

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

IAFREEDRE MCCLAIN, MONTRELL)
DAVIS, and others similarly situated,)
)
Plaintiffs,)
)
v.)
)
MORNING STAR, LLC a/k/a MORNING)
STAR NC, LLC, d/b/a HARDEE'S,)
)
Defendant.)

CIVIL ACTION FILE
NO. 3:18-cv-00419-FDW-DCK

E.P. and S.F., individually and on behalf of)
others similarly situated,)
)
Plaintiffs,)
)
v.)
)
CKE RESTAURANTS HOLDINGS, INC., a)
Delaware Corporation; HARDEE'S FOOD)
SYSTEMS LLC, a North Carolina)
Corporation; HARDEE'S RESTAURANTS)
LLC, a Delaware Corporation; and)
MORNING STAR, LLC a/k/a MORNING)
STAR NC, LLC, a Florida Corporation,)
)
Defendants.)

CIVIL ACTION FILE
NO. 3:18-cv-00483-FDW-DCK

**JOINT MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT AND
CONDITIONAL CERTIFICATION OF SETTLEMENT CLASS**

COME NOW the parties identified in the caption above, by and through their respective attorneys of record, and respectfully request that the Court preliminarily approve the settlement that the parties have reached in this matter.

I. RELIEF REQUESTED

The parties to this action request the Court's approval, as a preliminary matter, of the proposed settlement, issue findings that the settlement is fair, adequate, and reasonable, and that the proposed notice of settlement to class members is reasonable and sufficient.

II. BRIEF STATEMENT OF FACTS

The plaintiff and defendant have entered into a Settlement Agreement, subject to court approval, including the documents and exhibits incorporated therein (together, the "Settlement Agreement", **Exhibit 1**), to settle the above-captioned litigation (the "litigation"). The Settlement Agreement sets forth the terms and conditions for a proposed settlement and dismissal with prejudice of the litigation. The parties hereby stipulate to this Court's preliminary approval of the settlement, subject to final approval after notice and claim administration.

Plaintiffs have made claims against Defendant and originally filed the above-captioned class action complaints against Defendants in the General Court of Justice, Superior Court Division, Mecklenburg County, North Carolina, respectively identified as Civil Action Nos. 18-CVS-12752 (June 21, 2018) and 18-CVS-14007 (July 16, 2018). Defendants removed both actions to the United States District Court, Western District of North Carolina, Charlotte Division ("the litigation"). Plaintiffs dismissed without prejudice CKE Restaurant Holdings, Inc., Hardee's Food Systems LLC, and Hardee's Restaurants LLC from Civil Action No. 3:18-cv-00483.

The damages sought are the cost of Hepatitis A Virus ("HAV") blood testing and/or HAV vaccines or immune globulin ("IG") shots and an amount for the inconvenience for being warned and encouraged to receive the treatment.

Plaintiffs and putative class members obtained an HAV vaccination or an IG shot (with some persons also getting an HAV blood test) because of their potential exposure to HAV during an outbreak in the metropolitan Charlotte area in the summer of 2018. An employee working at the Hardee's restaurant located at 2604 Little Rock Road, Charlotte, NC 28214 ("Charlotte Hardee's") was one of the individuals who contracted an HAV infection during the outbreak. He last worked at the restaurant on June 23, 2018 and did not return to work again before the restaurant permanently closed on June 26, 2018.

As a result, public health officials recommended anyone who was a high risk for contracting HAV or who consumed food or beverages purchased at the Charlotte Hardee's between June 13, 2018, and June 23, 2018, receive prophylactic treatment against HAV within 14 days after their exposure at one of three clinics. These clinics were set-up before the Hardee's employee became ill. The individuals comprising the proposed class took immediate preventative action at the recommendation of public health authorities or other health professionals and, as a result, did not subsequently develop symptoms of HAV infection.

Plaintiffs have asserted in this litigation class claims for breach of warranties and negligence to recover damages for physical injury and economic loss arising from obtaining IG and/or HAV vaccinations in response to an alert by the North Carolina Department of Health and Human Services ("DOH") that Plaintiffs may have been exposed to the HAV by consuming food or drink purchased from the Charlotte Hardee's between June 13, 2018, and June 23, 2018 ("Potential Exposure Period").

Each named Plaintiff in the present case obtained a vaccination within 14 days of consuming food or beverage purchased between June 13, 2018, and June 23, 2018, at the Charlotte Hardee's, which is the time-period that CDC and FDA recommend. As a result of

obtaining vaccinations, these Plaintiffs prevented the possible development of a full-blown or symptomatic HAV infection for anyone actually exposed to and infected with HAV because the inactivated antigens in the vaccine caused (as intended) a protective immune-response. As such, the Plaintiffs were able to avoid the potentially more serious and life-threatening injuries that an individual might have experienced as the result of developing an HAV infection if they were actually exposed to and infected by HAV. Furthermore, Defendant was able to avoid potential liability for the more serious damages associated with a full-blown HAV infection. Nonetheless, Plaintiffs contend that they still suffered injuries for which this class action seeks fair compensation from the Defendant.

III. THE PROPOSED SETTLEMENT

1. The Settlement Class.

For purposes of this settlement, the Parties agree that the class (the “Class”) shall be defined as follows:

All individuals who were (a) potentially exposed to the Hepatitis-A Virus (“HAV”) at the Hardee’s Restaurant, 2604 Little Rock Road, Charlotte, North Carolina (“Charlotte Hardee’s”), between June 13, 2018, and June 23, 2018 (“Potential Exposure Period”), and (b) who, as a result of such potential exposure to HAV, obtained preventive medical treatment, including the administration of IG, HAV vaccine shots, or blood tests within 14 days after their exposure, and in no event any later than July 7, 2018.

Excluded from the Class are (1) all persons, if any, who developed HAV infections as a result of consuming food or beverage at the Charlotte Hardee’s during the Potential Exposure Period, (2) anyone receiving their first IG shot, HAV vaccine, or blood test after July 7, 2018, and (3) employees at the Charlotte Hardee’s during the Potential Exposure Period.

2. Relief to the Class.

General Damages: The General Damages Settlement provides for payment of general damages to each Class Member who submits a timely, qualified claim, for general damages (“Claimant”).

Each Claimant will receive as general damages a pro-rata share of the aggregate class amount of \$246,000.00 paid by Defendant's insurance carrier, Nationwide Insurance Company.

Compensation for Class Representatives: In addition to the above, and not to be deducted from the aggregate class amount, Class Plaintiffs, McClain, Davis, E.P. and S.F., will each receive an additional \$1,000.00 in compensation paid by Defendant's insurance carrier, Nationwide Insurance Company.

3. The Plaintiffs' Counsel's Fees.

Plaintiffs' reasonable attorneys' fees and costs will be capped at 25% of the amount paid to the Class for general damages, or what is awarded by the Court, whichever is less. In no event shall Defendant's insurer, Nationwide Insurance Company, be obligated to pay more than \$61,500 for Plaintiffs' attorneys' fees and costs. This amount is in addition to the General Damages paid to Qualified Claimants.

That the following Plaintiffs' attorneys shall continue to act as counsel for the Class ("Class Counsel"):

Brett Dressler
SELLERS, AYERS, DORTCH & LYONS, PA
301 S. McDowell St., Ste. 401
Charlotte, NC 28204
Tel (704) 377-5050
Fax (704) 339-0172

William D. Marler
MARLER CLARK, LLP, PS (Pro Hac Vice Admission Pending)
1012 First Avenue, Fifth Floor
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Tel (206) 346-1888
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Daniel K. Bryson
Scott C. Harris
WHITFIELD BRYSON & MASON LLP

900 W. Morgan Street
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Joseph G. Sauder
SAUDER SCHELKOPF LLC
555 Lancaster Avenue
Berwyn, Pennsylvania 19312
Telephone: (888) 711-9975
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IV. ARGUMENT AND CITATION TO AUTHORITIES

A. THE PROPOSED SETTLEMENT IS FAIR, ADEQUATE AND REASONABLE AND THEREFORE DESERVES THE COURT’S PRELIMINARY APPROVAL.

Rule 23 of the Federal Rules of Civil Procedure governs class actions. Fed. R. Civ. P. 23(e) provides, in part: “The claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court’s approval.” Rule 23(e) sets out the procedures for a proposed settlement, and provides that the court may only approve a settlement after conducting a hearing and finding that it is “fair, reasonable and adequate.” Fed. R. Civ. P. 23(e)(2); *U.S. Airline Pilots Association v. Velez*, No. 3:14-cv-00577-RJC-DCK, 2016 WL 8722883 (W.D.N.C. March 11, 2016).

Court approval of class action settlements is a two-step process: preliminary approval and final approval. *Manual for Complex Litigation*, Fourth, § 21.632 (2004). At the preliminary approval stage, the Court must “make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms and must direct the preparation of notice of the certification, proposed settlement, and date of the final fairness hearing.” *Id.*; *See also, Velez*, 2016 WL 8722882 at *1 (first step of approval is for the court to conduct a preliminary approval hearing “to determine whether the proposed settlement is within the range of possible approval, or, in other words, whether there is probable cause to notify the class of the proposed

settlement.”)(quoting *Horton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 855 F. Supp. 825, 827 (E.D.N.C. 1994)); *Manual for Complex Litigation*, Fourth, § 21.632 (2004)(preliminary approval should be granted where settlement has no “obvious deficiencies” and is within the range of possible approval). Also at this stage of the approval process, the Court must make a preliminary determination whether the class may be certified for settlement purposes under rule 23. *Amchem Prods., Inc. v. Windsor*, 512 U.S. 591, 620 (1997). If the trial court grants preliminary approval, notice is sent to the class and the court conducts a fairness hearing at which all parties are given the opportunity to be heard on the proposed settlement. *Velez*, 2016 WL 8722882 at *1.

At the second stage of the approval process, the “fairness hearing,” the court considers arguments in favor of an in opposition to approval of the settlement. If, after the second “fairness hearing,” the trial court determines that the proposed settlement is “fair, reasonable, and adequate,” it will give final approval of the settlement. Fed. R. Civ. P. 23(e)(2); *Velez*, 2016 WL 8722883 at *1(quoting *Horton*, 855 F. Supp. at 827).

The Fourth Circuit has bifurcated this analysis into two issues: (1) fairness, “which focuses on whether the proposed settlement was negotiated at arm’s length;” and (2) adequacy, “which focuses on whether the consideration provided the class members is sufficient.” *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158-59 (4th Cir. 1991); *U.S. Airline Pilots Association v. Velez*, No. 3:14-cv-00577-RJC-DCK, 2016 WL 1615408, *4 (W.D.N.C. April 22, 2016).

