be read to the contrary herein, this General Release does not:

- extinguish any contract (including exhibits and addenda thereto), side letter or other written agreement, nor impact the enforceability of the terms of such from the effective date of the General Release forward;
- release any claims the Named Plaintiffs may have in connection with any pending commissions, charges or other adjustments shown to be due and owing, as reflected in a Named Plaintiff's weekly settlement statement, as of the effective date of the General Release.

Settling Defendants hereby warrant and agree that they are not aware of any claims, demands or causes of actions that they may have presently against the Named Plaintiffs.

- 13. Releases by Qualified Claimants.** Upon the entry of the Final Order and Judgment, each Qualified Claimant, including any entities owned, controlled or managed in whole or in part by a Qualified Claimant, and all managers, officers, owners, shareholders, and agents of a Qualified Claimant, shall fully release Settling Defendants, as defined above, of any and all wage and hour that were asserted in the Action or could have been asserted based on the facts alleged, including: statutory or common law claims under Connecticut or any state or local law, that accrued or accrue prior to the date of the Order Granting Preliminary Approval, including claims under any legal theory for failure to pay minimum wage, failure to pay overtime compensation, failure to pay for all hours worked, failure to provide meal and rest periods, failure to timely pay wages or compensation or final wages or compensation, failure to reimburse or pay for business expenses, making illegal deductions from wages or compensation, failure to furnish accurate wage statements or other notices, failure to keep accurate records, and any and all claims for recovery of compensation, overtime pay, minimum wage, premium pay, employment benefits, out-of-pocket expenses, and/or penalties, claims under the Employee Retirement Income Security Act ("ERISA") that are related or derivative of the claims released in this Paragraph; other penalties; related tort and punitive, treble, and liquidated damages/claims; claims for interest and/or prejudgment interest; claims for unjust enrichment and for negligent, fraudulent or intentional misrepresentation, and/or violations of any other state or local statutory and common law ("Qualified Claimant Release").

In addition, any Qualified Claimant who or that cashes a settlement check shall (a) fully release and discharge Settling Defendants from any and all FLSA claims through the date of the Order Granting Preliminary Approval, including claims under any legal theory for failure to pay minimum wage, failure to pay overtime compensation, and/or failure to pay for all hours worked; and (b) if a Current Distributor, be deemed to have executed and agreed to be bound by the terms of the Revised Consignment Agreement.

This Settlement Class Release is intended to include in its effect all claims identified in this Settlement Agreement, including claims that each Qualified Claimant does not know or suspect to exist in his or her or its favor against Settling Defendants at the time of the release. The Qualified Claimant Release shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits that he or she or it may otherwise have had relating to the claims identified in this Paragraph.

For the purpose of implementing a full and complete release as to the wage and hour claims released by the Qualified Claimant Release, each Qualified Claimant shall expressly waive and relinquish all rights and benefits he or she or it may have, as well as under any other statutes or common law principle of similar effect which provides any remedy of any kind, and acknowledge that the Qualified Claimant Release is intended to include the discharge of all claims which the Qualified Claimant does not know or suspect to exist at the time this Agreement is effective. The Qualified Claimant will agree and acknowledge that this is a knowing and voluntary waiver.

- 14. Reports to Government Entities.** Nothing in the General Release or Settlement Class Release shall prohibit or restrict Named Plaintiffs or Non-Named Plaintiff Settlement Class Members from providing testimony before, providing confidential information to, reporting possible violations of law or regulation to, or from filing a claim or assisting with an investigation directly with a self-regulatory authority or a government agency or entity, including the U.S. Equal Employment Opportunity Commission, the Department of Labor, the National Labor Relations Board, the Department of Justice, the Securities and Exchange Commission, the Congress, and any agency Inspector General (collectively, the “Regulators”), or from making other disclosures that are protected under the whistleblower provisions of state or federal law or regulation. However, to the maximum extent permitted by law, Named Plaintiffs and Qualified Claimants are releasing their right to receive any individual monetary relief from Settling Defendants resulting from such claims or conduct, regardless of whether they or another party has filed them, and in the event they obtain such monetary relief the Settling Defendants will be entitled to an offset for the payments made pursuant to the Settlement Agreement. The General Release or Qualified Claimant Release does not limit Named Plaintiffs’ or Qualified Claimants’ rights to receive an award from any Regulator that provides awards for providing information relating to a potential violation of law. Named Plaintiffs or Qualified Claimants do not need the prior authorization of the Settling Defendants to engage in conduct protected by this paragraph, and will not need to notify the Settling Defendants that they have engaged in such conduct.

