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IN THE CIRCUIT COURT FOR THE STATE OF OREGON
FOR MULTNOMAH COUNTY

J PODAWILTZ, individually and on
behalf of all others similarly situated

Plaintiff

vs

**SWISHER INTERNATIONAL, INC.,
PLAID PANTRY, INC., and
PLAID PANTRIES, INC.**

Defendants

Case No. 16CV27621

**ORDER GRANTING
FINAL APPROVAL OF
CLASS SETTLEMENT**

ORDER GRANTING FINAL APPROVAL

After having carefully reviewed plaintiff's unopposed motion for final approval of class settlement, the Court determines and orders as follows:

- A.** Counsel have advised the Court that the parties had agreed, subject to final approval by this Court following notice to the proposed settlement class and a

1
2 hearing, to settle this action on the terms and conditions set forth in the
3 settlement agreement.

4 **B.** The Court reviewed the agreement, as well as the files, records, and
5 proceedings to date in this action. The terms of the agreement are hereby
6 incorporated as though fully set forth in this order.
7

8 **C.** Based upon preliminary examination at a hearing on January 29, 2019, it
9 appeared to the Court that the agreement was sufficiently fair, reasonable,
10 and adequate to warrant notice to the proposed settlement class; that the
11 settlement class should be certified for settlement purposes; and that the
12 Court should hold a hearing after notice to the settlement class to determine
13 whether to enter a settlement order and final judgment in this action, based
14 upon that agreement.
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17 **D.** A final approval hearing (“settlement hearing”) was held before this Court on
18 August 9, 2019, as set forth in the class notice, to determine whether the
19 settlement agreement is fair, reasonable, and adequate, and should be given
20 final approval. After reviewing the papers in support of final approval of the
21 settlement agreement, and having presented an opportunity for all interested
22 parties to object and be heard, the Court shall enter final judgment in
23 accordance with the settlement agreement, adjudicating the rights of the
24 settlement class members with respect to the claims being settled.
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27 Therefore, the Court finds and concludes and orders as follows:
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2 **1. Final Approval of Proposed Settlement.** The agreement, including all
3 exhibits, is approved as fair, reasonable, and adequate. The Court finds that
4 **(a)** the agreement resulted from extensive arm’s length negotiations between
5 the parties and their counsel, and **(b)** the agreement is sufficient to warrant
6 notice to members of the settlement class and the settlement hearing
7 described below. The Court grants final approval of the proposed settlement.
8

9
10 **2. Class Certification.** Under ORCP 32(A) the Court certifies the settlement
11 class as defined in the settlement agreement. In connection with the
12 certification, the Court makes the following findings: **(a)** the settlement class
13 satisfies ORCP 32(A)(1) because the settlement class appears to be so
14 numerous that joinder of all members is impracticable; **(b)** the settlement
15 class satisfies ORCP 32(A)(2) because there appear to be questions of law or
16 fact common to the settlement class; **(c)** the settlement class satisfies ORCP
17 32(A)(3) because the claims of the representative plaintiff named in the
18 caption appear to be typical of the claims being resolved through the proposed
19 settlement; **(d)** the settlement class satisfies ORCP 32(A)(4) because the
20 representative plaintiff appears to be capable of fairly and adequately
21 protecting the interests of the above-described settlement class in connection
22 with the proposed settlement and because counsel representing the
23 settlement class are nationally known, locally respected, qualified, competent,
24 and capable of prosecuting this action on behalf of the settlement class; **(e)**
25 the settlement class satisfies the requirements of ORCP 32(A)(3) because, for
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2 purposes of settlement approval and administration, common questions of law
3 and fact appear to predominate over questions affecting only individual
4 settlement class members and because settlement with the settlement class
5 appears to be superior to other available methods for the fair and efficient
6 resolution of the claims of the settlement class; and **(f)** the settlement class
7 appears to be sufficiently cohesive to warrant settlement by representation.
8
9 In making these findings, the Court has exercised its discretion in certifying
10 a settlement class.
11

12 **3. *Representative Plaintiff.*** The Court appoints plaintiff J Podawiltz as
13 representative plaintiff under ORCP 32, and finds that plaintiff has and will
14 fairly and adequately protect the interests of the settlement class.
15