In assessing the fairness and adequacy of a proposed settlement, “there is a strong initial presumption that the compromise is fair and reasonable.” Courts have recognized that “[s]ettlements, by definition, are compromises which ‘need not satisfy every single concern of

the plaintiff class, but may fall anywhere within a broad range of upper and lower limits.’ ” *S. Carolina Nat. Bank v. Stone*, 139 F.R.D. 335, 339 (D.S.C. 1991)(internal citations omitted).

1. The Settlement is Fair.

The primary concern of the fairness inquiry is whether the proposed settlement “was reached as a result of good-faith bargaining at arm's length, without collusion. . . ” *Jiffy Lube*, 927 F.2d at 158-59. Courts consider a variety of factors in evaluating the settlement’s fairness, including the posture of the case, the extent of discovery conducted, the “circumstances” of the negotiation and the experience of counsel in the type of case.

First, district courts within the Fourth Circuit have found that even when cases settle early in the litigation after only informal discovery has been conducted, the settlement may nonetheless be deemed fair. *See, e.g. PNC Mortg. Corp. of America*, No. CIV.A.PJM-97-3084, 1998 WL 350581 (D. Md. May 21, 1998). Here, while both of these cases are in the early stages of litigation, the informal discovery and investigation that has taken place on the underlying facts and claims has enabled the parties to fairly evaluate the merits of their respective positions and the risks inherent with further litigation. There is also no dispute that the Mecklenburg County Health Department conducted an investigation of this outbreak, which provided the parties with additional information relating to the claims at issue. Given the underlying facts and circumstances of this case, especially when combined with the extensive experience of counsel on these types of cases, the parties were able to objectively analyze the strengths and weaknesses of their positions. The settlement reflects concessions by both sides.

Similarly, the circumstances of the negotiations favor preliminary approval of the settlement. Counsel for the parties negotiated at arms-length over a period of months, and involved several detailed communications and discussions.

Finally, there can be no doubt as to the experience of counsel on this type of case. Counsel for both Plaintiffs and Defendants have extensive experience in prosecuting complex class actions, including cases involving potential food-borne illness cases. Counsel are well-qualified to conduct the Litigation. Accordingly, the Parties are well-suited to make informed judgments regarding the nature of the Settlement.

2. The Settlement is Adequate.

In assessing the adequacy of a proposed settlement, the Fourth Circuit considers the following five factors: (1) the relative strength of the plaintiffs' case on the merits; (2) the existence of any difficulties of proof or strong defenses the plaintiffs would likely encounter if the case were to go to trial; (3) the anticipated duration and expense of additional litigation; (4) the solvency of the defendants and the likelihood of recovery on a litigated judgment; and (5) the degree of opposition to the settlement. *Jiffy Lube*, 927 F.2d at 159; *Velez*, 2016 WL 1615408 at *4.

The first three factors are related. Here, the parties do not dispute that there was an HAV outbreak in the metropolitan Charlotte area in the summer of 2018, or that an employee of the Hardee's restaurant located at 2604 Little Rock Road, Charlotte, NC 28214 ("Charlotte Hardee's") contracted HAV. The putative class consists of individuals who were potentially exposed to HAV and obtained a vaccination or an IG shot (with some persons also getting an HAV blood test) because of their potential exposure to HAV. Defendants deny liability arising from plaintiffs' claims and have asserted numerous defenses both on the merits and as to class certification for purposes. While Defendants believe that they would likely prevail in these actions, they have concluded that it is desirable that this litigation be settled in the manner and on the terms and conditions set forth in the Settlement Agreement in order to avoid the expense,

inconvenience and burden of further protracted legal proceedings and the uncertainties inherent in any litigation. On the other hand, Plaintiffs believe that the claims asserted have merit and are supported by the available evidence. However, Plaintiffs also recognize the expense and length of trials in these actions which could take several years. Put short, the experienced attorneys for all Parties in these cases are aware that there are both foreseen and unforeseen difficulties in any litigation. Both sides of this litigation believe in the strength of their positions, but recognize the risks inherent with litigation. A complex litigation such as this, including appeals, could take years. With respect to the solvency of the Defendants, there is no evidence that the defendants are in any danger of becoming insolvent. Finally, due to the preliminary nature of this motion, the Parties are unaware of any opposition to this settlement.

The settlement here contains no “obvious deficiencies” and confers substantial benefits on the putative class members. Given the risks on both sides, and the potential for protracted litigation, the Parties have concluded that the settlement is adequate and in the range of possible final approval such that it should be preliminarily approved.

B. THIS COURT SHOULD CONDITIONALLY CERTIFY THE PROPOSED SETTLEMENT CLASS.

Before a court may approve a proposed class action settlement, the class must be conditionally certified and that the requirements of Fed. R. Civ. P. 23 are met. *Velez*, 2016 WL 8722883 at *1. The party seeking to bring a class action must establish the following under Rule 23(a):

(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a); *West*, 2017 WL 2470633 at *1; *Gunnells v. Health Plan Servs., Inc.*, 348 F.3d 417, 423 (4th Cir. 2003), *cert. denied*, 542 U.S. 915 (2004). Once the Rule 23(a) prerequisites are met, Plaintiffs must establish that the putative class meets one of the requirements of Rule 23(b). *West*, 2017 WL 2470633 at * 3. The Supreme Court has recognized that, In certifying a settlement class, the court is not required to determine whether the action, if tried, would present intractable management problems, “for the proposal is that there be no trial.” *Amchem*, 521 U.S. at 620.

Here, the proposed Settlement Class satisfies the requisite elements of Rule 23(a) and Rule 23(b)(3) in the context of settlement. With respect to numerosity, Rule 23(a)(1) requires that the class be so numerous that joinder of all members is impracticable. Here, the Mecklenburg Department of Health has indicated that more than 2,000 individuals received a HAV vaccination during the relevant time period. This easily meets the numerosity requirement. In fact, in the Fourth Circuit, class actions have been found to meet the numerosity requirement with as few as eighteen members. *Cypress v. Newport News General and Nonsectarian Hospital Ass’n*, 375 F.2d 648, 653 (4th Cir. 1967).

Rule 23(a)(2) requires that the court find that “there are questions of law or fact common to the class.” This subsection only requires that “common issues exist.” *Holsey v. Armour & Co.*, 743 F.2d 199, 216-17 (4th Cir. 1984). Here, common questions of law and fact exist with regard to the alleged injury and damages caused to each Plaintiff and putative class member allegedly caused by potential exposure to HAV at the Charlotte Hardee’s and including whether Defendant’s actions with respect to the ill Hardee’s employee breached warranties or duties to Plaintiffs or putative class members. For purposes of settlement, Plaintiffs also meet the typicality requirement of Rule 23(a). Plaintiffs allege that they, like all class members, were

potentially exposed to HAV at the Charlotte Hardee's and they assert the same legal claims as all class members. They further allege that their damages are typical of those allegedly suffered by every class member. *See, Velez*, 2016 WL 1615408, *2 (where claims of Plaintiffs were identical to those of class members, typicality was met).

The adequacy of representation requirement of Rule 23(a) requires a two-pronged inquiry: (1) the named plaintiffs must not have interests antagonistic to those of the class; and (2) the plaintiffs' attorneys must be qualified, experienced and generally able to conduct the litigation. *Velez Hewlett v. Premier Salons Int'l, Inc.*, 185 F.R.D. 211, 218 (D. Md. 1997). As discussed above, proposed class counsel are well-qualified, experienced and able to conduct this litigation. Plaintiffs' interests are co-extensive with those of the Class, since Plaintiffs seek relief that is identical to that which is sought by every other member of the Class. Moreover, Plaintiffs and Class Counsel have no interests antagonistic to those of the Settlement Class and are not subject to any unique defenses. Plaintiffs and Class Counsel have and will continue to fairly and adequately protect the interests of the Settlement Class.

The requirements of Rule 23(b)(3) are also met in this settlement context. Rule 23(b)(3) only requires that the common issues predominate, not that they are "dispositive" of the entire litigation. *Brown v. Pro Football*, 146 F.R.D. 1, 4 (D.D.C. 1992). Predominance exists here for purposes of this settlement where Plaintiffs claim they and all putative class members suffered the same injury from alleged exposure to HAV at the Charlotte Hardee's. *Kay Company v. Equitable Production Co.*, No. 2:06-cv-00612, 2009 WL 10664160, * 2 (S.D. W. Va. May 15, 2009)(Predominance met in settlement context where all class members had "common liability claims" with respect to alleged royalty payments). As noted above, given that the Settlement Class will be certified for the purposes of settlement only, the Rule 23(b)(3) requirement of

manageability need not be met because, in the context of a settlement class, manageability issues are not a bar to certification since there will be no trial. *Amchem*, 521 U.S. at 620; *Kay Company*, 2009 WL 10664160 at *2 (manageability issue mooted in class action settlement context). Finally, in this settlement context, a class action is superior to other available methods for a fair and efficient adjudication of these cases. *See, In re Serzone Products Liability Litigation*, No. MDL No. 1477, 2004 WL 2849197 (S.D. W. Va. Nov. 18, 2004)(superiority met in putative class action settlement where it promoted efficiency and uniformity where many settlement class members would not be forced to pursue separate actions). Because all of the requirements of Rule 23 are met here, the Parties respectfully request that the Court conditionally certify the proposed Settlement Class.

C. THE PROPOSED NOTICE OF SETTLEMENT IS REASONABLE AND SUFFICIENT.

Under Rule 23, in any proposed class action compromise or settlement, a court “must direct notice in a reasonable manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. (e)(1). In a class action settlement, due process requires reasonable notice combined with an opportunity to be heard. *Domonoske v. Bank of America*, 790 F.Supp.2d 466, 472 (W.D. Va. 2011). Rule 23 requires that the class members receive the “best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” The actual manner and form of the notice is largely within the discretion of the trial court. The trial court may require, among other things, that it review the content of any notice before its dissemination. As demonstrated by the Parties’ proposed Notice set forth in detail below the Notice satisfies both due process requirements and the requirements of Rule 23.

1. The Notice Company Should be Appointed as the Class Third-Party Administrator.

The Parties request that the Court formally appoint The Notice Company to be the proposed Class Administrator in this case. The Notice Company is principally engaged in the administration of class action lawsuits pending in courts around the United States, including the dissemination of notice to class members, administering the claims process, and distributing the proceeds of the litigation to the class; see the related Declaration of Joseph Fisher in support of this stipulation.