Federal law provides criminal and civil immunity to federal and state claims for trade secret misappropriation to individuals who disclose a trade secret to their attorney, a court, or a government official in certain, confidential circumstances that are set forth at 18 U.S.C. §§ 1833(b)(1) and 1833(b)(2), related to the reporting or investigation of a suspected violation of the law, or in connection with a lawsuit for retaliation for reporting a suspected violation of the law.

15. **Class Notice to Current Distributors to Include Revised Consignment Agreement.** Attached to the Class Notice sent to Current Distributors who or that are members of the Settlement Class will be an amendment to the Consignment Agreement in the form of a Revised Consignment Agreement. This Revised Consignment Agreement sent to Current Distributors will not include the current Schedules, Addenda, Side Letters etc. and it is expressly agreed that such are not impacted in any way by this settlement or the revisions to the existing Consignment Agreement. Any Current Distributor who becomes a Qualified Claimant and cashes a settlement check shall be deemed to have executed and agreed to be bound by the Revised Consignment Agreement.

16. **Distribution of Settlement Payments.**

When and if the Court enters the Final Order and Judgment approving the Settlement, and the Effective Date has passed, the Settlement Administrator shall prepare a final list of all Qualified Claimants. The Settlement Administrator shall provide this list to Pepperidge Farm within 5 days after the Effective Date. For each Qualified Claimant on this list, the Settlement Administrator will calculate the amounts due to each Qualified Claimant and issue checks payable to said Qualified Claimants.

All settlement payments to Named Plaintiffs and Qualified Claimants shall be reported on an IRS 1099 without withholdings. Named Plaintiffs and Qualified Claimants must pay their own portion of taxes on the settlement payments. Named Plaintiffs and Qualified Claimants shall be exclusively liable for any and all tax liability, and will indemnify Pepperidge Farm for any and all claims, damages, costs, and expenses (including reasonable attorneys' fees) arising from their failure to pay any and all taxes they owe as a result of the settlement payments they receive. The Service Enhancements to the Named Plaintiffs shall be reported on an IRS 1099 without withholdings. Named Plaintiffs must pay their own portion of taxes on the Service Enhancements.

17. **Qualified Settlement Fund.** Pepperidge Farm shall provide payment to the Settlement Administrator within thirty (30) days of the Final Order and Judgment. The Settlement Administrator shall create a Qualified Settlement Fund ("QSF"), to be funded by Pepperidge Farm and administered by the Settlement Administrator. Should the Effective Date never occur for any reason whatsoever, the entire amount of the Maximum Settlement Amount shall revert to Pepperidge Farm along with any accrued interest. Should the Effective Date occur, all interest earned on the

Maximum Settlement Amount shall inure to the benefit of the Class and Class Counsel.

18. **Right to Revoke and Voiding of Agreement.** Pepperidge Farm has the right to withdraw from the Settlement at any time prior to final approval if: (a) 10% (ten percent) or more of the Settlement Class Members opt out of the Settlement; or (b) Named Plaintiffs or their counsel materially breach this Agreement. Named Plaintiffs will have the right to withdraw from the Settlement at any time prior to final approval if Pepperidge Farm or its counsel materially breaches the Agreement.

If for any reason the Settlement Class is not certified or the Settlement is not approved by the Court, or if the Court materially changes any of the terms of this Agreement including any of the releases set forth herein, or if Pepperidge Farm or Named Plaintiffs withdraw from the Settlement pursuant to this Paragraph, this Agreement and any related settlement documents (including, but not limited to, the releases) will be null and void, other than the confidentiality provisions in Paragraphs 20 and 28, the non-disclosure provisions in Paragraph 21, and the non-admission provisions in Paragraph 24, and any class certified for settlement purposes will be vacated. In such an event, neither the Memorandum of Understanding between and among the parties dated April 16, 2021, nor this Agreement, nor the settlement documents, nor the negotiations leading to the Settlement may be used as evidence for any purpose, and Pepperidge Farm shall retain the right to challenge all claims and allegations in the Action, to assert all applicable defenses, and to dispute the propriety of class certification on all applicable grounds. If Pepperidge Farm invokes its right to withdraw, it shall be solely responsible for the Settlement Administration Expenses incurred to that time. A failure of the Court to approve the requested attorneys' fees, costs, or incentive payments shall not cause the settlement to be null and void.