16 **4. *Class counsel.*** The Court appoints Michael Fuller as lead attorney for the
17 representative plaintiff and the settlement class, and appoints OlsenDaines,
18 Law Office of Robert Le, Levi & Korsinsky, LLP, and Geragos & Geragos as
19 counsel for the settlement class. The Court finds that class counsel listed
20 above is competent and capable of exercising their responsibilities as class
21 counsel.
22

23 **5. *Settlement Administrator.*** The Court appoints JND Legal Administration
24 as settlement administrator, which shall fulfill the settlement administration
25 functions, duties, and responsibilities as set forth in the settlement agreement
26 and as set forth in this order and the order granting preliminary approval.
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2 **6. Settlement Hearing.** A final approval hearing (“settlement hearing”) was
3 held before this Court on August 9, 2019, as set forth in the class notice, and
4 the Court now determines that the settlement agreement is fair, reasonable,
5 and adequate, and should be given final approval.
6

7 **7. Class Notice.** The Court is satisfied that Swisher and the settlement
8 administrator have complied with the notice requirements of the settlement
9 agreement.
10

11 **8. Findings Concerning Class Notice.** The Court finds that the notice plan
12 carried out by Swisher and the settlement administrator is reasonable, that
13 it constitutes due, adequate and sufficient notice to all persons entitled to
14 receive notice, and that it meets the requirements of due process, ORCP 32,
15 and any other applicable laws.
16

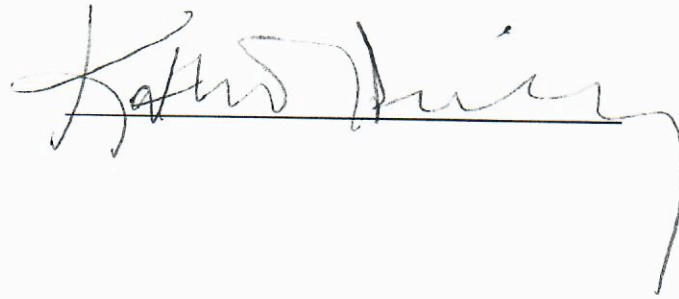
17 **9. Exclusion from Settlement Class.** The names of any individuals who timely
18 and properly requested to exclude themselves from the settlement class shall
19 be attached as an exhibit to the final judgment.
20

21 **10. Costs of Class Notice and Claims Processing.** Swisher shall bear all costs
22 of notice to the settlement class of the pendency and settlement of this action
23 and of processing claims.
24

25 **11. Objections and Appearances.** The settlement hearing presented an
26 opportunity for all interested parties to object and be heard.

27 **12. Motion for Final Approval and Responses to Objections.** After careful
28 consideration the Court grants plaintiff’s motion for final approval.

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2 **IT IS SO ORDERED.**



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4 **Presented by:**

5
6 /s/ Michael Fuller

7 **Michael Fuller, OSB No. 09357**

8 Lead Trial Attorney for Plaintiff

9 OlsenDaines

10 US Bancorp Tower

11 111 SW 5th Ave., Suite 3150

12 Portland, Oregon 97204

13 michael@underdoglawyer.com

14 Direct 503-222-2000

15
16 **Agreed as to form by:**

17 /s/ Peter Hargitai

18 **Peter Hargitai, Admitted Pro Hac**

19 Lead Trial Attorney for Defendant Swisher International, Inc.

20 /s/ Milo Petranovich

21 **Milo Petranovich, OSB No. 813376**

22 Lead Trial Attorney for Defendants Plaid Pantry, Inc. & Plaid Pantries, Inc.

1
2 **CERTIFICATE OF COMPLIANCE WITH UTCR 5.100**
3

4 I certify that this order is ready for judicial signature because I have served a
5 copy of this order on all parties entitled to service and all parties have stipulated to
6 the order.
7

8
9 July 26, 2019
10

11 /s/ Michael Fuller
12 **Michael Fuller, OSB No. 09357**
13 Lead Trial Attorney for Plaintiff
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