The Notice Company has implemented notice programs and served as settlement administrator in a wide variety of class action cases, with class membership sizes ranging from a few hundred to several million. The Notice Company has specific experience with specific class actions involving allegations of possible exposure to HAV at restaurants located in the United States, including the following cases:

- * *Werkmeister v. Hardee's Restaurants, LLC* (Spartanburg County, SC)
The Notice Company provided notice of the class action by (1) mailing notice to 4,592 persons identified by the public health departments, (2) publication of notice in The Greenville News and the Spartanburg Herald-Journal, and (3) posting notice on the world wide web. The Notice Company handled all mailings of notices, received all claim forms, and administered the settlement.
- * *Cagler v. Papa John's USA, Inc.* (W.D. NC)
The Notice Company provided notice of the class action by (1) mailing notice to 1,656 persons identified by the public health departments, (2) publication of notice in the Charlotte Observer, and (3) posting notice on the world wide web. The Notice Company handled all mailings of notices, received all claim forms, and administered the settlement.
- * *Prescott v. GMRI, Inc. d/b/a The Olive Garden Italian Restaurant* (Cumberland County, NC)
The Notice Company provided notice of the class action by (1) mailing notice to 3,086 persons identified by the public health department, (2) publication of notice in The Fayetteville Observer, and (3) posting notice on the world wide web. The

Notice Company handled all mailings of notices, received all claim forms, and administered the settlement.

* *Foster v. Friendly Ice Cream Corporation* (Middlesex County, MA)

The Notice Company provided notice to 2,633 members of the class by mailing notice to those individuals who had been identified by the Board of Health and by publication of notice in *The Arlington Advocate*. The Notice Company handled all mailings of notices, received all claim forms.

* *Johnson v. Houlihan's Restaurants, Inc.* (Kane County, IL)

Pursuant to the Court's Order, The Notice Company prepared 3,500 notices, claim forms and mailing envelopes. These documents were provided to the Kane County Health Department, which then mailed the documents to persons who had obtained immunoglobulin shots at the Health Department as a result of the alleged incident. The mailing envelopes showed The Notice Company's return address. The Notice Company handled all re-mailings of notices that were returned by the U.S. Postal Service, received all claim forms, and administered the settlement.

* *In re Chi-Chi's, Inc.* (Bankr. D. DE)

Pursuant to the Court's Order, The Notice Company prepared 9,500 notices, claim forms and mailing envelopes. These documents were provided to the Pennsylvania Department of Health, which then mailed the documents to persons who had obtained immunoglobulin shots at the Health Department in connection with the alleged incident. The mailing envelopes showed The Notice Company's return address. The Notice Company handled all re-mailings of notices that were returned by the U.S. Postal Service, received all claim forms, and administered the settlement.

The parties therefore request that the Court formally appoint The Notice Company to be the proposed Class Administrator in this case. The Notice Company has substantial experience in administering similar class actions and has served as the class settlement administrator in a wide variety of class action cases.

2. The Proposed Notice Plan Is Sufficiently Comprehensive.

The Proposed Notice Plan, set forth in detail below, is sufficiently comprehensive to comport with Due Process requirements.

1. Settlement Administration.

The Notice Company, Inc., 94 Station Street, Hingham, MA, (the “Settlement Administrator”) will handle the administration of the Opt-Out Class Action Settlement, as follows:

The printing, handling, mailing, and re-mailing, as required by the Notice of Settlement, including all related personnel and operating costs, and the processing of any requests for exclusion and other documents submitted.

Defendant’s insurance carrier, Nationwide Insurance Company, shall be responsible for fees and charges owed to The Notice Company with respect to the foregoing administration of the Settlement, including media publication and mailing, not to exceed \$25,000; said amount shall be paid within 7 days of entry of an Order Preliminarily Approving the Settlement. Defendant shall not be responsible, and shall not pay, for any time or costs incurred by Class Members or their counsel with respect to the negotiation, implementation, or administration of the Settlement, or any costs incurred by any Class Member in connection with participating in the Settlement, except as provided above.

2. Claim Form and Notice.

A. The claim form to be used by persons who qualify as Class Members shall be in the form attached hereto as **Exhibit 2** (the “Claim Form”). Claim Forms may be submitted by a legally authorized guardian or representative of an incapacitated or minor Class Member or on behalf of a deceased Class Member.

B. The Summary Notice of Settlement for publication, attached hereto as **Exhibit**

3.

C. The Detailed Notice of Settlement for mailing, attached hereto as **Exhibit 4.**

3. Class Notice and Claim Administration.

The Settlement Administrator shall proceed in accordance with the following

notification procedures and claims administration:

A. **Class List.** Within 7 days of entry of the Order Preliminarily Approving Class Settlement, the Plaintiffs' counsel, Defendant's counsel, and Mecklenburg County Health Department will provide the Settlement Administrator with the names and addresses of potential Class Members known to them. This list shall be known as the "Class List";

B. **Notice Package.** Within 21 days of the entry of the Order Preliminarily Approving Class Settlement, the Settlement Administrator shall cause the Detailed Notice of Settlement and Claim Form ("Notice Package") to be sent by the United States Postal Service First-class mail, postage prepaid, to all potential Class Members whose name and address appear on the Class List.

C. **Notice of Publication.** Commencing within 21 days of the entry of the Order Preliminarily Approving Class Settlement, the Settlement Administrator shall cause the Notice of Settlement for publication to be published once a week for two consecutive weeks in the *Charlotte Observer*.

D. **Website.** Within 21 days of entry of the Order Preliminarily Approving Class Settlement, the Settlement Administrator shall establish a website at www.CharlotteHepA.com where visitors may obtain the Claim Form, Detailed Notice of Settlement, the Order Preliminarily Approving Class Settlement and other information pertaining to this Settlement as requested by Class Counsel.

E. **Toll-free Telephone Number.** Within 21 days of entry of the Order Preliminarily Approving Class Settlement, the Settlement Administrator shall establish a toll-free telephone number for the purposes of effectuating notice.

F. **Claims/Exclusion/Objection Periods.** The Notice of Settlement shall provide

that within 65 days of the entry of the Preliminary Approval Order, all exclusion requests, objections and claims must be submitted.

G. **Extension.** The Administrator with the approval of Class Counsel may extend the dates and deadlines listed herein if circumstances warrant, for example, if there is a delay in obtaining the Class List from the Mecklenburg County Health Department.

4. Request for Exclusion.

A. Any person who would otherwise be a member of the Class may be excluded from the Class and from the settlement set forth herein by mailing a written request for exclusion to the Class Administrator pursuant to the Preliminary Approval Order, postmarked no later than 65 days from the entry of the Preliminary Approval Order or as the Court may otherwise direct. The original requests for exclusion shall be filed with the Court by Plaintiffs' counsel, and served on Defendant's counsel, at least 7 calendar days before the Final Approval Hearing. A member of the Class filing such a request shall be deemed excluded from the Class and from this Settlement with respect to all of the matters released.

B. Any potential member of the Class who does not file a timely written request for exclusion as provided in the preceding section shall be bound by this Settlement Agreement and all subsequent proceedings, orders, and judgments in this litigation, even if that potential member of the Class subsequently initiates litigation against Defendant relating to any of the matters released.

C. No party shall encourage any potential Class Member to file a request for exclusion or encourage or provide any material assistance for any potential Class Member to file an objection to this Settlement or to file any other action, except as expressly provided herein.

5. Objection to Settlement.

A. Any potential Class Member who has not filed a written request for exclusion and who wishes to object to the fairness, reasonableness, or adequacy of this Agreement or the proposed settlement must serve on Plaintiffs' counsel and on counsel for Defendant, and must file with the Court, no later than 65 days from the entry of the Preliminary Approval Order or as the Court may otherwise direct, a notice of intention to appear and/or object, together with copies of any papers such member of the Class intends to present to the Court in connection with such objection. Potential Class Members may make such appearances or objections either on their own or through attorneys hired at their own expense. If an attorney will represent any such potential Class Member, he or she must (i) file an appearance with the Court no later than 65 days from the entry of the Preliminary Approval Order or as the Court otherwise may direct, and (ii) serve on Plaintiffs' and Defendant's counsel a notice of the filing of the appearance. Any such potential Class Member or counsel thereto may, with notice, obtain access at the offices of Sellers, Ayers, Dortch, Lyons, 301 S. McDowell Street, Suite 410, Charlotte, NC 28204, to the complaints and answers thereto, if any, filed in this litigation and any orders entered in this litigation, and to such additional pleadings as may be agreed by Defendant's counsel and Plaintiffs' counsel. Defendant's counsel will inform Plaintiffs' counsel promptly of any requests received by Defendant's counsel by potential Class Members or their attorneys for access to such documents.

B. Only those potential Class Members who follow the procedures set forth in the foregoing paragraph may appear at the Final Approval Hearing and/or have their objections considered by the Court, unless otherwise directed by the Court.

C. Any potential Class Member who does not appear individually or through counsel and/or who does not challenge or comment upon the fairness and adequacy of this

Agreement shall waive and forfeit any and all rights that she or he may have to appear separately and/or object. All potential Class Members (whether or not they object to the fairness of this settlement) other than those requesting exclusion pursuant to the procedures described above shall be bound by all the terms of this Agreement and by all proceedings, orders and judgments in this litigation.

V. CONCLUSION

For the reasons set forth above, the parties to this action request:

- (1) That the Court preliminarily approve the settlement as sufficiently fair, reasonable, and adequate to allow notice of the proposed settlement to be given to the members of the Class;
- (2) That the Court conditionally certify the proposed Settlement Class;
- (3) That the Court approve the form of the Notice of Settlement of Proposed Class Action ("Notice") (Settlement Agreement, Exhibit 3), without material alteration;
- (4) That the Court further find that notice of the settlement in the manner set forth above and in the Settlement Agreement meets the requirements of Due Process, and that the proposed notice is reasonable, and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice; is the best practicable notice; and is reasonably calculated, under the circumstances, to apprise members of the Class of the pendency of the Lawsuit and of their right to object or to exclude themselves from the proposed settlement;
- (5) That the Court approve the form of the Class Action Claim Form ("Claim Form") (Settlement Agreement, **Exhibit 1**), without material alteration;
- (6) That a Final Approval Hearing be held at the direction of the Court, in the United States District Court, Western District of North Carolina, Charlotte Division, for the purpose of

determining: (a) whether the proposed settlement is fair, reasonable, and adequate and should be finally approved by the Court; and (b) whether to issue a final judgment order; and

(7) That all pretrial proceedings in the Litigation are stayed and suspended until further order of this Court.