19. **No Party Shall Be Considered the Agreement's Drafter.** No Party shall be considered the "drafter" of this Agreement for purposes of having terms construed against that Party. Subject to Pepperidge Farm's approval, Named Plaintiffs (and their counsel) shall be responsible for preparing and filing, subject to coordination with counsel for Pepperidge Farm and Pepperidge Farm's ability to make changes, the Motion for Preliminary Approval and the Motion for Final Order and Judgment.

The Final Order and Judgment shall include the names of all Settlement Class Members who or that submitted timely and valid opt-out requests.

20. **Class Information Confidential.** Names of Settlement Class Members and their allocation amounts shall be kept strictly confidential by the Settlement Administrator who will only file such information under seal if necessary. This information shall not be shared with the Named Plaintiffs or any Non-Named Plaintiff Settlement Class Member.

Named Plaintiffs and Named Plaintiffs' Counsel agree that any information they receive or have received in connection with this Settlement, may be used for the Action only, and may not be used for any purpose or in any other action or proceeding.

21. **Non-Disclosure.** Named Plaintiffs and Named Plaintiffs' Counsel agree not to disclose the terms of this Settlement prior to filing the Motion for Preliminary Approval, except in court papers, if required by legal process, as necessary to effectuate and administer the terms of this Settlement, to reply to inquires from Settlement Class Members about the Settlement and/or the settlement approval process, or for accounting or tax reporting purposes. Prior to filing the Motion for Preliminary Approval, neither Named Plaintiffs nor Named Plaintiffs' Counsel, directly or indirectly, shall issue a press release, hold a press conference, publish information about the Settlement on any website (other than used by the claims administrator for claims administration purposes), or otherwise publicize the Settlement. Named Plaintiffs and Named Plaintiffs' Counsel agree not to respond to any press inquiries concerning the Settlement except to refer reporters to the papers filed with the Court. Nothing in this Paragraph 21 shall be deemed to prohibit Named Plaintiffs or Named Plaintiffs' Counsel from discussing the terms of the Settlement with Settlement Class Members after the filing of the Motion for Preliminary Approval.

After the filing of the Motion for Preliminary Approval and before final approval, Named Plaintiffs' Counsel agree to provide advance notice to Pepperidge Farm regarding any general and/or unsolicited communications to class members about the settlement. After final approval, Counsel for Named Plaintiffs further agree to provide counsel for Pepperidge Farm with a copy of any information specifically referencing this case that will be posted on their website seven days in advance of any such posting.

The parties agree that this Non-Disclosure paragraph is a material term of the Settlement and a breach of this Non-Disclosure paragraph shall constitute a material breach of the Settlement Agreement.

22. **Settlement Checks.** Settlement checks sent to Qualified Claimants shall include a "Stale Date" that is at least one hundred eighty (180) days after the date the checks are issued. The Settlement Administrator shall send a reminder postcard to any Qualified Claimant who or that has not cashed a check ninety days following the mailing of the settlement check. Settlement checks sent to Qualified Claimants that remain uncashed after the Stale Date shall be cancelled. Those Qualified Claimants who fail to cash their settlement checks will be deemed to have waived irrevocably any right in or claim to a settlement share but the Settlement Agreement and the Qualified Claimant Release shall remain binding upon them (for avoidance of doubt, such Qualifeid Claimant will not release FLSA claims nor, if a Current Distributor, be bound by the Revised Consignment Agreement). Funds from uncashed settlement checks shall be disbursed as set forth in Paragraph 23.