Respectfully submitted this 5th day of December, 2018.

s/Brett Dressler (NC Bar #34516)
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Attorneys for Defendant Morning Star LLC

CERTIFICATE OF SERVICE

I hereby certify that on December 5, 2018, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of filing to all counsel of record who have appeared in the case.

s/Brett Dressler (NC Bar #34516)
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**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

IAFREEDRE MCCLAIN, MONTRELL)
DAVIS, and others similarly situated,)
)
Plaintiffs,)
)
v.)
)
MORNING STAR, LLC a/k/a MORNING)
STAR NC, LLC, d/b/a HARDEE’S,)
)
Defendant.)

CIVIL ACTION FILE
NO. 3:18-cv-00419-FDW-DCK

E.P. and S.F., individually and on behalf of)
others similarly situated,)
)
Plaintiffs,)
)
v.)
)
CKE RESTAURANTS HOLDINGS, INC., a)
Delaware Corporation; HARDEE’S FOOD)
SYSTEMS LLC, a North Carolina)
Corporation; HARDEE’S RESTAURANTS)
LLC, a Delaware Corporation; and)
MORNING STAR, LLC a/k/a MORNING)
STAR NC, LLC, a Florida Corporation,)
)
Defendants.)

CIVIL ACTION FILE
NO. 3:18-cv-00483-FDW-DCK

SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement” or “Settlement Agreement”) is entered into by Plaintiffs Iafreedre McClain, Montrell Davis, E.P., and S.F. (“Plaintiffs”), on behalf of themselves and all those similarly situated, and Morning Star, LLC, a/k/a Morning Star NC, LLC, d/b/a Hardee’s (“Defendant”)(collectively referred to as “the Parties”).

RECITALS

A. Plaintiffs have made claims against Defendant and originally filed class action complaints against various Defendants in the General Court of Justice, Superior Court Division, Mecklenburg County, North Carolina, respectively identified as Civil Action Nos. 18-CVS-12752 (June 21, 2018) and 18-CVS-14007 (July 16, 2018). Defendants removed both actions to the United States District Court, Western District of North Carolina, Charlotte Division (“the litigation”). Plaintiffs dismissed without prejudice Defendants CKE Restaurant Holdings, Inc., Hardee’s Food Systems LLC, and Hardee’s Restaurants LLC from Civil Action No. 3:18-cv-00483.

B. The damages sought are the cost of Hepatitis A Virus (“HAV”) blood testing and/or HAV vaccines or immune globulin (“IG”) shots and an amount for the inconvenience for being warned and encouraged to receive the treatment.

C. Plaintiffs and putative class members obtained an HAV vaccination or an IG shot (with some persons also getting an HAV blood test) because of their potential exposure to HAV during an outbreak in the metropolitan Charlotte area in the summer of 2018. An employee working at the Hardee’s restaurant located at 2604 Little Rock Road, Charlotte, NC 28214 (“Charlotte Hardee’s”) was one of the individuals who contracted an HAV infection during the outbreak. He last worked at the restaurant on June 23, 2018, and did not return to work again before the restaurant permanently closed on June 26, 2018.

D. As a result, public health officials recommended anyone who was a high risk for contracting HAV or who consumed food or beverages purchased at the Charlotte Hardee’s between June 13, 2018, and June 23, 2018, receive prophylactic treatment against HAV within 14 days after their exposure at one of three clinics. These clinics were set-up before the Hardee’s

employee became ill. The individuals comprising the proposed class took immediate preventative action at the recommendation of public health authorities or other health professionals and, as a result, did not subsequently develop symptoms of HAV infection.

E. Plaintiffs have asserted in this litigation class claims for breach of warranties and negligence to recover damages for physical injury and economic loss arising from obtaining IG and/or HAV vaccinations in response to an alert by the North Carolina Department of Health and Human Services (“DOH”) that Plaintiffs may have been exposed to HAV by consuming food or drink purchased from the Charlotte Hardee’s between June 13, 2018, and June 23, 2018 (“Potential Exposure Period”).

F. Each named Plaintiff in the present case obtained a vaccination within 14 days of consuming food or beverage purchased between June 13, 2018, and June 23, 2018, at the Charlotte Hardee’s, which is the time-period that CDC and FDA recommend. As a result of obtaining vaccinations, these Plaintiffs prevented the possible development of a full-blown or symptomatic HAV infection for anyone actually exposed to and infected with HAV because the inactivated antigens in the vaccine caused (as intended) a protective immune-response. As such, Plaintiffs were able to avoid the potentially more serious and life-threatening injuries that an individual might have experienced as the result of developing an HAV infection if they were actually exposed to and infected by HAV. Furthermore, Defendant was able to avoid potential liability for the more serious damages associated with a full-blown HAV infection. Nonetheless, Plaintiffs contend that they still suffered injuries for which this class action seeks fair compensation from the Defendant.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between Plaintiffs and Defendant, acting in good faith and subject to the approval of the Court, that all

class claims alleged against Defendant and the dismissed Defendants in the litigation above are hereby compromised, settled, released and discharged in accordance with the terms and conditions set forth below.

THE SETTLEMENT

In consideration of the respective covenants and undertakings set forth below, the Parties agree as follows:

1. Recitals Incorporated.

The foregoing Recitals are hereby expressly incorporated by reference as part of this settlement between the Parties.

2. Effective Date.

This Agreement shall become effective upon its execution by all parties hereto, which may be done in counterparts in accordance with Paragraph 22 below.

3. The Settlement Class.

For purposes of this settlement, the parties agree that the class (the "Class") shall be defined as follows:

All individuals who were (a) potentially exposed to the Hepatitis A Virus ("HAV") at the Hardee's Restaurant, 2604 Little Rock Road, Charlotte, North Carolina ("Charlotte Hardee's"), between June 13, 2018, and June 23, 2018 ("Potential Exposure Period"), and (b) who, as a result of such potential exposure to HAV, obtained preventive medical treatment, including the administration of IG, HAV vaccine shots, or blood tests within 14 days after their exposure, and in no event any later than July 7, 2018.

Excluded from the Class are (1) all persons, if any, who developed HAV infections as a result of consuming food or beverage at the Charlotte Hardee's during the Potential Exposure Period, (2) anyone receiving their first IG shot, HAV vaccine, or blood test after July 7, 2018, and (3) employees at the Charlotte Hardee's during the Potential Exposure Period.

To be a Qualified Claimant, all Class Members are Required to Submit: A declaration signed under penalty of perjury that the claimant was potentially exposed to HAV during the Potential Exposure Period at the Charlotte Hardee's and is an individual defined as a Class Member, *i.e.* a recipient of an IG shot, HAV vaccine, or HAV blood test within 14 days after the exposure. The receipt of an IG shot, an HAV vaccine, or blood test shall be shown through attestation, documentation and/or verification through the health department vaccination program. Each claimant shall show receipt of an IG shot, an HAV vaccine, or blood test by providing documentation from a health care provider if the treatment was not provided by the health department vaccination program.

4. Relief to the Class.

General Damages: The General Damages Settlement provides for payment of general damages to each Class Member who submits a timely, qualified claim, for general damages ("Claimant"). Each Claimant will receive as general damages a pro-rata share of the aggregate class amount of \$246,000.00 paid by Defendant's insurance carrier, Nationwide Insurance Company.

Compensation for Class Representatives: In addition to the above, and not to be deducted from the aggregate class amount, Class Plaintiffs, McClain, Davis, E.P. and S.F., will each receive an additional \$1,000.00 in compensation paid by Defendant's insurance carrier, Nationwide Insurance Company.

5. Settlement Process.

Plaintiffs' counsel will prepare initial drafts of all settlement documents and will supervise, subject to Court oversight and the prior agreed upon process, the class notice and claims administration process. The Notice Company, Inc., 94 Station Street, Hingham, MA (the "Class Administrator"), will provide written notice to Defendant of the claims scheduled to be

paid. Thereafter, claims shall be deemed valid, and Plaintiffs, their attorneys and agents shall be released and held harmless by Defendant for the payment thereof. The preliminary approval shall be submitted by joint motion or stipulation. Defendant agrees to join in Plaintiffs' Motion or Stipulation for Final Approval.

6. The Plaintiffs' Counsel's Fees.

Plaintiffs' reasonable attorneys' fees and costs will be capped at 25% of the amount paid to the Class for general damages, or what is awarded by the Court, whichever is less. In no event shall Defendant's insurer, Nationwide Insurance Company, be obligated to pay more than \$61,500 for Plaintiffs' attorneys' fees and costs. This amount is in addition to the General Damages paid to Qualified Claimants. The Attorneys' fees and costs shall be payable by Defendant's insurer, Nationwide Insurance Company, and will not diminish the amount to be paid to members of the Class. Class Counsel waives, discharges, and releases the released parties from any and all claims for attorneys' fees and costs by lien, statute, equity or otherwise, in connection with this action.

7. Settlement Administration.

The Notice Company, Inc., 94 Station Street, Hingham, MA, (the "Settlement Administrator") will handle the administration of the Opt-Out Class Action Settlement, as follows:

The printing, handling, mailing, and re-mailing, as required by the Notice of Settlement, including all related personnel and operating costs, and the processing of any requests for exclusion and other documents submitted.

Defendant's insurance carrier, Nationwide Insurance Company, shall be responsible for fees and charges owed to The Notice Company with respect to the foregoing administration of the Settlement, including media publication and mailing, not to exceed \$25,000; said amount

shall be paid within 7 days of entry of an Order Preliminarily Approving the Settlement. Defendant shall not be responsible, and shall not pay, for any time or costs incurred by Class Members or their counsel with respect to the negotiation, implementation, or administration of the Settlement, or any costs incurred by any Class Member in connection with participating in the Settlement, except as provided above.

8. Claim Form.

A. The claim form to be used by persons who qualify as Class Members shall be in the form attached hereto as **Attachment 1** (the “Claim Form”).

B. Claim Forms may be submitted by a legally authorized guardian or representative of an incapacitated or minor Class Member or on behalf of a deceased Class Member.

9. No Other Financial Obligations of Defendant.

Neither the Defendant nor any of its past, present, or future affiliates shall be liable or obligated to pay any fees, expenses, costs, or disbursements to, or incur any expense on behalf of, any person, either directly or indirectly, in connection with the litigation, this Agreement, or this Settlement, other than the amount or amounts expressly provided for in this Agreement.

10. Procedure for Implementation of Settlement.

After this Agreement has been fully executed, the Parties shall present this Agreement, including all attached exhibits, to the Court for a “preliminary approval”. Specifically, Plaintiffs shall file a Joint Motion for Preliminary Class Settlement Approval, which will seek entry of the “Order Preliminarily Approving Class Settlement” in the form attached hereto as **Attachment 2**.

The Joint Motion for Preliminary Settlement Approval will request that the Court: (a) preliminarily approve the proposed settlement; (b) approve the Claim Form in the form

attached hereto as **Attachment 1**; (c) approve the Summary Notice of Settlement for publication, attached hereto as **Attachment 3**; (d) approve the Detailed Notice of Settlement for mailing, attached hereto as **Attachment 4**; (e) direct that Plaintiffs' counsel, Defendant's counsel, and Mecklenburg County Health Department, to provide to The Notice Company the names and addresses of potential Class Members known to them; (f) direct, pursuant to the Motion and Order for Qualified HIPAA Order, attached hereto as **Attachment 5**, the Mecklenburg County Health Department to provide to the Administrator the names and addresses of potential Class Members known to the Department; and (g) conduct a final approval hearing ("Final Approval Hearing") approximately 80 days after the filing of the Preliminary Approval Order.

11. Class Notice and Claim Administration.

The Settlement Administrator shall proceed in accordance with the following notification procedures and claims administration:

A. **Class List.** Within 7 days of entry of the Order Preliminarily Approving Class Settlement, the Plaintiffs' counsel, Defendant's counsel, and Mecklenburg County Health Department will provide the Settlement Administrator with the names and addresses of potential Class Members known to them. This list shall be known as the "Class List";

B. **Notice Package.** Within 21 days of the entry of the Order Preliminarily Approving Class Settlement, the Settlement Administrator shall cause the Detailed Notice of Settlement and Claim Form ("Notice Package") to be sent by the United States Postal Service First-class mail, postage prepaid, to all potential Class Members whose name and address appear on the Class List.

C. **Notice of Publication.** Commencing within 21 days of the entry of the Order

Preliminarily Approving Class Settlement, the Settlement Administrator shall cause the Notice of Settlement for publication to be published once a week for two consecutive weeks in the *Charlotte Observer*.

D. **Website.** Within 21 days of entry of the Order Preliminarily Approving Class Settlement, the Settlement Administrator shall establish a website at www.CharlotteHepA.com where visitors may obtain the Claim Form, Detailed Notice of Settlement, the Order Preliminarily Approving Class Settlement and other information pertaining to this Settlement as requested by Class Counsel.

E. **Toll-free Telephone Number.** Within 21 days of entry of the Order Preliminarily Approving Class Settlement, the Settlement Administrator shall establish a toll-free telephone number for the purposes of effectuating notice.

F. **Claims/Exclusion/Objection Periods.** The Notice of Settlement shall provide that within 65 days of the entry of the Preliminary Approval Order, all exclusion requests, objections and claims must be submitted.

G. **Extension.** The Administrator with the approval of Class Counsel may extend the dates and deadlines listed herein if circumstances warrant, for example, if there is a delay in obtaining the Class List from the Mecklenburg County Health Department.

12. Request for Exclusion.

A. Any person who would otherwise be a member of the Class may be excluded from the Class and from the settlement set forth herein by mailing a written request for exclusion to the Class Administrator pursuant to the Preliminary Approval Order, postmarked no later than 65 days from the entry of the Preliminary Approval Order or as the Court may otherwise direct. The original requests for exclusion shall be filed with the Court by Plaintiffs'

counsel, and served on Defendant's counsel, at least 7 calendar days before the Final Approval Hearing. A member of the Class filing such a request shall be deemed excluded from the Class and from this Settlement with respect to all of the matters released.

B. Any potential member of the Class who does not file a timely written request for exclusion as provided in the preceding section shall be bound by this Settlement Agreement and all subsequent proceedings, orders, and judgments in this litigation, even if that potential member of the Class subsequently initiates litigation against Defendant relating to any of the matters released.

C. No party shall encourage any potential Class Member to file a request for exclusion or encourage or provide any material assistance for any potential Class Member to file an objection to this Settlement or to file any other action, except as expressly provided herein.

13. Objection to Settlement.

A. Any potential Class Member who has not filed a written request for exclusion and who wishes to object to the fairness, reasonableness, or adequacy of this Agreement or the proposed settlement must serve on Plaintiffs' and Defendant's counsel, and must file with the Court, no later than 65 days from the entry of the Preliminary Approval Order or as the Court may otherwise direct, a notice of intention to appear and/or object, together with copies of any papers such member of the Class intends to present to the Court in connection with such objection. Potential Class Members may make such appearances or objections either on their own or through attorneys hired at their own expense. If an attorney will represent any such potential Class Member, he or she must (i) file an appearance with the Court no later than 65 days from the entry of the Preliminary Approval Order or as the Court otherwise may direct, and (ii) serve on Plaintiffs' and Defendant's counsel a notice of the filing of the appearance. Any

such potential Class Member or counsel thereto may, with notice, obtain access at the offices of Sellers, Ayers, Dortch, Lyons, 301 S. McDowell Street, Suite 410, Charlotte, NC 28204, to the complaints and answers thereto, if any, filed in this litigation and any orders entered in this litigation, and to such additional pleadings as may be agreed by Defendant's counsel and Plaintiffs' counsel. Defendant's counsel will inform Plaintiffs' counsel promptly of any requests received by Defendant's counsel by potential Class Members or their attorneys for access to such documents.

B. Only those potential Class Members who follow the procedures set forth in the foregoing paragraph may appear at the Final Approval Hearing and/or have their objections considered by the Court, unless otherwise directed by the Court.

C. Any potential Class Member who does not appear individually or through counsel and/or who does not challenge or comment upon the fairness and adequacy of this Agreement shall waive and forfeit any and all rights that she or he may have to appear separately and/or object. All potential Class Members (whether or not they object to the fairness of this settlement) other than those requesting exclusion pursuant to the procedures described above shall be bound by all the terms of this Agreement and by all proceedings, orders and judgments in this litigation.

14. Final Approval, Final Approval Order, and Post-Settlement Notice.

If the Court approves of this Agreement and enters a Preliminary Approval Order, the Parties shall then seek and use their best efforts to obtain from the Court a "Final Approval Order" which shall, among other things:

A. Find that the Court has personal jurisdiction over all potential Class Members and that the Court has subject matter jurisdiction to approve this Agreement and all exhibits

thereto;

B. Approve this Agreement and the proposed settlement as fair, reasonable and adequate, and consistent and in compliance with the applicable provisions of the laws of North Carolina, the Federal Rules of Civil Procedure, and the United States Constitution, as to, and in the best interests of, each of the Parties and the potential Class Members; direct the Parties and their counsel to implement and consummate this Agreement according to its terms and provisions; and declare this 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 the named plaintiffs and all other potential Class Members, as well as their heirs, executors and administrators, successors and assigns;

C. Find that the Plaintiffs and Plaintiffs' counsel represented the Class for purposes of entering into and implementing the Settlement;

D. Find that the Notice of Settlement and the notice methodology implemented pursuant to this Agreement: (i) constitute the best practicable notice, (ii) constitute notice that is reasonably calculated, under the circumstances, to apprise potential Class Members of the pendency of the litigation and of their right to object to the proposed settlement and to appear at the Final Approval Hearing; (iii) are reasonable and constitute due, adequate and sufficient notice to all persons entitled to receive notice; and (iv) meet all applicable requirements of Federal Rule of Civil Procedure 23 and the Due Process Clause of the United States Constitution.

E. Authorize Defendant at its sole discretion, but in consultation with the Plaintiffs' counsel and without approval from the Court, to implement the settlement;

F. Dismiss the litigation (including all individual claims and Class claims presented thereby) on the merits and with prejudice, without fees or costs to any party except as provided in this Agreement;

G. Bar and permanently enjoin all potential Class Members from (i) filing, commencing, prosecuting, intervening in, or participating (as Class Members or otherwise) in, any lawsuit in any jurisdiction based on or relating to the claims and causes of action within the scope of the Release (as set out in paragraph 15 below), and (ii) organizing potential Class Members who have not been excluded from the Class into a separate class for purposes of pursuing as a purported class action any lawsuit (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending action) based on or relating to the claims and causes of action within the scope of the Release;

H. Authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications, and expansions of this Agreement and all exhibits attached hereto as (i) shall be consistent in all material respects with the Final Approval Order, or (ii) do not limit the rights of potential Class Members;

I. Without affecting the finality of the Final Approval Order for the purposes of appeal, retain the Court's jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of this Agreement and the Final Approval Order, and for any other necessary purpose; and

J. Incorporate any other provisions as the Court deems necessary and just.

15. Payment of Settlement Checks.

Defendant's insurer, Nationwide Insurance Company, shall send to the Class Administrator the amount required for distribution within 7 calendar days after the Approval

Order becomes final, where final means that the appeal period has passed, and no appeals have been filed or, if filed, such appeals have been dismissed. The Class Administrator shall mail settlement checks to approved claimants within 21 calendar days after the Approval Order becomes final. Settlement checks must be cashed within six (6) months of the date of the mailing (the "Payment Period"). Any claimant who does not cash his/her check within the Payment Period foregoes his/her claim to the funds. Any proceeds from checks not cashed by the deadline shall be returned to Defendant.

The Class Administrator shall send payment to the Class Representatives within 14 calendar days and to Class Counsel within 14 calendar days after the Approval Order becomes final, provided that such persons or entities shall be required to submit a completed IRS Form W-9 to the Class Administrator prior to the issuance of such payment. Within 14 calendar days after the Approval Order becomes final, Defendant's insurer shall send the payment for Class Counsel's costs and fees, in an amount approved by the Court, to the law firm of Marler Clark and those funds will be subsequently distributed pursuant to Class Counsel's Intra-Counsel Agreement.

15. Releases.

Upon payment of the amount agreed upon, Plaintiffs and each potential Class Member (except a potential Class Member who has obtained proper and timely exclusion from the class) hereby release Defendant and dismissed Defendants CKE Restaurant Holdings, Inc., Hardee's Food Systems LLC, and Hardee's Restaurants LLC, and their officers, directors, employees, agents, and insurers, of and from any and all liability for any and all claims, obligations, actions, demands, rights, costs, expenses, compensation, or causes of action of any nature whatsoever, whether based upon tort, contract, statute or any other theory of recovery, and whether for

compensatory, punitive, statutory, or any other forms of damage or relief, whether legal or equitable, which currently exist or which may accrue in the future, whether known or unknown, latent or patent, whether asserted or un-asserted in the Class Action, based upon or arising out of the acts, errors, omissions, and transactions alleged in the Class Action and/or relating in any way to any alleged exposure to the HAV virus as set out in the Recitals to this Agreement.