23. **Residual Funds.** Any funds from settlement checks that remain uncashed and unclaimed shall be deemed unclaimed property and shall be transmitted to the Unclaimed Property Division of the Office of the Connecticut State Treasurer. For avoidance of doubt, any Qualified Claimant who obtains any funds through the Unclaimed Property Division of the Office of the Connecticut State Treasurer shall be deemed to have waived any FLSA claims and, if a Current Distributor, will be bound by the Revised Consignment Agreement. Any surplus funds dedicated for Notice and Claims Administration purposes shall remain the property of Pepperidge Farm and shall be returned to Pepperidge Farm by the Administrator.
24. **Non-Admission.** Nothing set forth in this Agreement or in any other document or communication relating to this Settlement, or the Settlement itself, shall be construed as an admission of liability by Pepperidge Farm, and it will not be offered or used for that purpose, as liability is expressly denied.
25. **No Further Relationship.** Any Named Plaintiff who is no longer a Current Distributor at the time of this Agreement agrees that he or she or it shall not seek to enter any contractual relationship with Settling Defendants or employment relationship with Settling Defendants.
26. **Certification as to the Return of Pepperidge Farm's Property.** Any Named Plaintiff who is no longer a Current Distributor at the time of this Agreement shall certify that he has returned all Pepperidge Farm property in his possession or control, including without limitation, documents and data, which he prepared or obtained during the course of their contractual and/or alleged employment relationship.
27. **No Defamation or Disparagement.** Named Plaintiffs agree that at no time will they, verbally or in writing, defame or make disparaging remarks or encourage, solicit, induce or entice others to defame make disparaging remarks about Pepperidge Farm.
28. **Returns and/or Destruction of Confidential Settlement Materials.** Named Plaintiffs and Named Plaintiffs' Counsel agree to return and/or destroy all Confidential documents produced to them in this Action. If Named Plaintiffs and Named Plaintiffs' Counsel destroy said documents, they shall timely provide an affidavit of destruction to Pepperidge Farm.
29. **Class Communications.** Pepperidge Farm agrees that it will not communicate with any Settlement Class Member dissuading or discouraging any Settlement Class Member from participating in the Settlement, or retaliating or discriminating against any Settlement Class Member who or that participates or is eligible to participate in the Settlement.
30. **Extensions of Time.** If a party cannot reasonably comply with an obligation under this Agreement by the deadline set forth herein applicable to that obligation, that party may apply to the Court for a reasonable extension of time to fulfill that



obligation. Consent to such a request for an extension will not be unreasonably withheld by the other party.

31. **Modification and Counterparts.** The terms of this Agreement may not be changed, altered, or modified, except in writing and signed by counsel for the Parties. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile and electronic signatures (e.g., via DocuSign or a similar program) shall have the same force and effect as an original.

**CLASS COUNSEL:**



Jonathan B. Orleans  
Adam S. Mocchiolo  
Pulman & Comley, LLC

Dated: June 30, 2021

**NAMED PLAINTIFFS**

\_\_\_\_\_  
Douglas Brett

Dated: \_\_\_\_\_, 2021

\_\_\_\_\_  
Terrence Fox

Dated: \_\_\_\_\_, 2021

\_\_\_\_\_  
Steven Pulford

Dated: \_\_\_\_\_, 2021

\_\_\_\_\_  
Mark Ryan  
**COUNSEL FOR PEPPERIDGE FARM,  
INCORPORATED**

Dated: \_\_\_\_\_, 2021

\_\_\_\_\_  
Paul C. Evans  
Baker & McKenzie

Dated: \_\_\_\_\_, 2021

\_\_\_\_\_  
Michael C. D'Agostino  
Morgan, Lewis & Bockius LLP

Dated: \_\_\_\_\_, 2021

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Jonathan B. Orleans  
Adam S. Mociolo  
Pulman & Comley, LLC

Dated: \_\_\_\_\_, 2021

**NAMED PLAINTIFFS**

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Douglas W. Brett~~  
Douglas Brett

Dated: June 24, 2021

\_\_\_\_\_  
Terrence Fox

Dated: \_\_\_\_\_, 2021

\_\_\_\_\_  
Steven Pulford

Dated: \_\_\_\_\_, 2021

\_\_\_\_\_  
Mark Ryan  
**COUNSEL FOR PEPPERIDGE FARM,  
INCORPORATED**

Dated: \_\_\_\_\_, 2021

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Paul C. Evans  
Baker & McKenzie