16. Integration and Drafting.

The Parties agree that this Agreement is clear and unambiguous, that it was drafted by respective counsel for the Parties at arm's length and sets forth the entire agreement among the Parties with respect to its subject matter, and that no parole or other evidence may be offered to explain, construe, contradict, or clarify its terms, the intent of the Parties or their counsel, or the circumstances under which the Agreement was made or executed. The Parties further agree that no party shall be deemed to have drafted this Agreement. This Agreement constitutes and represents the complete and entire agreement among the Parties. This Agreement merges and supersedes any and all prior agreements, discussions, negotiations, and communications among the Parties. The Parties acknowledge and expressly represent and warrant that they have relied solely on their own judgment, together with advice of counsel when deciding whether to enter into this Agreement. Each party further agrees, acknowledges, and expressly warrants that no information, statement, promise, representation, warranty, condition, inducement, or agreement of any kind, whether oral or written, made by or on behalf of any other party shall be, or has been, relied upon by it unless specifically contained and incorporated herein.

17. Modification, Court Approval, Extensions.

This Agreement is not subject to modification without the written consent of all Parties and approval of the Court; provided, however, that, after entry of the Final Approval Order,

the Parties may by agreement effect such modification of this Agreement and its implementing documents (including all exhibits hereto) without notice to or approval by the Court if such changes are consistent in all material respects with the Court's Final Approval Order or do not limit the rights of potential Class Members. The Parties also reserve the right, subject to the Court's approval, to make any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement.

18. Termination of Agreement.

This Agreement will terminate at the sole option and discretion of Defendant or Plaintiffs if: (i) the Court, or any appellate court(s), rejects, modifies or denies approval of any portion of this Agreement or the proposed settlement that the terminating party in its (or their) sole judgment and discretion believes is material; or (ii) the Court, or any appellate court(s), does not enter or completely affirm, or alters or expands, any portion of the Final Approval Order, or any of the Court's findings of fact or conclusions of law, that the terminating party in its (or their) sole judgment and discretion believes is material. The terminating party must exercise the option to withdraw from and terminate this Agreement, as provided in this paragraph no later than twenty (20) days after receiving notice of the event described in this paragraph. Notwithstanding the foregoing, Plaintiffs may not terminate this Agreement solely because of the amount of attorneys' fees awarded by the Court or any appellate court(s). If the Agreement is terminated, then the Agreement, its terms, and its exhibits shall be null and void and shall have no force or effect, no party shall be bound by any of its terms (except for the terms of this Paragraph) and the Agreement shall not be admissible in any further or different proceedings.

19. Attachments.

All of the attachments hereto are incorporated herein by reference as if set forth herein

verbatim, and the terms of all attachments are expressly made a part of this Agreement.

20. Waiver.

The waiver by any Party of any breach of this Agreement shall not be deemed or construed as a waiver of any other breach, whether prior or subsequent to, or contemporaneous with, this Agreement.

21. Authorization of Signatories.

The undersigned counsel for Plaintiffs represent that (i) they are authorized to enter into this Agreement on behalf of the respective Plaintiffs and any other attorneys who have represented or who now represent Plaintiffs, and (ii) they are seeking to protect the interests of the entire Class. The undersigned counsel for Defendant represents that he is authorized to enter into this Agreement on behalf of Defendant and any attorneys who have represented or who now represent Defendant in the litigation.

22. Agreement Executable in Counterparts.

This Agreement may be executed in any number of actual or tele-copied counterparts and by each of the different Parties on several counterparts, each of which when so executed and delivered shall be an original. The executed signature page(s) from each actual counterpart may be joined together and attached to one such original and shall constitute one and the same instrument.

23. Confidentiality.

The Parties and their counsel agree to keep the existence and contents of this Agreement and all related negotiations confidential, provided, however, that this paragraph shall not prevent the disclosure of such information to regulators, rating agencies, financial analysts, sales representatives and brokers, or any other person or entity (such as experts, courts, and/or Class

Administrators) to whom the Parties agree disclosure must be made in order to effectuate the terms and conditions of this Agreement. The Parties further agree that no further press release or public statement (including any internet publication by anyone other than the Class Administrator) shall be made, issued or posted on the internet announcing this settlement or discussing the litigation.

24. Interest of the Class.

Plaintiffs' counsel and the Plaintiffs represent that they are seeking to protect the interests of the entire Class and believe that this Agreement is in the best interests of the Class. The Plaintiffs and Plaintiffs' counsel agree not to request exclusion from the Class or to object to the proposed settlement, and they further agree to support and urge the Court approve the Notice of Settlement.

25. No Evidence.

In no event shall this Agreement, any of its provisions, or any negotiations, statements, or proceedings relating to it in any way be construed as, offered as, received as, used as, or deemed to be evidence of any kind in the litigation, any other action, or in any judicial, administrative, regulatory, or other proceeding, except in a proceeding to enforce this Agreement. Without limiting the foregoing, neither this Agreement nor any related negotiations, statements, or proceedings shall be construed as, offered as, used as, or deemed to be evidence or an admission or concession by any person of any matter, including but not limited to any liability or wrongdoing on the part of Defendant or as a waiver by Defendant of any applicable defense, including without limitation any applicable statute of limitations, or as evidence of the appropriateness of certification of any class or of defense against any such certification.

26. Tax Consequences.

No opinions concerning the tax consequences of the proposed settlement to individual claimants is given or will be given by Defendant, the Plaintiffs, or Plaintiffs' counsel, nor are any representations in this regard made by virtue of this Agreement. Each claimant's tax obligations, if any, and the determination thereof, are the sole responsibility of the claimant, and the tax consequences, if any, may vary depending on the particular circumstances of each individual claimant. Defendant shall act as it determines is required by the United States Internal Revenue Code and the Regulations of the Internal Revenue Service thereunder, and by any applicable state law or regulations thereunder, in reporting any settlement benefit provided to any claimant pursuant to this Agreement.

27. Media Communications.

Plaintiffs' counsel, Plaintiffs, Defendant's counsel, and Defendant agree to cooperate in good faith to ensure that descriptions of the proposed settlement in the media or in any other public forum are fair and accurate.

28. The Plaintiffs' Assertion of Good Faith.

Plaintiffs expressly affirm that the allegations they made in pleadings filed in the litigation were made in good faith and does not admit or concede that any of the claims alleged in the Complaint lack merit.

29. Cooperation in Effecting Settlement.

The Parties, their successors and assigns, and their attorneys undertake to implement the terms of this Agreement in good faith, to use good faith in resolving any disputes that may arise in the implementation of terms of this Agreement, to cooperate fully with one another in seeking Court approval of this Agreement, and to use their best efforts to effect the prompt

consummation of this Agreement and the proposed settlement.

30. Conditions to Obligation to Conclude Settlement.

The obligation, although not the ability, of the Parties to conclude the proposed settlement is and will be contingent upon each of the following:

- A. Execution of this Agreement by the Parties;
- B. Entry by the Court of the Final Approval Order approving the settlement, from which the time to appeal has expired or which has remained unmodified after any appeal(s); and
- C. Any other conditions stated in this Agreement.

31. Governing Law.

This Agreement and any ancillary agreements shall be governed by, and interpreted according to, the law of the State of North Carolina.

32. Forum for Enforcement of Settlement.

G. Any action to enforce this Agreement shall be commenced and maintained only in the United States District Court, Western District of North Carolina, Charlotte Division. If any Class Member hereafter sues or commences arbitration against Defendant or dismissed Defendants CKE Restaurant Holdings, Inc., Hardee's Food Systems LLC, and Hardee's Restaurants LLC for the purpose of enforcing any claims that are released under this Agreement, this Agreement shall be and constitute a complete defense thereto.

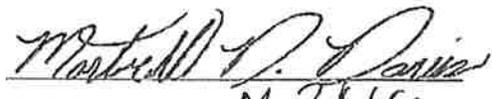
33. Parties Bound.

This Settlement Agreement shall be binding upon and inure to the benefit of the Plaintiffs, all potential Class Members, Plaintiffs' counsel, Defendant, and dismissed Defendants CKE Restaurant Holdings, Inc., Hardee's Food Systems LLC, and Hardee's Restaurants LLC and the respective heirs, successors and assigns of each of the foregoing.

PLAINTIFF LAFREEDRE MCCLAIN:


Dated: 11-21-18

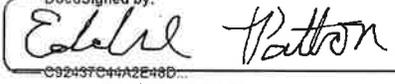
PLAINTIFF MONTRELL DAVIS:


Dated: 11-21-18

FOR PLAINTIFFS', MCCLAIN & DAVIS, COUNSEL:


Dated: 11-21-18

PLAINTIFF E.P.:

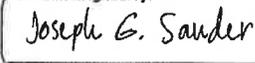
DocuSigned by:

C92437C47A2E48D...
Dated: 11/20/2018

PLAINTIFF S.F.:

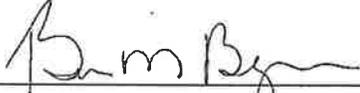
DocuSigned by:

38E0D1C5A38F48F...
Dated: 11/16/2018 4:09:54 PM PST

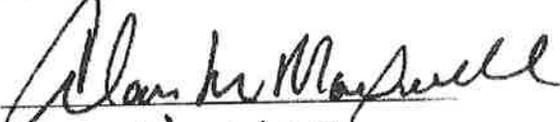
FOR PLAINTIFFS', E.P. & S.F., COUNSEL:

DocuSigned by:

7B1B043C80F644B...
Dated: 11/19/2018

FOR MORNING STAR, LLC, a/k/a MORNING STAR NC, LLC, d/b/a HARDEE'S:


Dated: 11-27-2018

FOR DEFENDANT'S COUNSEL:


Dated: 11/19/18

CLASS ACTION CLAIM FORM

POSSIBLE HEPATITIS A EXPOSURE ALLEGED TO ORIGINATE AT A HARDEE'S RESTAURANT IN CHARLOTTE, NORTH CAROLINA, BETWEEN JUNE 13 AND JUNE 23, 2018.

You are an ELIGIBLE member of the Class if you were (a) potentially exposed to the Hepatitis A Virus ("HAV") at the Hardee's restaurant, 2604 Little Rock Road, Charlotte, North Carolina ("Charlotte Hardee's"), between June 13, 2018, and June 23, 2018 ("Potential Exposure Period"), and (b) who, as a result of such potential exposure to HAV, obtained preventive medical treatment, including the administration of immune globulin ("IG"), HAV vaccine shots, or blood tests within 14 days after their exposure, and in no event any later than July 7, 2018.

You are NOT ELIGIBLE if you (1) developed an HAV infection as a result of consuming food or beverage at the Charlotte Hardee's during the Potential Exposure Period, (2) received your first IG shot, HAV vaccine, or blood test after July 7, 2018, or (3) were employed at the Charlotte Hardee's during the Potential Exposure Period.

IMPORTANT – to be valid, this form **MUST** be mailed so that it is received by the Settlement Administrator on or before **MONTH XX, 2018**.

Fill out a separate claim form for each person who obtained an IG shot, HAV vaccination or blood tests. The parent or guardian of a minor child who obtained a shot should fill out a separate claim form for each minor child.

CLAIMANT _____
NAME SOCIAL SECURITY No. (LAST 4 DIGITS ONLY)

MAILING ADDRESS _____
STREET

CITY STATE ZIP

CONTACT _____
PHONE EMAIL

TREATMENT INFORMATION

DATE(S) OF TREATMENT: _____ TYPE OF TREATMENT (IG, HAV VACCINE, OR BLOOD TEST): _____

NAME OF MEDICAL FACILITY WHERE YOU OBTAINED TREATMENT: _____

ADDRESS OF MEDICAL FACILITY: _____
STREET CITY STATE ZIP

IS THIS A NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES ("DOH") FACILITY? Yes No

SUPPORTING DOCUMENTATION

IF YOUR TREATMENT WAS **NOT** PROVIDED BY THE DOH, THEN YOU MUST SHOW RECEIPT OF IG, HAV VACCINE, OR BLOOD TESTS BY PROVIDING DOCUMENTATION FROM YOUR MEDICAL PROVIDER.

CLASS MEMBER'S DECLARATION

I declare under penalty of perjury that I consumed food or beverage purchased from the Hardee's restaurant, 2604 Little Rock Road, Charlotte, North Carolina between June 13, 2018, and June 23, 2018, and, as a result of potential exposure to HAV, obtained preventive medical treatment within 14 days of the exposure, and in no event any later than July 7, 2018. I, therefore, am an eligible member of the Class as described above and that the information set forth in this Claim Form is true and correct to the best of my knowledge and belief.

CERTIFICATION _____
SIGNATURE OF CLAIMANT OR PARENT/GUARDIAN OF CLAIMANT DATE

CHECK BOX IF YOU ARE SIGNING AS THE PARENT OR GUARDIAN OF THE CLAIMANT

THIS FORM WILL NOT BE ACCEPTED UNLESS ALL INFORMATION IS PROVIDED, SIGNED BY THE CLAIMANT AND RETURNED SO THAT IT IS RECEIVED NO LATER THAN MONTH XX, 2018, TO THE ADDRESS BELOW:

**THE NOTICE COMPANY
CHARLOTTE HEP-A CLASS ACTION
P.O. BOX 778
HINGHAM, MA 02043**

LEGAL NOTICE

If you were potentially exposed to the Hepatitis A Virus (“HAV”) at the Hardee’s Restaurant located at 2604 Little Rock Road, Charlotte, North Carolina, between June 13 and June 23, 2018, and as a result you obtained preventative medical treatment, a Class Action Settlement may affect your rights.

Qualified Class Members can make a claim for a share of \$246,000.00 if they submit a claim by MONTH XX, 2018.

A settlement has been reached in the lawsuits entitled *McClain, et al., v. Morning Star, LLC a/k/a Morning Star NC, LLC, d/b/a Hardee’s* (Civil Action File No. 3:18-cv-00419-FDW-DCK) and *E.P. et al. v. CKE Restaurants Holdings, Inc., a Delaware Corporation, et al.* (Civil Action File 3:18-cv-00483-FDW-DCK), pending in the Charlotte Division of the United States District Court for the Western District of North Carolina. Visit www.CharlotteHepA.com for complete information.

What Is This Case About?

This lawsuit asserts class claims for breach of warranties and negligence to recover damages for physical injury and economic loss arising from obtaining immune globulin (“IG”), blood tests, and/or Hepatitis A (“HAV”) vaccinations in response to the North Carolina Department of Health and Human Services (“DOH”) alert for potential exposure to HAV by consuming food or drink from the Charlotte Hardee’s between June 13, 2018, and June 23, 2018 (“Potential Exposure Period”).

Who Is Included in the Settlement?

The “Class” includes all individuals who were (a) potentially exposed to HAV at the Hardee’s Restaurant, 2604 Little Rock Road, Charlotte, North Carolina (“Charlotte Hardee’s”), between June 13, 2018, and June 23, 2018, and (b) who, as a result of such potential exposure to HAV, obtained preventive medical treatment, including the administration of IG, HAV vaccine shots, or blood tests within 14 days after their exposure, and in no event any later than July 7, 2018.

Excluded from the Class are (1) all persons, if any, who developed HAV infections as a result of consuming food or beverage at the Charlotte Hardee’s during the Potential Exposure Period, (2) anyone receiving their first IG shot, HAV vaccine, or blood test after July 7, 2018, and (3) employees at the Charlotte Hardee’s during the Potential Exposure Period.

What Does the Settlement Provide?

Each Claimant will receive as general damages a pro-rata share of the aggregate class amount of \$246,000.00 (“General Damages Fund”). In addition, the Named Plaintiffs will each receive \$1,000.00 in compensation to be paid by the Defendant.

Who Pays the Class Counsel and Administrative Costs?

The settlement provides for the Defendant to pay Class Counsel's fees and costs which will be capped at the lesser of (a) 25% of the amount paid to the Class for general damages, or (b) \$61,500. Up to \$25,000 in fees and charges for Settlement administration will be paid by the Defendant. These amounts will not diminish the amount to be paid to members of the Class.

How Do I Receive Payment?

To receive payment, you must be a member of the Class and submit a claim form by MONTH XX, 2018. If you do not submit a complete and timely claim form, you will not be entitled to payment. Claim forms and instructions are available at www.CharlotteHepA.com.

What Are Your Rights?

If you do nothing, members of the Class will be bound by the Court's decisions. If you do not want the benefits of the settlement and, instead, you want to keep your right to sue the Defendant, you must exclude yourself from the Settlement Class by writing to the Settlement Administrator at the following address:

Charlotte Hep-A Exclusions
c/o The Notice Company
P.O. Box 778
Hingham, MA 02043

The Court will exclude from the Class any Class Member who submits a timely, written exclusion request, which must (a) state your full name and mailing address, (b) be signed and dated, and (c) state that you request to be "Excluded from the Charlotte Hardee's Hepatitis A Class Action in North Carolina". To be valid, exclusion requests must be postmarked on or before MONTH XX, 2018.

If you do not exclude yourself, you may object to the settlement, or enter an appearance through counsel, by filing an objection with the Court and sending copies to Class Counsel and Defendant's Counsel. See the instructions at www.CharlotteHepA.com. The deadline to file objections or a notice of appearance is MONTH XX, 2018.

When Is the Final Hearing?

The Court will hold a Final Approval Hearing on MONTH XX, 2018, at XX:XX a.m./p.m. The address of the Court is United States Courthouse, Charles R. Jonas Federal Building, 401 West Trade Street, Room 210, Charlotte, NC 28202. At the hearing, the Court will consider whether the proposed settlement should be granted final approval as fair, adequate, and reasonable, and in the best interests of the Class as a whole. This date may change so please check the website at www.CharlotteHepA.com. You or your own lawyer may appear and speak at the hearing at your own expense.

How Do I Get Additional Information?

This is only a summary notice of the proposed settlement. You may obtain a detailed notice, the claim form, and other Settlement information by visiting www.CharlotteHepA.com, by calling toll free 1-800-XXX-XXXX, or by writing to The Notice Company, Charlotte Hep-A Administrator, P.O. Box 778, Hingham, MA 02043.

**PLEASE DO NOT CONTACT THE COURT
WITH INQUIRIES ABOUT THE SETTLEMENT**

If you were potentially exposed to the Hepatitis A Virus (“HAV”) at the Hardee’s Restaurant located at 2604 Little Rock Road, Charlotte, North Carolina, between June 13 and June 23, 2018, and as a result, you obtained preventative medical treatment, a Class Action Settlement may affect your rights.

A court ordered this notice. This is not a solicitation from a lawyer.

- You can make a claim for your share of \$246,000.00 if you submit a claim by MONTH XX, 2018, and qualify as a Class Member.
- Please read this notice carefully. Your legal rights may be affected whether or not you act.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM BY MONTH XX, 2018	You must submit a claim to receive a payment from the Settlement. See Questions 4, 5 and 6 below.
EXCLUDE YOURSELF BY MONTH XX, 2018	Excluding yourself from the Settlement is the only option that allows you individually to sue the Defendant about the claims in this case. See Questions 6 and 7 for specifics. If you do not exclude yourself from the Class, you cannot individually sue the Defendant.
OBJECT BY MONTH XX, 2018	You can file an objection with the Court explaining why you disagree with the Settlement, the requested attorneys’ fees and litigation expenses, and/or the Class Representative awards. See Questions 4, 6, 8 and 12 for specifics.
GO TO THE HEARING ON MONTH XX, 2018	You can ask to speak to the Court about the Settlement. See Questions 8 and 12 below.
DO NOTHING	If you do nothing, then you will not receive any payment from the Settlement and you will give up any rights you currently may have separately to sue the Defendant for the conduct that is the subject of this litigation.

1. Why should I read this Notice?

The purpose of this Notice is to inform you that your rights may be affected by the proposed settlement (the “Settlement”) of the lawsuits entitled McClain, et al., v. Morning Star, LLC a/k/a Morning Star NC, LLC, d/b/a Hardee's (Civil Action File No. 3:18-cv-00419-FDW-DCK) and E.P. et al. v. CKE Restaurants Holdings, Inc., a Delaware Corporation, et al. (Civil

Action File 3:18-cv-00483-FDW-DCK), pending in the Charlotte Division of the United States District Court for the Western District of North Carolina.

2. What is the lawsuit about?

The Defendant in these lawsuits is Morning Star, LLC, also known as Morning Star NC, LLC, doing business as Hardee's.