Dated: \_\_\_\_\_, 2021

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Jonathan B. Orleans  
Adam S. Mocchiolo  
Pulman & Comley, LLC

Dated: \_\_\_\_\_, 2021

**NAMED PLAINTIFFS**

\_\_\_\_\_  
Douglas Brett

Dated: \_\_\_\_\_, 2021

\_\_\_\_\_  
Terrence Fox

Dated: 07-05-21, 2021

\_\_\_\_\_  
Steven Pulford

Dated: \_\_\_\_\_, 2021

\_\_\_\_\_  
Mark Ryan  
**COUNSEL FOR PEPPERIDGE FARM,  
INCORPORATED**

Dated: \_\_\_\_\_, 2021

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Baker & McKenzie

Dated: \_\_\_\_\_, 2021

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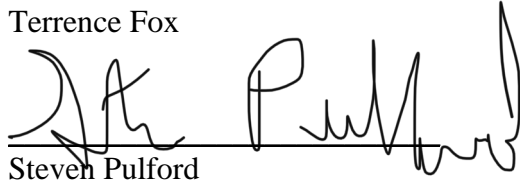
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**NAMED PLAINTIFFS**

\_\_\_\_\_  
Douglas Brett

Dated: \_\_\_\_\_, 2021

\_\_\_\_\_  
Terrence Fox

  
Steven Pulford

Dated: \_\_\_\_\_, 2021

Dated: 7-5-21, 2021

\_\_\_\_\_  
Mark Ryan  
**COUNSEL FOR PEPPERIDGE FARM,  
INCORPORATED**

Dated: \_\_\_\_\_, 2021

\_\_\_\_\_  
Paul C. Evans  
Baker & McKenzie

Dated: \_\_\_\_\_, 2021

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Jonathan B. Orleans  
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Pulman & Comley, LLC

Dated: \_\_\_\_\_, 2021

**NAMED PLAINTIFFS**

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Douglas Brett

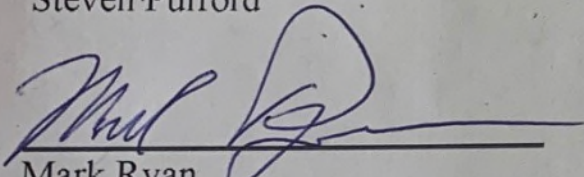
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\_\_\_\_\_  
Terrence Fox

Dated: \_\_\_\_\_, 2021

\_\_\_\_\_  
Steven Pulford

Dated: 6/29, 2021

  
\_\_\_\_\_  
Mark Ryan  
**COUNSEL FOR PEPPERIDGE FARM,  
INCORPORATED**

Dated: 6/29, 2021

\_\_\_\_\_  
Paul C. Evans  
Baker & McKenzie

Dated: \_\_\_\_\_, 2021

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**CLASS COUNSEL:**

\_\_\_\_\_  
 Jonathan B. Orleans  
 Adam S. Mocchiolo  
 Pulman & Comley, LLC

Dated: \_\_\_\_\_, 2021

**NAMED PLAINTIFFS**

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 Douglas Brett

Dated: \_\_\_\_\_, 2021

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Dated: \_\_\_\_\_, 2021

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 Steven Pulford


Dated: \_\_\_\_\_, 2021

\_\_\_\_\_  
 Mark Ryan  
**COUNSEL FOR PEPPERIDGE FARM,  
 INCORPORATED**

Dated: \_\_\_\_\_, 2021

  
 \_\_\_\_\_  
 Paul C. Evans  
 Baker & McKenzie

Dated: July 8 \_\_\_\_\_, 2021

  
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 Michael C. D'Agostino  
 Morgan, Lewis & Bockius LLP

Dated: July 8 \_\_\_\_\_, 2021

**PEPPERIDGE FARM, INCORPORATED**

DocuSigned by:

*Brad Troup*

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Dated: 7/8/2021, 2021

Pepperidge Farm Representative

Name:

*Brad Troup*

Title:

VP Finance - Snacks