The Plaintiffs, Iafreedre McClain, Montrell Davis, E.P. and S.F. ("Named Plaintiffs"), acting on behalf of themselves and all those similarly situated, have asserted claims against the Defendant concerning a potential exposure that occurred at the Hardee's restaurant located at 2604 Little Rock Road, Charlotte, North Carolina 28214 ("Charlotte Hardee's"), where an employee was confirmed to have been infected with HAV. The North Carolina Department of Health and Human Services ("DOH") recommended that anyone who was at high risk for contracting HAV or who consumed food or beverages purchased at the Charlotte Hardee's between June 13, 2018, and June 23, 2018, receive prophylactic treatment against HAV within 14 days after their exposure at one of three clinics. The lawsuit seeks recovery of economic and non-economic damages sustained as a result of the potential exposure and post-exposure treatment. The lawsuit would provide compensation to persons who took immediate preventative action at the recommendation of public health authorities or other health professionals and, as a result, did not subsequently develop symptoms of an HAV infection.

The Plaintiffs have asserted in this litigation class claims for breach of warranties and negligence to recover damages for physical injury and economic loss arising from obtaining immune globulin ("IG"), blood tests, and/or HAV vaccinations in response to the DOH alert for potential exposure to the HAV by consuming food or drink from the Charlotte Hardee's between June 13, 2018, and June 23, 2018 ("Potential Exposure Period").

The Defendant expressly denies any wrongdoing and does not admit or concede any actual or potential fault, wrongdoing or liability in connection with any facts or claims that have been or could have been alleged against them in the litigation but consider it desirable for these litigations to be settled and dismissed.

3. Who is covered by the Class?

For purposes of this Settlement, the parties agree that the class (the "Class") is defined as follows:

All individuals who were (a) potentially exposed to the Hepatitis A Virus ("HAV") at the Hardee's Restaurant, 2604 Little Rock Road, Charlotte, North Carolina ("Charlotte Hardee's"), between June 13, 2018, and June 23, 2018 ("Potential Exposure Period"), and (b) who, as a result of such potential exposure to HAV, obtained preventive medical treatment, including the administration of IG, HAV vaccine shots, or blood tests within 14 days after their exposure, and in no event any later than July 7, 2018.

Excluded from the Class are (1) all persons, if any, who developed HAV infections as a result of consuming food or beverage at the Charlotte Hardee's during the Potential

Exposure Period, (2) anyone receiving their first IG shot, HAV vaccine, or blood test after July 7, 2018, and (3) employees at the Charlotte Hardee's during the Potential Exposure Period.

4. What are the terms of the settlement?

The proposed Settlement provides for payment of general damages to each member of the Class who submits a timely, qualified claim for general damages ("Claimant"). Each Claimant will receive as general damages a pro-rata share of the aggregate class fund of \$246,000.00. In addition to and not to be deducted from the class fund, the Named Plaintiffs will each receive \$1,000.00 in compensation to be paid by Defendant.

5. How do I make a claim?

To make a claim, you must submit a claim form so that it is received by the Settlement Administrator on or before MONTH XX, 2018. To be a Qualified Claimant, you must (a) submit a complete claim form and sign it as a declaration under penalty of perjury attesting to facts showing your membership in the Class listed above; and (b) show receipt of IG, HAV vaccine, or blood tests by providing date of treatment and, if the treatment was not provided by the DOH, provide treatment documentation from your medical provider.

You can obtain a claim form by downloading the form at **www.CharlotteHepA.com** or by calling **1-800-XXX-XXXX**. You must provide the information requested on the claim form to support and verify your claim and mail it to the Settlement Administrator so that it is received no later than MONTH XX, 2018. The address of the Settlement Administrator is:

The Notice Company
Charlotte Hep-A Class Action
P.O. Box 778
Hingham, MA 02043

You must complete and submit a separate claim form for each person who obtained IG, HAV vaccine shots, or blood tests. **FAILURE TO SUBMIT A VALID AND TIMELY CLAIM FORM SO THAT IT IS RECEIVED BY MONTH XX, 2018 WILL BAR YOU FROM RECEIVING PAYMENT FROM THE SETTLEMENT.**

6. What are my options?

In order to receive payment, you must submit a valid claim form so that it is received by **MONTH XX, 2018**. You will not be charged anything individually to remain in the Class. You may also exclude yourself from the Class as described below. If you exclude yourself, you may not submit a claim form.

Any potential member of the Class who wishes to do so may object to the proposed Settlement and/or enter an appearance in this litigation through his or her own attorney but must pay separately for the fees and expenses incurred by that attorney. Should you decide to enter an

appearance in this litigation, however, you must still submit a timely claim form in order to receive payment.

7. How do I exclude myself from the class?

If you exclude yourself from the Class, you may not submit a claim and you will not be entitled to receive payment from this Settlement. Persons who would otherwise be members of the Class may exclude themselves (“opt out”) from the Class and from the Settlement by mailing a written request for exclusion to the Settlement Administrator to the following address:

Charlotte Hep-A Exclusions
c/o The Notice Company
P.O. Box 778
Hingham, MA 02043

To be valid, your exclusion request must be received no later than **MONTH XX, 2018**. Your request for exclusion must (a) state your full name and mailing address, (b) be signed and dated, and (c) state that you request to be “Excluded from the Charlotte Hardee’s Hepatitis A Class Action in North Carolina”. A member of the Class submitting such a request will be deemed excluded from the Class and from this Settlement.

Any potential member of the Class who does not file a timely written request for exclusion will be bound by the Settlement and all subsequent proceedings, orders and judgments in this lawsuit, even if that person does not submit a claim.

8. How do I object to the settlement?

Any member of the Class who has not filed a written request for exclusion and who wishes to object to the fairness, reasonableness, or adequacy of the settlement must serve a notice of intent to appear and/or object, together with copies of any papers the member of the Class intends to present to the Court in connection with such objection, on the Class Counsel and counsel for the Defendant, no later than MONTH XX, 2018. A copy of the notice of intent and any accompanying papers must also be filed with the Court no later than MONTH XX, 2018.

COURT ADDRESS:

United States Courthouse
Charles R. Jonas Federal Building
401 West Trade Street, Room 210
Charlotte, NC 28202

CLASS COUNSEL ADDRESSES:

Brett Dressler, Esquire
Sellers, Ayers, Dortch & Lyons, P.A.
301 S. McDowell Street, Ste. 401
Charlotte, NC 28204

William D. Marler, Esquire
Marler Clark, L.L. P., P.S.
1012 First Avenue, Fifth Floor
Seattle, WA 98104-1008

Daniel K. Bryson, Esquire
Scott C. Harris, Esquire
Whitfield Bryson & Mason LLP
900 W. Morgan Street
Raleigh, NC 27603

Joseph G. Sauder, Esquire
Sauder Schelkopf LLC
555 Lancaster Avenue
Berwyn, PA 19312

DEFENDANT’S COUNSEL ADDRESSES:

Shawn D. Scott, Esq.
Alan M. Maxwell, Esq.
Nicholas P. Panayotopoulos, Esq.
Jennifer A. Adler, Esq.
Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC
3344 Peachtree Road, N.E., Suite 2400
Atlanta, GA 30326

Class members may make such appearances or objections either on their own or through attorneys hired at their own expense. If an attorney will represent any such Class member, he or she must (i) file a notice of appearance with the Court no later than MONTH XX, 2017, and (ii) serve on the Class Counsel and on Defendant’s Counsel, a copy of the same. Any such Class Member or their counsel may obtain access at the offices of Sellers, Ayers, Dortch & Lyons, P.A., 301 S. McDowell St., Ste. 401, Charlotte, North Carolina, to the complaints, answers, any orders entered by the court in the lawsuit, and to such additional pleadings as may be agreed upon by Defendant’s Counsel and Class Counsel.

Only those Class Members who follow the procedures set forth above may appear at the Final Approval Hearing and/or have their objections considered by the Court.

Any Class Member who does not appear individually or through counsel and/or who does not challenge the fairness, reasonableness or adequacy of the settlement shall waive and forfeit any and all rights that he or she may have to appear separately and/or object.

9. Who represents the class?

The Court has designated Iafreedre McClain, Montrell Davis, E.P. and S.F. as Class Representatives. The Court has appointed as Class Counsel the following: Sellers, Ayers, Dortch & Lyons, PA; Marler Clark, LLP, PS; Whitfield Bryson & Mason, LLP; and Sauder Schelkopf LLC. If you have any questions for the Class Counsel, you may write to them at the addresses listed above.

10. Who pays the attorneys' fees and costs?

Members of the Class are not responsible for paying the attorney fees or expenses of Class Counsel. The Defendant will pay Class Counsel’s fees and costs which will be capped at the lesser of (a) 25% of the amount paid to the Class for general damages, or (b) \$61,500. This amount is in addition to the General Damages to be paid to Qualified Claimants

11. What are the reasons for the Settlement?

The Class Representatives and the Class Counsel support the proposed settlement because they believe it provides for prompt, efficient, and fair relief to the Class. In ultimately deciding to recommend this settlement, the Class Counsel considered the relative risks, costs, and benefits to the Class of settlement or continuing litigation.

12. What is the Settlement approval procedure?

The Court will hold a Final Approval Hearing on MONTH XX, 2018, at XX a.m./p.m. The address of the Court is United States Courthouse, Charles R. Jonas Federal Building, 401 West Trade Street, Room 210, Charlotte, NC 28202. At the hearing, the Court will consider whether the proposed settlement should be granted final approval as fair, adequate, and reasonable, and in the best interests of the Class as a whole. The Parties will request that the Court enter a Final Approval Order.

You may attend this hearing if you wish, but you are not required to do so in order to participate in the Settlement.

The Court's determination on the final approval of the proposed settlement will be binding on all Class members. If the Court grants final approval of the settlement, the judgment will release the Defendant from all claims for damages arising as a result of the Potential Exposure Period by persons who meet the Class definition.

The compensation included in the settlement covers the cost of the shots, and the value of lost time required to obtain the shots. This release will bar any further suit on the settled claims by or on behalf of the Class Members, and any persons claiming by or through them, including heirs, assigns, administrators, devisees, successors, attorneys, or representatives of any kind.

If the Court does not approve the settlement, the case will proceed as active litigation.

13. Where do I get additional information?

The foregoing is only a summary of the circumstances surrounding the litigation, the claims asserted, the proposed settlement, and related matters. Additional information is available at **www.CharlotteHepA.com**. You may seek the advice and guidance of your own private attorney, at your own expense, if you desire.

If you wish to communicate with the Class Counsel identified above or wish to obtain relevant Court documents, you may do so by writing to the Class Counsel at the address listed above.

**PLEASE DO NOT CONTACT THE COURT
WITH INQUIRIES ABOUT THE SETTLEMENT**